

secure.commentworks.com/ftc-TSRDebtRelief) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<https://secure.commentworks.com/ftc-TSRDebtRelief>). If this Notice appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (<http://www.ftc.gov>) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Telemarketing Sales Rule - Debt Relief Amendments - R411001" 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 H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, to avoid security related delays.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB"), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). 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 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.shtm>).

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. E9-24730 Filed 10-14-09; 8:45 am]

**BILLING CODE 6750-01-S**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 610

**RIN 3084-AA94**

#### **Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** Section 205 of the Credit CARD Act of 2009 requires the Federal Trade Commission ("FTC" or "Commission") to issue a rule by February 22, 2010, to prevent deceptive marketing of "free credit reports." To that end, the Commission proposes, and seeks comment on, amendments to the Commission's Free Annual File Disclosures Rule, 16 CFR Part 610. The proposed amendments would require certain advertisements for "free credit reports" to include prominent disclosures designed to prevent consumers from confusing these "free" offers with the federally mandated free annual file disclosures available through the single centralized source. In addition, the Commission proposes amendments to delay advertisements for products and services through the centralized source until after the consumer receives his or her free annual file disclosure, and to prohibit other practices that may interfere with the free file disclosure process. Finally, the Commission proposes certain technical amendments to the Rule.

**DATES:** Comments must be received on or before November 30, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Comments in electronic form should be submitted by using the following weblink: (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135

(Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the SUPPLEMENTARY INFORMATION section below.

#### **FOR FURTHER INFORMATION CONTACT:**

Katherine Armstrong, Attorney, or Steven Toporoff, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2252.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In this Notice, the Commission is proposing to amend its Free Annual File Disclosures Rule ("Free Reports Rule" or "Rule"),<sup>1</sup> which went into effect in 2004. This Rule sets out the procedures that nationwide consumer reporting agencies<sup>2</sup> ("CRAs") and nationwide specialty consumer reporting agencies<sup>3</sup> must follow to comply with section 612 of the Fair Credit Reporting Act ("FCRA"), which gives consumers the right to obtain free annual file disclosures from the nationwide CRAs through a single centralized source. The Commission's proposed amendments implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Act"),<sup>4</sup> which directs the Commission to promulgate a rule within nine months requiring certain disclosures in the advertising for "free credit reports" to reduce consumer confusion. The Commission also is proposing a number of changes to address certain practices that the Commission believes interfere with or detract from consumers' ability to obtain their free annual file disclosures, as well as certain technical corrections described below.

##### *A. The Free Annual File Disclosures Rule*

The Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") amended the FCRA and directed the Commission to promulgate a rule specifying the procedures for consumers

<sup>1</sup>16 CFR Part 610.

<sup>2</sup>Section 603(p) of the FCRA defines a "nationwide consumer reporting agency" as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. At this time, there are three nationwide consumer reporting agencies – Equifax Inc., Experian, and TransUnion LLC.

<sup>3</sup>Nationwide specialty consumer reporting agencies are defined in section 603(w) of the FCRA. Specifically, section 603(w) defines "nationwide specialty consumer reporting agency" as a CRA that compiles and maintains files on consumers on a nationwide basis relating to (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history, or (5) insurance claims.

<sup>4</sup>Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009).

to obtain free annual file disclosures from nationwide CRAs and nationwide specialty consumer reporting agencies.<sup>5</sup> To carry out this directive, the Commission promulgated the Free Reports Rule, which became effective in a structured roll-out beginning on the west coast in December 2004 and ending on the east coast in September 2005.<sup>6</sup> The purpose of the Rule was to enable consumers to detect and dispute inaccurate or incomplete information in the files of nationwide CRAs.

The Rule requires that the nationwide CRAs jointly establish and operate a centralized source from which consumers can obtain free annual file disclosures through a single dedicated Internet website (AnnualCreditReport.com),<sup>7</sup> a toll-free telephone number, or a postal address.<sup>8</sup> Consumers may request and obtain their free annual file disclosures from each nationwide CRA at one time or stagger their requests throughout the year.

#### B. The Advertising of "Free Credit Reports"

Since issuance of the Rule, there has been a proliferation of confusing advertising regarding where consumers can obtain their free annual file disclosures. For example, shortly after the Rule went into effect, imposter websites appeared that misspelled AnnualCreditReport.com or used sound-alike website names that did not link to the authorized AnnualCreditReport.com website.

