

FEDERAL RESERVE SYSTEM
12 CFR Part 222
[Regulation V; Docket No. R-1172]

FEDERAL TRADE COMMISSION
16 CFR Part 602
RIN 3084 Project No. P044804

Effective Dates for the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (FTC).

ACTION: Joint interim final rules.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the Board and the FTC (the Agencies) jointly to adopt rules establishing the effective dates for provisions of the Act that do not contain specific effective dates. The Agencies are taking two related actions to comply with this requirement. In this action, the Agencies are jointly adopting interim final rules that establish December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act (FCRA) and state laws and provisions that authorize rulemakings or other implementing action by various agencies. In the second action, published elsewhere in today's Federal Register, the Agencies jointly propose rules establishing a schedule of effective dates for other provisions of the FACT Act.

DATES: Comments must be submitted on or before January 12, 2004. The Agencies' interim final rules are effective on December 31, 2003.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to either of the Agencies and need not send comments (or copies) to both of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "Interim Final Rules for the FACT Act" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Board of Governors of the Federal Reserve System: Comments should refer to Docket No. R-1172 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or (202) 452-3102. Members of the public may inspect comments in Room MP-500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Federal Trade Commission: Comments should refer to “Interim Final Rules for the FACT Act, Project No. P044804.” Comments filed in paper form should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) should be sent to: FACTAdates@ftc.gov. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”¹ Regardless of the form in which they are filed, the Commission will consider all timely comments, and will make the comments available (with confidential material redacted) for public inspection and copying at the Commission’s principal office and on the Commission web site at www.ftc.gov. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC web site.

FOR FURTHER INFORMATION CONTACT:

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452-3594; David A. Stein, Counsel, Minh-Duc T. Le, Ky Tran-Trong, Senior Attorneys, Krista P. DeLargy, Attorney, Division of Consumer and Community Affairs, (202) 452-3667 or (202) 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

FTC: Christopher Keller or Katherine Armstrong, Attorneys, Division of Financial Practices, (202) 326-3224.

SUPPLEMENTARY INFORMATION:

Congress enacted the FACT Act, which the President signed into law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information that is contained in a consumer report. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the “Financial Literacy and Education Improvement Act”) creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The Act includes effective dates for many of its sections that vary to take account of the need for rulemaking, implementation efforts by industry, and other policy concerns. Section 3 of

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

the FACT Act requires the Agencies to prescribe joint regulations establishing an effective date for each provision of the Act for which the Act itself does not specifically provide an effective date. The FACT Act requires that the Agencies jointly adopt final rules establishing the effective dates within two months of the date of enactment of the Act. The Act also provides that each of these effective dates must be “as early as possible, while allowing a reasonable time for the implementation” of that provision, but in no case later than ten months after the date of issuance of the Agencies’ joint final rules establishing the effective dates for the Act (117 Stat. 1953).

The Agencies are jointly adopting these interim final rules that establish December 31, 2003, as the effective date for section 711 and certain other provisions of the Act that establish the relationship between the FCRA and state laws, as well as for the provisions that authorize rulemaking and other agency action under the FACT Act. In a separate notice published in conjunction with this action, the Agencies are jointly proposing regulations that establish effective dates for the other applicable provisions of the FACT Act. As noted above, the Agencies must complete these effective date rules by February 4, 2004.

The Administrative Procedure Act (APA) (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 participate in the rulemaking by providing comments prior to promulgation of the rule. The requirement for providing notice of the proposed rule and an opportunity for public comment do not apply “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.” Correspondingly, a rule may not be made effective less than thirty days after publication, unless as otherwise provided by the agency for good cause found and published with the rule.²

The current FCRA contains provisions that preempt state laws in seven areas governed by the FCRA. Under section 624(d)(2) of the FCRA, these provisions expire on January 1, 2004.³ One of the central aims of the FACT Act is to eliminate this so-called sunset provision and make permanent the current preemption provisions and add others.⁴ In these interim final rules, the Agencies are establishing December 31, 2003, as the effective date for section 711 of the FACT Act, which amends section 624(d)(2) of the FCRA, as well as for sections 151(a)(2), 212(e), 214(c), and 311(b) of the FACT Act, each of which similarly determines the relationship of state laws to areas governed by the FCRA.

