



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

## The Collection of Public Comments Filed Electronically

### Privacy Impact Assessment

August 13, 2004

## Introduction

Congress has empowered and directed the Federal Trade Commission (FTC or Commission) to prevent the use of unfair methods of competition, and unfair or deceptive acts or practices, in or affecting commerce, pursuant to the FTC Act, 15 U.S.C. §§ 41-58. Congress has also empowered and directed the FTC to prevent mergers, acquisitions, price discrimination, and certain other practices that may “substantially lessen competition” or “tend to create a monopoly,” in violation of the Clayton Act, 15 U.S.C. §§ 12-27. In addition, Congress has directed the FTC to enforce or assist with implementing a large number of other statutes.<sup>1</sup>

As one important vehicle for executing its responsibilities under these statutes, the Commission conducts rulemaking proceedings.<sup>2</sup> This year, the Commission is conducting a virtually unprecedented number of Congressionally mandated rulemaking proceedings, principally under the CAN-SPAM and FACT Acts. Comments from members of the public concerning proposed rules are an important source of information, and the Commission has incorporated the solicitation and systematic consideration of such comments into its Rules of Practice.<sup>3</sup> The Commission also solicits and considers public comments in connection with

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<sup>1</sup> See, e.g., Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. 108-187 (Dec. 16, 2003) (the “CAN-SPAM Act”); Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159 (Dec. 4, 2003) (the “FACT Act”); Telephone Disclosure and Dispute Resolution Act of 1992 (codified in relevant part at 15 U.S.C. §§ 5701 *et seq.*); Telemarketing and Consumer Fraud and Abuse Prevention Act (codified in relevant part at 15 U.S.C. §§ 6101-6108); Home Ownership and Equity Protection Act, 15 U.S.C. § 1639; The Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506; Identity Theft Assumption and Deterrence Act of 1998, (codified in relevant part at 18 U.S.C. § 1028 note); Gramm-Leach-Bliley Act (to be codified in relevant part at 15 U.S.C. §§ 6801-6809); Energy Policy and Conservation Act, 42 U.S.C. §§ 6201-6422; Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a; Federal Cigarette Labeling and Advertising Act of 1966, 15 U.S.C. §§ 1331-1340; Truth in Lending Act, 15 U.S.C. §§ 1601-1667f; Fair Credit Billing Act, 15 U.S.C. 1666-1666j; Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681(u); Fair Credit and Charge Card Disclosure Act (codified in different sections of the U.S. Code, particularly 15 U.S.C. 1637(c)-(g)); Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f; Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o; Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r; Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f; Magnuson Moss Warranty-Federal Trade Commission Improvements Act, 15 U.S.C. §§ 2301-2312; Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. §§ 4401-4408.

<sup>2</sup> Rulemakings are conducted under both the notice and comment procedures established by Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, and the procedures prescribed by Section 18 of the Federal Trade Commission Act, 15 U.S.C. § 57a, where applicable.

<sup>3</sup> The rules governing the solicitation of public comments in trade regulation rule proceedings, pursuant to Section 18 of the FTC Act, are set forth in Subpart B of the Rules of

proposed administrative consent agreements (*see* 16 C.F.R. §§ 2.34(c), (e), 3.25(f)); applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders (*see* 16 C.F.R. § 2.41(f)(2)); and requests to reopen and modify Commission rules and orders (*see* 16 C.F.R. § 2.51(c)). In addition, the Commission solicits and considers public comments as part of its preparation of reports and sponsoring of workshops.<sup>4</sup>

The Commission currently collects comments from the public through mail, e-mail, and through Regulations.gov, a federal government Web site available to the public.<sup>5</sup> In order to further the goals of the E-Government Act of 2002 and to provide more options for the public to provide comments, the Commission proposes to permit members of the public to file comments electronically through a Web-based form and to store the comments in a comments database.<sup>6</sup> The online form will be maintained on the FTC's Web site or its contractor's site, and comments collected through the form will be stored in a secure nonpublic database. Except as described below, the public comments collected will be placed on the public FTC Web site during or at the end of the public comment period. To address any privacy concerns that may arise as a result of the program, the FTC has prepared this Privacy Impact Assessment ("PIA"). This PIA will be updated as warranted by future developments.

