

Federal Trade Commission

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that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

§ 316.5 Prohibition on charging a fee or imposing other requirements on recipients who wish to opt out.

Neither a sender nor any person acting on behalf of a sender may require that any recipient pay any fee, provide any information other than the recipient's electronic mail address and opt-out preferences, or take any other steps except sending a reply electronic mail message or visiting a single Internet Web page, in order to:

(a) Use a return electronic mail address or other Internet-based mechanism, required by 15 U.S.C. 7704(a)(3), to submit a request not to receive future commercial electronic mail messages from a sender; or

(b) Have such a request honored as required by 15 U.S.C. 7704(a)(3)(B) and (a)(4).

§ 316.6 Severability.

The provisions of this Part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 317—PROHIBITION OF ENERGY MARKET MANIPULATION RULE

Sec.

317.1 Scope.

317.2 Definitions.

317.3 Prohibited practices.

317.4 Preemption.

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AUTHORITY: 42 U.S.C. 17301-17305; 15 U.S.C. 41-58.

SOURCE: 74 FR 40701, Aug. 12, 2009, unless otherwise noted.

§ 317.1 Scope.

This part implements Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 ("EISA"), Pub. L. 110-140, 121 Stat. 1723 (December 19, 2007), codified at 42 U.S.C. 17301-17305. This Rule applies to any person over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§ 317.2 Definitions.

The following definitions shall apply throughout this Rule:

(a) *Crude oil* means any mixture of hydrocarbons that exists:

(1) In liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities; or

(2) As shale oil or tar sands requiring further processing for sale as a refinery feedstock.

(b) *Gasoline* means:

(1) Finished gasoline, including, but not limited to, conventional, reformulated, and oxygenated blends; and

(2) Conventional and reformulated gasoline blendstock for oxygenate blending.

(c) *Knowingly* means that the person knew or must have known that his or her conduct was fraudulent or deceptive.

(d) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(e) *Petroleum distillates* means:

(1) Jet fuels, including, but not limited to, all commercial and military specification jet fuels; and

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(2) Diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.

(f) *Wholesale* means:

(1) All purchases or sales of crude oil or jet fuel; and

(2) All purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack or upstream of the terminal rack level.

§ 317.3 Prohibited practices.

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

(a) Knowingly engage in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person; or

(b) Intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.

§ 317.4 Preemption.

The Federal Trade Commission does not intend, through the promulgation of this Rule, to preempt the laws of any state or local government, except to the extent that any such law conflicts with this Rule. A law is not in conflict with this Rule if it affords equal or greater protection from the prohibited practices set forth in § 317.3.

§ 317.5 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 318—HEALTH BREACH NOTIFICATION RULE

Sec.

- 318.1 Purpose and scope.
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- 318.4 Timeliness of notification.

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- 318.5 Method of notice.
- 318.6 Content of notice.
- 318.7 Enforcement.
- 318.8 Effective date.
- 318.9 Sunset.

AUTHORITY: Public Law 111-5, 123 Stat. 115 (2009).

SOURCE: 74 FR 42980, Aug. 25, 2009, unless otherwise noted.

§ 318.1 Purpose and scope.

(a) This part, which shall be called the “Health Breach Notification Rule,” implements section 13407 of the American Recovery and Reinvestment Act of 2009. It applies to foreign and domestic vendors of personal health records, PHR related entities, and third party service providers, irrespective of any jurisdictional tests in the Federal Trade Commission (FTC) Act, that maintain information of U.S. citizens or residents. It does not apply to HIPAA-covered entities, or to any other entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity.

(b) This part preempts state law as set forth in section 13421 of the American Recovery and Reinvestment Act of 2009.

§ 318.2 Definitions.

(a) *Breach of security* means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual. Unauthorized acquisition will be presumed to include unauthorized access to unsecured PHR identifiable health information unless the vendor of personal health records, PHR related entity, or third party service provider that experienced the breach has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information.

(b) *Business associate* means a business associate under the Health Insurance Portability and Accountability Act, Public Law 104-191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(c) *HIPAA-covered entity* means a covered entity under the Health Insurance Portability and Accountability Act, Public Law 104-191, 110 Stat. 1936, as defined in 45 CFR 160.103.