The Agencies believe that there is good cause for adopting these rules as interim final rules effective without advance public comment or delay. As noted above, the current preemption provisions in the FCRA expire on January 1, 2004. Delaying final action on these provisions of the FACT Act would undermine the purpose of these provisions and is likely to provoke substantial confusion about the applicability of some state laws in areas that Congress has determined should be governed by uniform nationwide standards. Adopting these rules in final form on an interim basis also will have the effect of preserving the current state of the law while comment is received. Implementing these interim final rules is consistent with the statutory directive to act quickly and to “establish effective dates that are as early as possible.”

² 5 U.S.C. 553(b)(3)(B) and (d)(3).

³ 15 U.S.C. 1681t(d)(2).

⁴ See, e.g., S. Rep. No. 108-166 (2003) at 10-11, 25.

Certain provisions of the Act require one or more agencies to undertake an action or rulemaking within a specified period of time after enactment of the Act. For example, section 213(b) states that the Commission's regulations implementing that section "shall be issued in final form not later than 1 year after the date of enactment of this Act." The Agencies have determined that no joint regulations under section 3 of the FACT Act are required to make these provisions effective. The Agencies believe that, in these cases, Congress has specified the date of enactment as the lawful effective date because that is the predicate for mandating that an agency action be performed within a specified period of time after the date of enactment.

There are, however, several sections of the Act that do not specify the period for rulemaking or other action. To address this, the Agencies' interim final rules establish December 31, 2003, as the effective date for each provision of the FACT Act that authorizes an agency, without establishing an implementation date, to issue a regulation or to take other action to implement the Act or the applicable provision of the FCRA, as amended by the FACT Act. The Agencies believe that there is good cause for adopting these rules in final form on an interim basis without advance public comment or delay. Establishing an early effective date for these regulatory provisions would allow the agencies to begin immediately to perform their responsibilities under the FACT Act. The Agencies note that this section of the interim final rules applies only to the provisions of the FACT Act without effective dates that relate to an agency's authority to issue a regulation or to take other action to implement the Act. These interim final rules do not affect the substantive provisions of the FACT Act implemented by an agency rule. The substantive provisions of the Act become effective as provided in the Act, as provided in the Agencies joint effective date rules, or as provided by the substantive rules promulgated by the agencies, as appropriate.

Accordingly, the Agencies find good cause for adopting these rules as interim final rules effective on December 31, 2003.

To allow for public participation and assure that these interim rules are appropriate, the Agencies invite comment on the interim final rules and on the Agencies' findings. Based on comments received, the Agencies may adjust the effective date of a section governed by the interim final rules as necessary.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have reviewed the interim final rules. (The Board has done so under authority delegated to the Board by the Office of Management and Budget.) The rules contain no collections of information pursuant to the Paperwork Reduction Act.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

Solicitation of Comments on Use of Plain Language

Section 722(a) of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.⁵ In light of this requirement, the Board has sought to present the provisions of the joint interim final rule in a simple and straightforward manner. The Board invites your comments on how to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 222

Banks, banking, Fair Credit Reporting Act, Federal Reserve System, Holding companies, state member banks.

Authority and Issuance

For the reasons set forth in the preamble, the Board adds a new 12 CFR part 222 to read as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V) Subpart A—General Provisions

Sec.

222.1 Purpose, scope, and effective dates.

Authority: Pub. L. 108-159, sec. 3; 15 U.S.C. 1681s.

Subpart A—General Provisions

§ 222.1 Purpose, scope, and effective dates.

(a) [Reserved].

(b) [Reserved].

(c) Effective dates. 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:

⁵ Pub. L. 106-102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

(1) Provisions effective December 31, 2003.

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

(B) 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.

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For the reasons set forth in the preamble, the FTC adds a new 16 CFR part 602 to read as follows:

PART 602—FAIR CREDIT REPORTING

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

Subpart A—General Provisions

Sec.

602.1 Purpose, scope, and effective dates.

Authority: Pub. L. 108-159, sec. 3; 15 U.S.C. 1681s.

Subpart A—General Provisions

§ 602.1 Purpose, scope, and effective dates.

(a) [Reserved].

(b) [Reserved].

(c) Effective dates. 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.

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

(B) 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.

[THIS SIGNATURE PAGE RELATES TO THE JOINT INTERIM FINAL RULE ON THE
“EFFECTIVE DATES FOR THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF
2003”]

By order of the Board of Governors of the Federal Reserve System, December 16, 2003.

Jennifer J. Johnson (signed)
Jennifer J. Johnson
Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE JOINT INTERIM FINAL RULE ON THE
“EFFECTIVE DATES FOR THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF
2003”]

Dated: December 15, 2003

By Direction of the Commission

Donald S. Clark (signed)

Donald S. Clark

Secretary