## System Overview

The purpose of the electronic comments system is to provide a mechanism for collecting from members of the general public electronic comments concerning rulemakings and other proceedings and matters in which the Commission solicits and considers public comments; for storing the comments in a database that is both secure and readily accessible to members of the Commission staff and, in some matters, contract personnel, for review and analysis; and for readily separating home contact information for individuals submitting comments in their personal capacity, thereby greatly facilitating the placement of the remaining information in each

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Practice at 16 C.F.R. §§ 1.10(b)(2), 1.11(a)(5), 1.13(a), while the analogous provision for rules promulgated under authority other than Section 18 of the FTC Act is set forth in Subpart C of the Rules of Practice at 16 C.F.R. § 1.26(b)(4).

<sup>4</sup> *See generally* Section 6(a) of the FTC Act, 15 U.S.C. § 46(a).

<sup>5</sup> Regulations.gov was launched in January, 2003, as the first milestone in the federal eRulemaking Initiative, a cross-agency E-Government effort under the President's Management Agenda.

<sup>6</sup> Subsections 206(c) and 206(d) of the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899-2970, require federal agencies, to the extent practicable, to accept rulemaking comments electronically and establish an online system through which members of the public can access rulemaking comments.

such comment on the Commission Web site. The Office of the Executive Director is the business owner of the system.<sup>7</sup>

## Analysis

### 1. The Information That Will Be Collected (Nature and Source)

Because the Commission solicits public comments from all members of the public, the system necessarily covers all categories of individuals and organizations, including but not limited to consumers, business owners and employees, law firms, economic consulting firms, trade associations, and public interest groups. For each comment submitted, the system collects the some or all of the following information concerning the commenter:

- |                                 |                      |                  |
|---------------------------------|----------------------|------------------|
| (1) title;                      | (2) first name;      | (3) last name;   |
| (4) organization name (if any); | (5) mailing address; | (6) city;        |
| (7) state;                      | (8) country; and     | (9) postal code. |

In addition, for each comment, the system permits each commenter to type in additional information he or she believes to be relevant to the proceeding, and permits each commenter to attach a file to the form, in any of a variety of different word processing and other formats. For some matters and proceedings, the system may also collect additional information relevant thereto, as set forth in the request for public comment.

### 2. Why The Information Is Being Collected (Purposes)

As discussed in the Introduction, numerous laws and regulations require or permit the Commission to accept and consider electronically filed public comments. For any given comment so filed, the information collected has been minimized; that is, it has been limited to the text of the comment itself (and any attachment thereto); to the information needed to ensure that the Commission and its staff can determine the source of the comment and take steps, if necessary, to verify the accuracy of the information submitted; and, in some matters or proceedings, to certain other information relevant thereto. Once the comments are posted on the FTC Web site during or after the comment period ends, members of the public will be able to review and analyze them.

### 3. The Opportunities Individuals Will Have To Decline To Provide Information Or To Consent To Particular Uses Of The Information And How Individuals Grant Consent

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<sup>7</sup> FTC staff and authorized contractors will also utilize the system to upload into the database any comments which are forwarded to the Commission by [www.regulations.gov](http://www.regulations.gov), scanned versions of paper comments, and comments submitted by e-mail (if the proceeding provides for submission of comments by e-mail).

Whether to file a public comment electronically, by mail, or at all, is voluntary. The Web-based form for submitting comments electronically includes a Privacy Act notice. The notice will inform commenters whether specific information requested by the form is voluntary or mandatory, and any consequences of not providing the information (e.g., the comment may not be considered). The notice also describes how the information will be used – that it will be made publicly available on the FTC Web site and considered by the Commission in connection with the particular proceeding for which the information was requested. Commenters who submit a comment are considered to have consented to the uses of the information specified in the disclosures.

Some of the information submitted for comments filed by individuals submitting comments in their personal capacity (e.g., mailing address) constitutes home contact information, when associated with the name of the commenter. The Commission makes every effort to remove home contact information for such individuals from the public comments it receives before placing those comments on the FTC Web site.<sup>8</sup>

#### 4. Intended Uses Of The Information Collected

For a given electronic comment, the information provided will be used to help determine the course of action the Commission should pursue in the rulemaking proceeding or other proceeding or matter. The personal information provided by the commenter will facilitate assessments of the validity and significance of the comment; will permit storing the comment alphabetically by last name; and will permit the Commission or its staff or contractors to contact the commenter, should that become necessary.

