

§ 316.6

16 CFR Ch. I (1-1-25 Edition)

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.
- 317.5 Severability.

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

- (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

Federal Trade Commission**§ 318.2**

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.
- 318.2 Definitions.
- 318.3 Breach notification requirement.
- 318.4 Timeliness of notification.
- 318.5 Methods of notice.
- 318.6 Content of notice.
- 318.7 Enforcement.
- 318.8 Applicability date.
- 318.9 Sunset.

AUTHORITY: 42 U.S.C. 17937 and 17953.

SOURCE: 74 FR 42980, Aug. 25, 2009, as amended at 89 FR 47054, May 30, 2024, 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, 42 U.S.C. 17937. This part 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. This part 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, 42 U.S.C 17951.

§ 318.2 Definitions.

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 acqui-

sition 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. A breach of security includes an unauthorized acquisition of unsecured PHR identifiable health information in a personal health record that occurs as a result of a data breach or an unauthorized disclosure.

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.

Clear and conspicuous means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(1) *Reasonably understandable.* You make your notice reasonably understandable if you:

- (i) Present the information in the notice in clear, concise sentences, paragraphs, and sections;
- (ii) Use short explanatory sentences or bullet lists whenever possible;
- (iii) Use definite, concrete, everyday words and active voice whenever possible;
- (iv) Avoid multiple negatives;
- (v) Avoid legal and highly technical business terminology whenever possible; and
- (vi) Avoid explanations that are imprecise and readily subject to different interpretations.

(2) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

- (i) Use a plain-language heading to call attention to the notice;
- (ii) Use a typeface and type size that are easy to read;
- (iii) Provide wide margins and ample line spacing;
- (iv) Use boldface or italics for key words; and
- (v) In a form that combines your notice with other information, use distinctive type size, style, and graphic