

the surface of Galliano, LA and will be published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in an adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of an intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this action will be filed in the Rules Docket.

### Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p.389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

### ASW LA E5 Galliano, LA [New]

Air Logistics Galliano Heliport, LA  
Lat. 29°24'44" N, long. 90°17'40" W

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of Air Logistics Galliano Heliport, LA, excluding that portion of airspace that overlies existing Class E airspace for the South La Fourche Airport, Galliano, LA.

\* \* \* \* \*

Issued in Fort Worth, TX, on May 10, 2004.

**Donald R. Smith,**

*Acting Director of Central En Route and Oceanic Area Operations.*

[FR Doc. 04–11448 Filed 5–19–04; 8:45 am]

**BILLING CODE 4910–13–M**

## FEDERAL TRADE COMMISSION

### 16 CFR Parts 602, 603, 604, and 611

**RIN 3084-AA94**

### Amendment of Rules Under the FACT Act

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Final rules.

**SUMMARY:** The Fair and Accurate Credit Transactions Act of 2003 requires the FTC to adopt a number of rules to implement its provisions amending the Fair Credit Reporting Act. In this action, the FTC is revising the title or location of two previously-issued rules in the Code of Federal Regulations, and adding two technical provisions that apply generally to all rules issued by the Commission under the FCRA.

**DATES:** These rules are effective on June 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Clarke Brinckerhoff, Attorney, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

**SUPPLEMENTARY INFORMATION:** The recently enacted Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") requires the FTC to adopt a number of rules to implement several of its provisions, which amend the Fair Credit Reporting Act ("FCRA"). The Commission has published one final rule, Effective Dates for the FACT Act (69 FR 6526; Feb. 11, 2004) (the "effective dates rule") and one interim final rule, Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting

Agency (69 FR 8532; Feb. 24, 2004) (the "circumvention rule"). All FACT Act rules will be published in Title 16, Chapter I, Subchapter F, of the Code of Federal Regulations ("CFR"), which is labeled "Fair Credit Reporting Act." In the CFR, the effective dates rule was designated as Part 602; the circumvention rule was designated as Part 603. Subsequently, the Commission published more proposed rules, including Free Annual File Disclosures (69 FR 13192; Mar. 19, 2004) (the "free reports rule") and Identity Theft Definitions (69 FR 23369; Apr. 28, 2004) (the "definitions rule"). In the CFR, the proposed free reports rule was designated as Part 610; the proposed definitions rule was designated as Part 603.

In this document, the Commission makes non-substantive revisions to the effective dates rule in Part 602, and establishes a new Part 611, containing the provisions of the circumvention rule previously issued as Part 603. In addition, the Commission revises Part 603 (*i.e.*, the heading and § 603.1) to state that terms defined in the FCRA have the same meaning in the FCRA rules unless otherwise stated in those rules. Finally, the Commission adds a new Part 604, which states that any court ruling staying or invalidating any provision of any FCRA rule has no impact on the continuing effectiveness of any other provision or rule (new § 604.1). The above changes are described in greater detail below.

### I. Reorganization of FCRA Rules

To achieve a clearer and more logical structure for its FCRA rules, the Commission is making certain non-substantive, technical changes to several CFR parts in which those rules appear. Specifically, the Commission is making three technical revisions to 16 CFR Part 602, which contains the effective dates rule. First, the Commission is changing the heading of that part from "Fair Credit Reporting Act," which unnecessarily duplicates the heading of Subchapter F, to "Fair and Accurate Credit Transactions Act of 2003," which more specifically describes the nature of the rules that are subject to the effective dates set forth in Part 602. Second, the Commission is changing the heading of § 602.1 from "Purpose, scope, and effective dates" to "Effective dates" and deleting references to topics other than effective dates, because there are no provisions on other topics in this section. Third, it changes the description of § 602.1(c)(3)(xi) from "concerning enhanced disclosure of the means available to opt out of prescreened lists" to "concerning

duration of elections" to more accurately describe the FACT Act provision involved. This revision is purely descriptive in nature and is intended neither to alter any effective date adopted jointly by the Commission and the Federal Reserve Board, nor to have any other effect whatsoever on any legal rights or obligations that may arise under any rule or other requirement arising under the FACT Act.