In addition, the nationwide CRAs and others have advertised "free credit reports" that are tied to the purchase of products and services, such as credit scores and credit monitoring. Although some advertising predated the Rule, the bulk of the advertising for "free credit reports" now takes advantage of consumers' general knowledge that free file disclosures are available under federal law. These advertisements direct consumers not to AnnualCreditReport.com, the

authorized source for free annual file disclosures, but to commercial websites operated by the nationwide CRAs or others that sell a variety of products and services. Further, when a consumer uses an Internet search engine to find the website for free annual file disclosures, the search engine will usually list "sponsored" links – again, selling products and services – such as "FreeCreditReport.com" first.<sup>9</sup>

As a result of this advertising, consumers are often misled and confused about where to go to obtain the free annual file disclosure mandated by federal law. Indeed, as discussed further below, the Commission has received numerous consumer complaints demonstrating such confusion, and concerns about the issue have been the topic of numerous articles and online discussions.<sup>10</sup>

The Commission has taken action to address these practices. For example, in 2005, the Commission sent 29 warning letters to operators of more than 130 "imposter" sites. That same year, the Commission filed an action against Consumerinfo.com, Inc.,<sup>11</sup> a marketer of "free credit reports." In that action, the Commission alleged that Consumerinfo.com, which advertised "free credit reports" to consumers on the Internet, through emails, and through television and radio advertisements, engaged in deceptive acts or practices in violation of section 5 of the FTC Act, including the failure:

to disclose or to disclose adequately in their advertisements or on their websites that the "free" credit reports they were offering were not associated with the annual free credit report program pursuant to the FACT Act, but rather a commercial promotion, and that consumers cannot obtain their statutorily-mandated free report through Defendant's websites.<sup>12</sup>

Two years later, the Commission entered a second order with Consumerinfo.com settling allegations that it violated the 2005 order.<sup>13</sup>

In addition to law enforcement, the Commission has undertaken extensive education efforts to alert consumers of their legal rights to obtain their free annual file disclosures. For example, in the past five years, the Commission has distributed approximately 1.5 million copies of the Commission's brochure *Your Access to Free Credit Reports*, which was published in both English and Spanish. In addition, ([www.ftc.gov/freereports](http://www.ftc.gov/freereports)) contains materials on the Free Reports Rule and has garnered more than 8.6 million hits. Most recently, the Commission distributed educational videos through its own website and at ([www.youtube.com/ftcvideos](http://www.youtube.com/ftcvideos)) to educate consumers about AnnualCreditReport.com, the only federally recognized source for free annual file disclosures. These videos have been viewed or downloaded more than 400,000 times.

#### C. Section 205 of the Act and Proposed Section 610.4 of the Free Reports Rule

Despite the Commission's efforts, the aggressive advertising for "free credit reports" tied to the purchase of products and services continues to confuse consumers. To address consumer confusion, Congress enacted section 205 of the Act ("section 205").<sup>14</sup> Section 205 directs the Commission to promulgate a rule within nine months that would require advertisements for "free credit reports" in any medium to include certain prominent disclosures. With respect to television and radio advertisements, section 205 specifies the language for the required disclosure as: "This is not the free credit report provided for by Federal law." For television advertisements, this disclosure must appear in both the audio and visual portion of the advertisement. For all other media, section 205 directs the Commission to issue a rule determining the content and placement of the disclosures.<sup>15</sup> Finally, section 205 requires the following interim advertising disclosure if a rule is not finalized within nine months: "Free credit reports are available under Federal law at: AnnualCreditReport.com."

The Commission proposes to add section 610.4 to this part to carry out the mandate of section 205. This proposal is intended to implement the clear Congressional directive to combat the deceptive marketing of "free credit reports" through "prominent" disclosures. In enacting section 205, Congress was well aware of current practices in this area, as well as the

<sup>5</sup>Prior to the FACT Act, consumers could purchase file disclosures from consumer reporting agencies, but could only receive a free file disclosure under limited circumstances. For example, section 615 of the FCRA provides that consumers denied credit or employment based upon information contained in a consumer report may obtain a free file disclosure from the CRA that provided the report. 15 U.S.C. 1681m.

<sup>6</sup>69 FR 35468 (June 24, 2004). The Commission staggered implementation of the Rule across the country to manage requests for free file disclosures.

