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### FTC Regulation on the Disposal of Consumer Information Goes Into Effect June 1st

By John F. Goemaat

*Proper disposal means “reasonable measures” have been taken to protect against unauthorized access or use of consumer information.*

On June 1, 2005 the Federal Trade Commission’s regulation on disposal of consumer information reports and records goes into effect. This regulation is pursuant to the Fair and Accurate Credit Transactions Act of 2003, which amended the Fair Credit Reporting Act.

The rule has broad application to any employer who for business purposes “maintains or otherwise possesses consumer information.” This includes businesses using background checks for credit transactions, insurance underwriting or employment purposes, among others. It applies to employers who evaluate an individual for employment, promotion, reassignment or retention as an employee.

The Commission’s comments also state that the rule covers consumer reporting agencies, resellers of consumer reports, lenders, insurers, employers, landlords, government agencies, mortgage brokers, automobile dealers, and waste disposal companies, among others.

The rule does not require disposal of consumer information, but it does impose requirements on methods of disposal. Disposal is defined as the discarding, abandonment, sale, donation, or transfer of any medium (including computer equipment) that contains consumer reports or information derived from such reports that identifies the individual to whom it pertains. (cont’d ➔)



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The Commission comments that there are several forms of information, in addition to name and social security number, that would render the information personally identifiable. The rule requires proper disposal of information by taking “reasonable measures” to protect against unauthorized access or use of the information. The rule gives examples of such “reasonable measures,” including:

Implementing and monitoring compliance with

- policies and procedures for burning, pulverizing, or shredding paper;
- policies and procedures for destruction or erasure of electronic media;
- due diligence when entering and monitoring contracts with others for disposal, which are consistent with the rule;
- policies and procedures to protect against unauthorized or unintentional disposal when providing consumer information to others.

The FTC rule, in effect, requires that those who possess consumer information for a business purpose do the following:

1. create a policy covering disposal, as defined by the regulation;
2. assure that those to whom they provide such information have in effect a compliant policy;
3. monitor compliance with the policy.

All of these actions will be subject to the Commission’s view of what is “reasonable,” and those subject to the rule will need to be prepared to demonstrate compliance with each of these elements.



*The material in this Employment Alert is for information purposes only and is not intended as legal advice. If you have any questions concerning this Alert, please contact John F. Goemaat ([jgoemaat@lindabury.com](mailto:jgoemaat@lindabury.com)) or John H. Schmidt, Jr. ([jschmidt@lindabury.com](mailto:jschmidt@lindabury.com)). For biographical information on our attorneys, see our web site at [www.lindabury.com](http://www.lindabury.com).*