Further, the Commission is changing the designation of the previously issued circumvention rule,<sup>1</sup> by revising Part 603 to eliminate those provisions from that part and incorporating them instead into a new Part 611. This change will avoid any conflict with the proposed definitions rule, which, if finally adopted, will be issued in Part 603. This change allows for a rational arrangement of the Commission's FCRA rules in 16 CFR, whereby rules of general applicability would be contained in Parts 600–609, and rules applying to consumer reporting agencies would start with the proposed free reports rule in Part 610. Thus, the rule against circumventing the duty to provide free reports (Part 611) would immediately follow the free reports rule. The Commission anticipates proposing as Part 612 a rule concerning a reasonable fee for disclosure of scores by consumer reporting agencies, pursuant to Section 212(b) of the FACT Act, and has already proposed two rules relating to identity theft as Part 613 (Duration of Active Duty Alerts) and Part 614 (Appropriate Proof of Identity) (69 FR 23369; Apr. 28, 2004).

### II. Provision for Statutorily Defined Terms and Severability

Aside from the above organizational changes, the Commission is adding certain provisions that, without making substantive alterations, clarify the relationship between the statutory definitions and the Commission's rules, and the effect, if any, on those rules if a particular rule provision were to be invalidated.

The Commission anticipates that some of its FACT Act rules may use terms that are already defined in the FCRA. Accordingly, the Commission is amending Part 603 (which no longer contains the circumvention rule) to revise the heading (to "Definitions")

<sup>1</sup> This Commission action, changing the circumvention rule's location in the CFR, does not affect its classification as an interim final rule. Similarly, it has no impact on the Commission's invitation for comments to assist it in ascertaining facts necessary to reach a determination whether to adopt it as a final rule. 69 FR 8532 (Feb. 24, 2004). The Commission will address those comments and any needed substantive changes in the circumvention rule at a later date.

and specify in § 603.1 that any term used in any Commission FACT Act (or other FCRA) rule has the same meaning as in the FCRA unless otherwise specified in that rule. This provision will make it unnecessary for each rule to state that terms have the same meaning as in the FCRA.

Finally, the Commission adds a new Part 604 and § 604.1 containing a severability provision similar to that in other recent Commission rules. (See, *e.g.*, the Telemarketing Sales Rule, 16 CFR 310.8.) This provision will ensure the effectiveness of all the Commission's FCRA rules, in the event that any rule (or any provision of any rule) is declared invalid by a court.

### III. Good Cause for Final Rule

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, generally requires an agency to publish a notice of a proposed rule and afford interested persons an opportunity to provide comments prior to promulgation of the rule. Notice of the proposed rule and an opportunity for public comment are not required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B).

The Commission finds good cause for adopting these rules without advance public notice or comment. The FACT Act requires the Commission to promulgate a large number of rules implementing various amendments to the FCRA, all of which will appear in 16 CFR, Chapter I, Subchapter F, "Fair Credit Reporting Act." It has finalized some rules, proposed others, and will propose and finalize more in the coming months. It is important that FACT Act rules be appropriately organized and labeled in the CFR so they can be easily accessed by the public. Similarly, addition of the severability and FCRA definitions provisions will avoid possible uncertainties relating to the Commission's FACT Act rules. The revisions described above, however, are purely technical in nature, and are not intended to make any substantive change in the legal rights or obligations as defined or to be defined by the Commission's rules. Rather, the changes merely clarify the organizational structure and relationship of the rules, including the severability of its provisions, and to reiterate relevant terms already defined by statute. For these reasons, the FTC finds that issuing these rule changes with prior notice and comment is unnecessary, and would be contrary to the public interest to the

extent it would delay publication of the clarifications and interfere with the timely and orderly promulgation of the relevant substantive rules. 5 U.S.C. 553(b)(3)(B). Accordingly, the Commission finds that there is good cause for adopting these rules as effective without prior public comment.

#### IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506; 5 CFR 1320 Appendix A.1, the FTC has reviewed these final rule changes. The Commission has determined that these changes neither affect nor contain any collection of information requirements subject to Office of Management and Budget review under the Paperwork Reduction Act. The rule changes do not require any entity to collect, maintain, disclose, or submit any records or other information.

