

FEDERAL TRADE COMMISSION**16 CFR Part 4****Privacy Act of 1974; Implementation**

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendment.

SUMMARY: The FTC amends its Privacy Act rules to include a new exempt system of records that will be used to compile and maintain identity theft complaint data. This system implements the requirements of the Identity Theft and Assumption Deterrence Act of 1998. The exemption will help prevent individuals suspected of engaging in identity theft from obtaining access to complaint data.

DATES: This amendment is final and effective on December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2447. For more information about the Commission's identity theft program, contact Beth Grossman, (202) 326-3019, or Joanna Crane, (202) 326-3258, Attorneys, Division of Planning & Information, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On October 27, 1999, in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission published notice of its intent to establish a new agency system of records, entitled FTC-IV-2, "Identity Theft Complaint Management System" (FTC-IV-2), and sought public comment on a proposed amendment of the Commission's rules to exempt the system from certain provisions of the Act. See 64 FR 57887 (system notice), 57825 (notice of proposed rulemaking to amend Commission Rule 4.13(m), 16 CFR 4.13(m)). The system of records will enable the FTC to fulfill its statutory responsibilities under section 5 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105-318, 112 Stat. 3007, 3010, 18 U.S.C. 1028 note ("ITADA"). The ITADA designates the FTC to serve as a clearinghouse for the receipt and referral of identity theft complaints and requires that the FTC establish procedures: (1) To log and acknowledge receipt of complaints from individuals who certify that they have a reasonable belief that one or more of their means of identification have been assumed, stolen, or otherwise unlawfully acquired in violation of the statute; (2) to provide informational materials to such

individuals; and (3) to refer such complaints to "appropriate entities." Under the statute, these entities include, but are not limited to, the three major national consumer reporting agencies (i.e., currently Equifax, Experian and Trans Union) and appropriate law enforcement agencies for potential law enforcement action.

As explained in the Commission's notice of the proposed rulemaking, the Commission believes that the identity theft complaint data contained in the system must be exempted under the Privacy Act to prevent certain categories of individuals (e.g., targets of identity theft complaints or investigations), to the extent they are covered by the system, from invoking the Act to obtain access to complaint files that may pertain to their activities. A principal purpose for compiling these complaint files is for law enforcement, since these complaints focus on specific instances of suspected illegal identity theft. In many cases, these complaints will be referred to other law enforcement authorities, as contemplated by the ITADA, and in certain cases, may also be relevant to Commission investigations. Under these circumstances, disclosure of the complaint file to a target would harm or otherwise interfere with law enforcement efforts. For example, if the complaint data were not exempted from access, a target could anticipate and evade prosecution by learning about actual or potential law enforcement referrals, investigations, or other actions from information maintained in the complaint file. Such access to the file could also inadvertently facilitate further identity theft or retaliation by enabling the target to ascertain or confirm sensitive personal information submitted by and being maintained about the identity theft victim or about other informants.

The Commission received no comments in response to its proposed exemption of the system. Accordingly, for the reasons set forth above, the Commission is amending Commission Rule 4.13(m), 16 CFR 4.13(m), to add the system to its inventory of systems that are exempt under subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2). The Commission, however, reserves the sole discretion to permit certain categories of individuals (e.g., complainants or other individual informants) whose records are covered by the system to obtain access to information that was provided by such individuals in order to correct, update or verify the accuracy of that information or for other related purposes.

The Commission certifies that this rule amendment does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Records, Sunshine Act.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR chapter I as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read:

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Amend § 4.13 by revising paragraph (m)(2) to read as follows:

§ 4.13 Privacy Act rules.

* * * * *

(m) * * *

(2) Pursuant to 5 U.S.C. 552a(k)(2), investigatory materials compiled for law enforcement purposes in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(2):

Investigational, Legal, and Public Records—
FTC
Disciplinary Action Investigatory Files—FTC
Clearance to Participate Applications and the
Commission's Responses Thereto, and
Related Documents—FTC
Management Information System—FTC
Office of the Secretary Control and Reporting
System—FTC
Office of Inspector General Investigative
Files—FTC
Stenographic Reporting Service Requests—
FTC
Identity Theft Complaint Management
System—FTC
Freedom of Information Act Requests and
Appeals—FTC
Privacy Act Requests and Appeals—FTC
Information Retrieval and Indexing System—
FTC
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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-32036 Filed 12-10-99; 8:45 am]

BILLING CODE 6750-01-P