<sup>7</sup>Most requests for file disclosures through the centralized source occur through the AnnualCreditReport.com website.

AnnualCreditReport.com is the only federally authorized website for obtaining free annual file disclosures.

<sup>8</sup>16 CFR 610.2(a).

<sup>9</sup>"FreeCreditReport.com" is owned and operated by Consumerinfo.com, Inc., an Experian company.

<sup>10</sup> See discussion of disclosure for Internet websites below at II.C.4.d of this document.

<sup>11</sup> *FTC v. Consumerinfo.com, Inc.*, SACV05-801 AHS (MLGx) (C.D. Cal. Aug. 15, 2005).

<sup>12</sup> *Id.* The settlement in this action required the defendant to pay consumer redress, prohibited the defendant from making deceptive and misleading claims about "free" reports, and required disclosure of the terms and conditions of any "free" offers. The defendant also agreed to forgo \$950,000 in ill-gotten gains.

<sup>13</sup> *FTC v. Consumerinfo.com, Inc.*, SACV05-801 AHS (MLGx) (C.D. Cal., Jan. 8, 2007) (prohibiting defendant from failing to make required disclosures mandated by the 2005 Order and requiring \$300,000 payment for consumer redress).

<sup>14</sup> Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009).

<sup>15</sup> *Id.*

Commission's efforts to address them in the *Consumerinfo.com* settlements.<sup>16</sup> As explained more fully below, it is clear that Congress sought a marked and substantial change from the status quo, requiring more significant disclosures than any currently required or used in advertisements for "free credit reports." Accordingly, the Commission proposes specific prominent disclosures to prevent consumer confusion and deceptive marketing of "free credit reports." Such disclosures are designed to prevent consumer deception and confusion without impeding the truthful advertising and marketing of products and services that consumers may choose to purchase.

As described in the Section-by-Section analysis below, proposed section 610.4 includes general requirements to ensure that the required disclosures are sufficiently prominent, such as requiring that all audio disclosures be delivered in a slow and deliberate manner. This section also includes requirements that are specific to each of the various media in which advertising may occur. For Internet-based advertisements, for example, proposed section 610.4 requires that any advertisements for "free credit reports" appearing on a commercial website include a distinct landing page – not easily bypassed and containing no distracting text – directing consumers to AnnualCreditReport.com.

Where possible, the minimum disclosure standards in the proposed amended rule are drawn from comparable FTC law addressing the prominence of specific required disclosures – in particular the Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("Pay Per Call Rule").<sup>17</sup> They also draw upon relevant Commission law enforcement actions and business education materials.

#### D. Proposed Changes to Section 610.2

In addition to adding provisions to implement section 205, the Commission also proposes several changes to section 610.2 of the Rule to address certain practices that the Commission believes interfere with or detract from consumers' ability to obtain their free annual file disclosures through the centralized source. In many respects, these proposed changes complement section 610.4 in that they would restrict practices that may confuse or mislead consumers.

<sup>16</sup> See, e.g., 155 Cong. Rec. S6178, S6179 (June 4, 2009) (statement of Sen. Levin) (emphasizing the inadequacy of current disclosures accompanying offerings for "free credit reports").

<sup>17</sup> 16 CFR Part 308.

Section 610.2 of the Rule currently permits the nationwide CRAs to advertise their proprietary products and services through the centralized source. When it promulgated the Rule, the Commission recognized the potential for confusion from such advertising and marketing, but chose not to restrict it.<sup>18</sup> Instead, to address concerns about confusion from such advertising, the Commission restricted communications on the centralized source that "interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source."<sup>19</sup>

The Commission does not believe that the standard set forth in the Rule has worked well. Consumers are subjected to substantial amounts of advertising for the nationwide CRAs' proprietary products or services while navigating AnnualCreditReport.com to obtain their free annual file disclosures. Indeed, when consumers access the website, they encounter offers for a variety of add-on goods or services – such as credit scores and credit monitoring services – which they must purchase or decline before obtaining their free annual file disclosures.<sup>20</sup>

To address this concern, the Commission proposes to amend section 610.2(g) to delay any advertising or marketing for products or services through the centralized source until after consumers have obtained their free annual file disclosures. To ensure that there is no uncertainty as to when advertising or marketing may begin, the proposed amended Rule specifies that advertising or marketing may only begin once consumers have obtained their file disclosures through telephone, mail, or Internet requests. The Commission believes that consumers are less likely to be confused or deceived if they are presented with commercial messages after they have obtained their disclosures. The Commission notes that the proposed delay does not prevent truthful advertising or marketing after consumers obtain their free file disclosures.