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule and a Final Regulatory Flexibility Analysis with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605. The FTC certifies that these rules are entirely technical in nature and thus will not have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect.

#### List of Subjects in 16 CFR Parts 602, 603, 604, and 611

Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

■ Accordingly, for the reasons set forth in the preamble, the FTC revises 16 CFR Parts 602 and 603, and adds new Parts 604 and 611, to read as follows:

■ 1. Revise Part 602 to read as follows:

#### PART 602—FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

**Authority:** 15 U.S.C. 1681s; sec. 3, Pub. L. 108–159; 117 Stat. 1953.

##### § 602.1 Effective dates.

(a)–(b) [Reserved]

(c) The applicable provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Pub. L. 108–159, 117 Stat. 1952, shall be effective in accordance with the following schedule:

(1) *Provisions effective December 31, 2003.*

(i) Sections 151(a)(2), 212(e), 214(c), 311(b), and 711, concerning the relation to state laws; and

(ii) Each of the provisions of the FACT Act that authorizes an agency to issue a regulation or to take other action to implement the applicable provision of the FACT Act or the applicable provision of the Fair Credit Reporting Act, as amended by the FACT Act, but only with respect to that agency's authority to propose and adopt the implementing regulation or to take such other action.

(2) *Provisions effective March 31, 2004.*

(i) Section 111, concerning the definitions;

(ii) Section 156, concerning the statute of limitations

(iii) Sections 312(d), (e), and (f), concerning the furnisher liability exception, liability and enforcement, and rule of construction, respectively;

(iv) Section 313(a), concerning action regarding complaints;

(v) Section 611, concerning communications for certain employee investigations; and

(vi) Section 811, concerning clerical amendments.

(3) *Provisions effective December 1, 2004.*

(i) Section 112, concerning fraud alerts and active duty alerts;

(ii) Section 114, concerning procedures for the identification of possible instances of identity theft;

(iii) Section 115, concerning truncation of the social security number in a consumer report;

(iv) Section 151(a)(1), concerning the summary of rights of identity theft victims;

(v) Section 152, concerning blocking of information resulting from identity theft;

(vi) Section 153, concerning the coordination of identity theft complaint investigations;

(vii) Section 154, concerning the prevention of repollution of consumer reports;

(viii) Section 155, concerning notice by debt collectors with respect to fraudulent information;

(ix) Section 211(c), concerning a summary of rights of consumers;

(x) Section 212(a)–(d), concerning the disclosure of credit scores;

(xi) Section 213(c), concerning duration of elections;

(xii) Section 217(a), concerning the duty to provide notice to a consumer;

(xiii) Section 311(a), concerning the risk-based pricing notice;

(xiv) Section 312(a)–(c), concerning procedures to enhance the accuracy and

integrity of information furnished to consumer reporting agencies;

(xv) Section 314, concerning improved disclosure of the results of reinvestigation;

(xvi) Section 315, concerning reconciling addresses;

(xvii) Section 316, concerning notice of dispute through reseller; and

(xviii) Section 317, concerning the duty to conduct a reasonable reinvestigation.

■ 2. Revise Part 603 to read as follows:

#### PART 603—DEFINITIONS

**Authority:** Pub. L. 108–159, sec. 111; 15 U.S.C. 1681a.

##### § 603.1 Terms defined in the Fair Credit Reporting Act.

Any term used in any part in this subchapter, if defined in the Fair Credit Reporting Act (FCRA) and not otherwise defined in that rule, has the same meaning provided by the FCRA.

■ 3. Add new Part 604 to read as follows:

#### PART 604—FAIR CREDIT REPORTING ACT RULES

**Authority:** Pub. L. 108–159, secs. 3, 111, 112, 114, 151, 153, 211, 212, 213, 214, 216, 311, 315; 15 U.S.C. 1681s.

##### § 604.1 Severability.

All parts and subparts of this subchapter are separate and severable from one another. If any part or subpart is stayed or determined to be invalid, the Commission intends that the remaining parts and subparts shall continue in effect.

