promulgated a final rule describing the method by which it conducts the MIRS. See 58 FR 19195 (Apr. 13, 1993), codified at 12 CFR 906.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

• Pursuant to their respective organic statutes, Fannie Mae and Freddie Mac use the MIRS results as the basis for the annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. See 12 U.S.C. 1454(a)(2) and 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. See Pub. L. 96–399, tit. III, sec. 313(a)–(b), 94 Stat. 1644–1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on ''the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB].'' See 12 U.S.C. 1454(a)(2) and 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. See FIRREA, tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.

• Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable rate mortgages (ARMs) remain available. See FIRREA, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note. At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute a substantially similar ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. See 12 U.S.C. 1437 note.

• Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. See Pub. L. 103–327, 108 Stat. 2314 (Sept. 28, 1994), codified at 12 U.S.C. 1709(b)(2)(A)(ii).

• The Internal Revenue Service uses the MIRS data in establishing ''safe-harbor'' limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. See 26 CFR 6a.103A–2(f)(5).

• Statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin and the Virgin Islands, refer to, or rely upon, the MIRS. See, e.g., Cal. Civ. Code 1916.7 and 1916.8 (mortgage rates); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Comp. Laws 445.1621(d) (mortgage index rates); Minn. Stat. 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. 138.056 (variable loan rates); V.I. Code Ann. tit. 11, sec. 951 (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published on the Finance Board's website (*www.fhfb.gov/mirs*) and in press releases, in the popular trade press, and in publications of other federal agencies.

The likely respondents include a sample of savings associations, mortgage companies, commercial banks, and savings banks. The information collection requires each respondent to complete FHFB Form 10–91 or a submission using the MIRS software on a monthly basis.

The OMB number for the information collection is 3069–0001. The OMB clearance for the information collection expires on July 31, 2007.

B. Burden Estimate

The Finance Board estimates the total annual number of respondents at 200, with 6 responses per respondent. The estimate for the average hours per response is 30 minutes. The estimate for the total annual hour burden is 600 hours (200 respondents × 6 responses × 0.5 hours).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on April 11, 2007. See 72 FR 18246 (April 11, 2007). The 60-day comment period closed on June 11, 2007. The Finance Board received no comments.

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: June 19, 2007.

By the Federal Housing Finance Board.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. E7–12279 Filed 6–25–07; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9311]

South Carolina State Board of Dentistry; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''South Carolina State Board, Dkt. No. 9311,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be

filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Gary H. Schorr (202) 326-3063, Bureau of Competition, Room NJ-7264, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 20, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/06/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before the date specified in the DATES section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement to a proposed consent order with the South Carolina State Board of Dentistry. The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. The proposed consent order has been placed on the public record for 30 days to receive comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the Respondent that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

The Challenged Conduct

The Commission's complaint, issued September 12, 2003, charges the South Carolina State Board of Dentistry with unlawfully restraining competition in the provision of preventive dental care services in South Carolina, in violation of Section 5 of the Federal Trade Commission Act. The Board is a state regulatory agency that licenses and regulates dentists and dental hygienists. The nine-member Board includes seven practicing dentists, six of whom are elected by the dentists in their local area.

The complaint alleges that the Board illegally restricted the ability of dental hygienists to provide preventive dental services (cleanings, topical fluoride treatments, and application of dental sealants) in school settings. The South Carolina legislature in 2000 eliminated a statutory requirement that a dentist examine each child before a hygienist may perform preventive care in schools, in order to address concerns that many schoolchildren, particularly those in low-income families, were receiving no preventive dental services. In July 2001, however, the Board adopted an emergency regulation that re-imposed the dentist examination requirement that the legislature had eliminated. As a result of the Board's action, a hygienist-owned company known as Health Promotion Services, which had begun sending hygienists to schools to provide preventive services under written protocols from a supervising dentist, had to change its business model and was able to serve far fewer patients.