<sup>18</sup> *Id.* Among other things, the Commission reasoned that the FACT Act required nationwide CRAs to inform consumers of the availability of credit scores when providing file disclosures to them and that there was a benefit to those consumers wishing to purchase a credit score to do so at the same time that they obtain their annual file disclosures. 69 FR at 35486.

<sup>19</sup> 16 CFR 610.2(g)(1).

<sup>20</sup> Consumer complaints received by the Commission show that promotions selling products and services confuse and frustrate consumers attempting to obtain their free annual file disclosures. Indeed, consumers report feeling compelled to purchase these advertised products or services in order to obtain their free annual file disclosure.

The Commission also proposes the addition of a new section 610.2(h) to prohibit a number of other practices that may interfere with or undermine consumers' ability to obtain their free annual file disclosures. This new provision: (1) prohibits the placement of hyperlinks to the nationwide CRAs' websites that transport consumers away from the AnnualCreditReport.com website; (2) prohibits the nationwide CRAs that participate in the centralized source process from requiring consumers to establish an account to obtain a disclosure; and (3) prohibits the nationwide CRAs from imposing any "terms and conditions" on consumers' access to their file disclosures. As above, these restrictions are designed to address practices that interfere with a consumer's right to obtain disclosures through the centralized source; they do not prevent the truthful advertising and marketing of products and services outside of this context.

## II. Section-by-Section Discussion of Proposed Amendments to the Rule

This section discusses each of the proposed amendments to the Rule. The Commission seeks comment on each of these proposals.

### A. Proposed section 610.2: Operation of the centralized source

Proposed section 610.2 retains the current Rule's general restriction on communications or instructions that interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source.<sup>21</sup> In addition, the Commission proposes to add a restriction on any advertising or marketing for products or services, or any communications or instructions that advertise or market any products or services, through the centralized source until after the consumer has obtained his or her annual file disclosure. As discussed above, the Commission believes such a restriction is needed to address the proliferation of distracting and confusing advertising for products and services to which consumers are exposed on AnnualCreditReport.com, and to ensure that consumers easily can exercise their federal right to obtain their free annual file disclosures. By delaying such advertising, consumers can focus first on obtaining their free annual file disclosure and can decide afterwards whether to purchase additional products or services.

The proposed Rule amendments also add language to clarify when consumers

<sup>21</sup> The current restriction found in section 610.2(g)(1) will be renumbered as proposed section 610.2(g)(2).

have “obtained” an annual file disclosure. Specifically, proposed section 610.2(g)(1)(i) provides that, for telephone and written requests for annual file disclosures, the consumer “has obtained” the file disclosure when the file disclosure is mailed to the consumer. Similarly, proposed section 610.2(g)(1)(ii) provides that, for file disclosures requested through the Internet, the consumer “has obtained” the file disclosure when it is delivered to the consumer through the Internet. The Commission intends this provision to mean that the delivery is made in a form that permits the consumer to store, download, print, or otherwise maintain the file disclosure for future reference.<sup>22</sup> Proposed section 610.2(g)(2) retains the requirement that any advertising on the centralized source shall not “interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source.”

*B. Proposed section 610.2(h): Additional prohibited practices*

Proposed section 610.2(h) prohibits three additional types of conduct that the Commission believes interfere with and undermine consumers’ ability to obtain their free annual file disclosures through the centralized source. Specifically, proposed section 610.2(h) prohibits: (1) hyperlinks to commercial websites from the centralized source; (2) any requirement that consumers establish an account in order to obtain their free annual file disclosures; and (3) any requirement that consumers agree to “terms and conditions” in order to obtain their free annual file disclosures. Each of these proposed conduct prohibitions is discussed below.

1. Proposed section 610.2(h)(i): Prohibition on hyperlinks to commercial websites

Proposed section 610.2(h)(i) prohibits hyperlinks to commercial or proprietary websites on the website for the centralized source. Currently, the landing page to AnnualCreditReport.com contains hyperlinks to the websites of the three nationwide CRAs. If a consumer clicks on one of the CRA’s hyperlinks, the consumer is transported to that CRA’s commercial website, where the consumer is unable to obtain his or her free annual file disclosure provided by federal law. The proposed prohibition is intended to reduce the possibility that consumers attempting to obtain their free annual file disclosures will be transferred to commercial websites that

do not provide the federally mandated free file disclosures and, indeed, may instead be selling various products or services.