■ 4. Add a new part 611 to read as follows:

#### PART 611—PROHIBITION AGAINST CIRCUMVENTING TREATMENT AS A NATIONWIDE CONSUMER REPORTING AGENCY

Sec.

611.1 Rule of construction.

611.2 General prohibition.

611.3 Limitation on applicability.

**Authority:** Pub. L. 108–159, sec. 211(b); 15 U.S.C. 1681x.

##### § 611.1 Rule of construction.

The examples in this part are illustrative and not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

##### § 611.2 General prohibition.

(a) A consumer reporting agency shall not circumvent or evade treatment as a “consumer reporting agency that compiles and maintains files on

consumers on a nationwide basis' as defined under section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(b) *Examples:*

(1) *Circumvention through reorganization by data type.* XYZ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that public record information is assembled and maintained only by its corporate affiliate, ABC Inc. XYZ continues operating as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603 (p), because it no longer maintains public record information. XYZ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(2) *Circumvention through reorganization by regional operations.* PDQ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that corporate affiliates separately assemble and maintain all information on consumers residing in each state. PDQ continues to operate as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer operates on a nationwide basis. PDQ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(3) *Circumvention by a newly formed entity.* Smith Co. is a new entrant in the

marketplace for consumer reports that bear on a consumer's credit worthiness, standing and capacity. Smith Co. organizes itself into two affiliated companies: Smith Credit Co. and Smith Public Records Co. Smith Credit Co. assembles and maintains credit account information from persons who furnish that information regularly and in the ordinary course of business on consumers residing nationwide. Smith Public Records Co. assembles and maintains public record information on consumers nationwide. Neither Smith Co. nor its affiliated organizations comply with FCRA obligations of consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. Smith Co.'s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(4) *Bona fide, arms-length transaction with unaffiliated party.* Foster Ltd. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd. sells its public record information business to an unaffiliated company in a bona fide, arms-length transaction. Foster Ltd. ceases to assemble, evaluate and maintain public record information on consumers residing nationwide, and ceases to offer reports containing public record information. Foster Ltd.'s conduct is not a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd.'s conduct does not violate this part.

#### **§ 611.3 Limitation on applicability.**

Any person who is otherwise in violation of § 611.2 shall be deemed to be in compliance with this part if such person is in compliance with all obligations imposed upon consumer reporting agencies that compile and maintain files on consumers on a nationwide basis under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 04-11329 Filed 5-19-04; 8:45 am]

**BILLING CODE 6750-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Parts 211, 231, and 241**

[Release Nos. 33-8422; 34-49708; FR-73]

### **Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretation.

**SUMMARY:** The Commission is publishing interpretive guidance regarding Auditing and Related Professional Practice Standard No. 1, *References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board* ("Auditing Standard No. 1") of the Public Company Accounting Oversight Board (the "PCAOB").

**DATES:** *Effective Date:* May 14, 2004.

#### **FOR FURTHER INFORMATION CONTACT:**

Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Consuelo Hitchcock, Division of Corporation Finance, at (202) 942-2960 or to Esmeralda Rodriguez, Office of the Chief Accountant, at (202) 942-4400, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0401.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Section 103(a) of the Sarbanes-Oxley Act of 2002 (the "Act") authorized the PCAOB to establish auditing and related professional practice standards to be used by registered public accounting firms.<sup>1</sup> On December 23, 2003, the PCAOB filed with the Commission proposed Auditing Standard No. 1, *References in Auditing Reports to the Standards of the Public Company Accounting Oversight Board*.<sup>2</sup> After soliciting comments on the proposed standard,<sup>3</sup> the Commission today approved Auditing Standard No. 1, effective for auditors' reports issued or reissued on or after May 24, 2004.<sup>4</sup> Auditing Standard No. 1 directly impacts certain of the Commission's

<sup>1</sup> Pub. L. 107-204, 116 Stat. 745 (2002).

<sup>2</sup> The PCAOB approved Auditing Standard No. 1 on December 17, 2003. PCAOB Release No. 2003-25 (December 17, 2003) (the "PCAOB Adopting Release").

<sup>3</sup> Release No. 34-49528 (April 6, 2004).

<sup>4</sup> Release No. 34-49707 (May 14, 2004).