By operation of South Carolina law, the emergency regulation expired after six months, in January 2002. By that time, the Board had published a proposal to adopt the dentist examination requirement as a permanent regulation. However, after a state administrative law judge concluded that the Board's proposed regulation was unreasonable and contravened state policy, the Board did not proceed with the permanent regulation.

The South Carolina legislature subsequently enacted legislation in May 2003 that expressly provides that dentist examination requirements applicable in some settings do not apply to dental hygienists' provision of preventive care services delivered in public health settings under the direction of the state health department. The new statute also added a provision stating that a dentist billing for services provided by a dental hygienist under such an arrangement was ''clinically responsible'' for the delivery of those services. Because in South Carolina dental hygienists cannot bill the state Medicaid program directly, this new provision would plainly apply to school-based preventive dental care programs. Aside from the general concern that the Board might once again defy a legislative change, there was evidence in Board minutes suggesting that the Board might interpret the ''clinically responsible'' language in the new statute to require that a licensed dentist examine a patient and provide a treatment plan in all settings, whether private dental offices or public health locations.

Post-Complaint Proceedings

Shortly after the complaint issued, the Board moved to dismiss the case, asserting that its actions were exempt from the antitrust laws by virtue of the state action doctrine. That doctrine, first articulated by the Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943),

[1] 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).

rests on the Court's holding that the Sherman Act was not intended to ''restrain a state or its officers or agents from activities directed by its legislature.'' The Board also argued that the 2003 statute made it legally impossible for it to resume its challenged conduct and therefore rendered the case moot.

In a July 2004 opinion, the Commission rejected the Board's state action arguments.[2] As the Commission's opinion explains, the Board's claim to automatic state action protection by virtue of its status as a state agency is contrary to well-established Supreme Court precedent.[3] Furthermore, the Board failed to establish an essential element of the state action defense, because it was unable to show that its challenged conduct was undertaken pursuant to a clearly articulated policy of the legislature to displace competition with regard to the delivery of preventive dental care in schools. Neither the Board's general authority to regulate, nor its claims about the meaning of the state legislature's 2000 statutory revisions, demonstrated the requisite clear articulation to bring the challenged conduct within the protection afforded by the state action doctrine. On the contrary, the policy expressed by the legislature's elimination in 2000 of the statutory requirement for a dentist examination before dental hygienists could provide preventive services in schools was one favoring such competition, in order to increase access to critically important oral health care. Finally, because the Board failed to make a threshold showing of a legislative policy to displace the type of competition that it is charged with suppressing, its final argument, that any conflict with the 2000 statute was merely an error of state law and of no federal antitrust significance, failed as well.

The Board filed an appeal with the United States Court of Appeals for the Fourth Circuit seeking an interlocutory review of the Commission's state action ruling. The Commission moved to dismiss the appeal, arguing that the ruling did not fall within the narrow class of ''collateral orders'' that fall outside the general rule that interlocutory orders are not immediately appealable court of appeals agreed and dismissed the appeal for lack of jurisdiction. In its May 2006 decision in *South Carolina State Board of Dentistry v. F.T.C.*, 455 F.3d 436 (4th Cir. 2006), the court of appeals rejected the position of some other circuits, which have upheld interlocutory appeals from the denial of a claim of state action protection on the theory that the state action exemption is an immunity from suit:

> [W]e cannot conclude that *Parker* creates an immunity from suit. The *Parker* doctrine did not arise from any concerns about special harms that would result from trial. Instead, *Parker* speaks only about the proper interpretation of the Sherman Act. 455 F.3d at 444.

With respect to the Board's arguments that the 2003 statute made it impossible for the Board to resume the challenged conduct, the Commission's July 2004 ruling rejected the Board's claim that the statute compelled dismissal of the complaint as a matter of law. Instead, it held the Board's motion to dismiss in abeyance pending discovery on factual issues relating to the risk of recurrence of the challenged conduct.[4] As noted in the Commission's decision, the very premise of the alleged violation in this case is that the Board flouted a statutory directive designed to promote competition and increase access to preventive dental services. Moreover, the complaint also alleges particular facts with regard to the Board's interpretation of language added by the 2003 statute that raise a significant risk of recurrence.