#### 5. With Whom The Information Will Be Shared (Disclosures)

The Commission will serve as the official custodian and owner of electronic comments submitted through the electronic comments system. Except for certain portions for which there is a legal basis to redact the information, the comments are legally considered public records in accordance with the agency's Rules of Practice, *see* 16 C.F.R. § 4.9(b), and will be routinely shared with the public (i.e., made available for public inspection) on the agency's Web site, [www.ftc.gov](http://www.ftc.gov).<sup>9</sup>

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<sup>8</sup> Individual home contact information is considered part of the administrative record and will be maintained by the FTC.

<sup>9</sup> Under the agency's Rules of Practice, comments containing nonpublic material must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." Rule 4.2(d), 16 CFR 4.2(d). The comment must 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).

Selected Commission staff and, in some proceedings or matters, contract personnel, will have access to data contained in the electronic database for the purposes of maintaining the information filed for each comment and placing the data in those comments on the FTC Web site. As noted, the Commission makes every effort to remove home contact information for individuals submitting comments in their personal capacity, prior to posting their comments on the Web site. Selected members of the Commission staff and, in some proceedings or matters, contract personnel will also have access to the data for the purpose of analyzing and evaluating the typed in comment, any attachment, and any other information requested as relevant to the matter or proceeding.<sup>10</sup> The General Counsel of the Commission may give Federal and state agencies access to home contact information for individuals for law enforcement or other purposes, provided that the agencies certify that they will maintain this information in confidence. The Commission does not expect that any other entities will have access to the individual home contact information in the system, except as may otherwise be required or authorized by federal law or regulation.

In that regard, the Commission cannot rule out possible requests for public disclosure of individual home contact information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552. Under that Act and the agency's FOIA rules, the agency may be required to make such information publicly accessible unless it is determined that such disclosure would constitute a clearly unwarranted invasion of personal privacy within the meaning of FOIA Exemption 6, 5 U.S.C. 552(b)(6), or some other exemption applies. The Commission has determined that all of the above uses or disclosures of the data are authorized and both relevant and necessary to the purposes for which the data are collected.

## 6. Security (Administrative And Technological Controls)

The FTC follows all IT security and procedures required by federal law and policy to ensure that information is appropriately secured. Because the system collects only public comments, the level of sensitivity of the information is relatively low. Given the security procedures currently in place for the system, as well as the need to provide more efficient ways for the public to comment and for the staff to analyze comments, the FTC has determined that the security level for the system is appropriate. The web-based form utilizes embedded SSL encryption software to protect the integrity and security of the information collected. The contractor has performed a security assessment of the system which provides that access controls, a firewall and an intrusion protection system are in place to safeguard the information. All required confidentiality, Privacy Act, and other privacy-related clauses have been inserted into the contractor's contract with the Commission. The FTC, or its contractor as applicable, will monitor, test and evaluate the system on a regular basis to assure that all controls continue to

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<sup>10</sup> The system will be used simultaneously for multiple proceedings/matters. The Commission will make an effort to limit access to comments for a given matter on the system only to those staff working on that specific matter. The system will also be used to upload certain data on the commenter into the Commission's Matter Management System 2 (MMS2), to assist Commission staff in tracking comments. The Commission does not plan to upload to MMS2 home contact information for individuals.

work properly, to safeguard the information collected. The Office of the Executive Director is the point of contact for any additional questions from system users.

## 7. Privacy Act

The electronic collection and storage of public comments is covered by an existing Privacy Act System of Records notice, which describes, in particular, System FTC I-1: Investigational, Legal, and Public Records. 57 Fed. Reg. 45,678 (October 2, 1992). The electronic comment system therefore does not require a new Privacy Act System of Records notice.

In compliance with the Act, the Web-based form used to collect the information will contain the required notice of authority, purpose, routine uses, and whether the collection is voluntary or mandatory and the consequences, if any, of not providing the information.

## 8. Other Privacy Considerations and Analysis

The collection, use, and disclosure of information in this system has been reviewed to ensure that the agency's practices are consistent with the privacy policy posted on the FTC Web site, [www.ftc.gov](http://www.ftc.gov). Consistent with federal law, the Web-based form being implemented here does not use persistent tracking technology such as permanent "cookies" or otherwise permanently place software files or other information on computers of those who access it. Finally, the Web-based form does not constitute the operation of a Web site directed toward children for purposes of the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501 *et seq.* In accordance with those statutory and regulatory requirements, however, if Commission or contractor staff secure actual knowledge from reading a particular comment that it was submitted by a child (i.e., a person under 13 years of age), all personal information contained in the comment will be purged from the system.

Prepared for the Business Owner of the System, the Office of the Executive Director, by

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