During the pendency of the Board's appeal on state action, the Commission stayed discovery in the case. The stay expired in January 2007, after the Supreme Court denied the Board's petition for certiorari seeking review of the appellate court's dismissal of the appeal, thereby clearing the way for discovery on the issues delegated to an FTC administrative law judge.

The Proposed Order

The proposed order has two central features:

• First, to eliminate the alleged anticompetitive effects of the challenged conduct, the proposed order requires the Board to affirm and publicize its support for the state legislative policy, now embodied in the 2003 amendments to the Dental Practice Act, that prevents the Board from requiring a dentist examination as a condition of dental hygienists providing preventive dental care in public health settings.

• Second, to prevent similar anticompetitive restraints in the future, the proposed order requires the Board to give the Commission advance notice before adopting rules or taking other actions that relate to dental hygienists' provision of preventive dental services in a public health setting.

The Board announcement is set forth in Appendix A of the proposed order. That announcement: (1) Expresses the Board's view that the 2003 statute prevents it from requiring a dentist examination when patients receive preventive services from dental hygienists working under arrangements with the state health department; and (2) states that the Board fully supports this legislative policy.

In addition to publication on the Board's website and in its newsletter, Paragraph III of the proposed order requires the Board to distribute this announcement, along with a copy of the Commission's complaint and order, to every dentist and dental hygienist holding a license to practice in South Carolina (and, for a period of three years, to new licensees), and to the superintendent of every school district in South Carolina. Widespread publication of this announcement is designed to remedy potentially significant chilling effects from the Board's past conduct on market participants who might otherwise be interested in participating in public health preventive dental care programs involving dental hygienists.

The proposed order's prior notice provision is contained in Paragraph II. It requires the Board to give the Commission written notice 30 days in advance of adopting proposed or final rules, policies, disciplinary and other actions, that relate to the provision by dental hygienists of preventive dental services in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), a provision that governs dental hygienist practice in public health settings. The scope of the notice provision includes actions that concern dentists' authorizing, supervising, or billing for the provision by dental hygienists of preventive dental services in a public health setting. This prior notice requirement, which extends beyond the re-institution of the restraint contained in the Board's 2001 emergency regulation, will enhance the Commission's ability to monitor the Board's future conduct and take prompt action where warranted.

[2] In the Matter of South Carolina State Board of Dentistry, 138 F.T.C. 229, 230 (2004), available at *http://www.ftc.gov/os/adjpro/d9311/040728commissionopinion.pdf* and *http://www.ftc.gov/os/decisions/docs/Volume138.pdf.*

[3] *See, e.g.,* Southern Motor Carriers Rate Conf., Inc. v. United States, 471 U.S. 48, at 57, 60-61 (1985).

[4] Administrative agencies are not subject to the constitutional requirement of a ''case or controversy'' that limits the jurisdiction of Article III courts, but instead exercise discretion in deciding whether to hear cases that might be considered moot. *See, e.g.,* R.T. Communications, Inc. v. FCC, 201 F.3d 1264, 1276 (10th Cir. 2001); Tenn. Gas Pipeline Co. v. Fed. Power Comm'n, 606 F.2d 1373, 1380 (D.C. Cir 1979).

The Commission has determined that it is not necessary to include a ''cease and desist'' provision that directly prohibits the Board from resuming the conduct challenged in the complaint. This conclusion rests on various factors particular to this case. A key factor is the experience in South Carolina since the 2003 changes to the South Carolina Dental Practice Act. The new statutory scheme has now been in place for nearly four years. Throughout this period, dental hygienists have been providing preventive services in schools under an agreement with the health department—without an initial examination by a dentist—and the Board has not reimposed its previous dentist examination requirement. Thus, although the 2003 amendments have not eliminated the need for relief in this case, they are a relevant consideration in determining the nature and scope of that relief.

Accordingly, the proposed order takes the statutory change into account. First, requiring the Board to distribute the announcement set forth in Appendix A to all dentists, dental hygienists, and school districts will ensure that interested parties know that the Board has formally acknowledged that it is legally barred from resuming the conduct challenged in the Commission's complaint. Second, the notice requirement of Paragraph II addresses the possibility that the Board might attempt to restrain competition in the provision of dental hygienist services in public health settings in ways not addressed by the 2003 amendments. This notice provision will increase the Commission's ability to monitor the Board's future conduct and is likely to help deter the Board from imposing restraints on public health preventive dental care that are not grounded in the policies articulated by the South Carolina legislature.

As is standard in Commission orders, the proposed order contains certain reporting and other provisions that are designed to assist the Commission in monitoring compliance with the order.

The proposed order would expire in ten years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–12323 Filed 6–21–07: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Preparedness & Response, Office of Preparedness & Emergency Operations; Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency (OPEO).

ACTION: Notice of a new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''The National Disaster Medical System (NDMS) Patient Treatment and Tracking Records System,'' System Number 09–90–0040. The primary purpose of the NDMS Patient Treatment and Tracking Records System is to collect data from individuals using the medical care capabilities provided by NDMS.

EFFECTIVE DATES: NDMS filed a new SOR report with the Chair of the House Committee on Oversight and Government Reform; the Chair of the Senate Committee on Homeland Security and Governmental Affairs; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 18, 2007. The proposed SOR will be effective 30 days from the publication of the notice or 40 days from the date mailed to ensure that all parties have adequate time in which to comment. However, a request has been submitted to the OMB to grant HHS a 10 day waiver of the review period due to the impending start of the hurricane season. We may defer implementation of this system and retrieve the request for waiver should we receive comments that are contrary and requires the document to be altered.

ADDRESSES: You may submit comments, identified by *one* of the following methods: The Federal e-Rulemaking Portal at *http://www.regulations.gov* and following the instructions for submitting comments, or send to the NDMS Chief Medical Officer, National Disaster Medical System, 330 Independence Avenue, SW., Room G–644, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: CAPT Ana Marie Balingit-Wines, Chief Nurse, NDMS Electronic Medical Records Project Officer, ASPR/OPEO/NDMS, 330 Independence Avenue, SW., Room G–644, Washington, DC 20201. CAPT Balingit-Wines can be contacted by telephone at 202–205–8088, or e-mail at *anamarie.balingit-wines@hhs.gov* for issues related to the SOR.

SUPPLEMENTARY INFORMATION: NDMS operates pursuant to Section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), and currently resides in HHS under ASPR in accordance with the Pandemic and All Hazards Preparedness Act (PAHPA), Public Law 109–417. With the passage of PAHPA, ASPR has been designated as the agency responsible for medical response to include the deployment of NDMS and Field Medical Station assets as well as the management of the officers of the Public Health Service Commissioned Corps deployed during a response. ASPR medical components, in particular NDMS, function in a coordinated effort with DHS, DoD, and the VA. In a disaster situation, NDMS and other ASPR components will augment the public health and health care activities of State and local governments.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a SOR, which is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular, such as property address, mailing address, assigned to the individual. As a component of Emergency Support Function (ESF) #8, NDMS has shared medical records with the other agencies and departments that comprise ESF #8, due to the Function's shared statutory authority over the collection of medical information. NDMS has three key functions to which each of the ESF partners contribute and require the collection of medical information: medical response, patient evacuation, and definitive medical care.

The medical response function of NDMS is related to the activation and deployment of NDMS response teams, comprised of medical and logistical personnel, to assess the health and medical needs of disaster victims. In response to the overall needs of the patients, NDMS teams are activated to provide physical and mental health, as well as evacuation during a public health emergency as cause for activation as defined in 42 U.S.C. 300hh–11(a)(3)(A).