2. Proposed section 610.2(h)(ii): Prohibition on requiring the establishment of accounts

Proposed section 610.2(h)(ii) prohibits requiring a consumer to establish an “account” as a prerequisite for obtaining an annual file disclosure through the centralized source. The Commission believes that such a practice interferes with the operation of the Rule because it imposes a condition – namely, the requirement that the consumer establish an account – on the consumer’s ability to obtain free annual file disclosures. Such a prerequisite is contrary to the intent of the Rule and existing Commission commentary on the provision of file disclosures.<sup>23</sup> Further, because establishing an account generally requires the collection of personally identifiable information, this practice runs counter to the prohibition in section 610.2(b)(ii), which limits the collection of information to that which is reasonably necessary to properly identify the consumer and to process the consumer’s transaction(s).

3. Proposed section 610.2(h)(iii): Prohibition on requiring terms and conditions

Finally, proposed section 610.2(h)(iii) prohibits asking or requiring consumers to agree to terms and conditions as a prerequisite for obtaining their free annual file disclosures through the centralized source. Apart from providing appropriate identifying information, a consumer’s right to obtain a free annual file disclosure should be unfettered and without any restrictions or conditions.

*C. Proposed Section 610.4: Prevention of deceptive marketing of free credit reports*

Proposed section 610.4 implements the Act’s prominent disclosure requirements for any advertisement for “free credit reports.” As detailed below, the proposed rule requirements specify the wording and placement of the disclosures.

1. Proposed section 610.4(a): The term “free credit report”

As a preliminary matter, proposed section 610.4(a) defines the term “free

credit report,” as used in this section of the Rule, as follows:

a consumer report or file disclosure that is prepared by or obtained, directly or indirectly, from a nationwide consumer reporting agency (as defined in section 603(p) of the [FCRA]); that is represented, either expressly or impliedly, to be available to the consumer free of charge; and that is, in any way, tied to the purchase of a product or service.

The proposed definition has three parts. First, because the term “credit report” is undefined in section 205 of the Act, the FCRA, or the Free Reports Rule, the Commission proposes to define the term to include a “consumer report” or “file disclosure” under the FCRA. Second, the term “free credit report” includes only those consumer reports or file disclosures that are represented to be free of charge. Third, the term covers only “free credit report” offers tied to the purchase of a product or service. The qualifier “tied to the purchase of a product or service” makes clear that providers of truly free consumer reports – including the free file disclosures provided through the centralized source – need not comply with the advertising disclosure requirements of this section.

2. Proposed section 610.4(b): The term “www.AnnualCreditReport.com and 877-322-8228”

Proposed section 610.4(b) provides that if the centralized source’s website (currently “www.AnnualCreditReport.com”) or toll-free telephone number (currently 877-322-8228) were to change, the new website or toll-free telephone number would be substituted in all disclosures required by this proposed section of the Rule.

3. Proposed section 610.4(c): General requirements for advertising disclosures

Proposed section 610.4(c) implements the Act’s mandate that the required advertising disclosures for “free credit reports” be “prominent” by setting forth requirements for visual, audio, and program-length advertisements.<sup>24</sup> These proposed presentation requirements are designed to ensure that the mandated

<sup>24</sup>These minimum disclosure standards are drawn from several Commission trade regulation rules. See Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (“Pay Per Call Rule”), 16 CFR Part 308; Door-to-Door Sales Rule, 16 CFR Part 429; Franchise Rule, 16 CFR Part 436; Business Opportunity Rule, 16 CFR Part 437; and Regulations under the Fair Packaging and Labeling Act, 16 CFR Part 500.

<sup>22</sup> Cf. Franchise Rule, 16 CFR 436.6(b) (addressing disclosures in an online environment).

<sup>23</sup> See FTC Commentary on the Fair Credit Reporting Act, 16 CFR 600 Appendix, comment 610-2 (“A consumer reporting agency may not add conditions not set out in the FCRA as a prerequisite to the required disclosure.”).

disclosures can be readily understood by consumers.

a. Proposed section 610.4(c)(1): Language usage

Proposed section 610.4(c)(1) requires that any advertising disclosure mandated by this section be provided in the same language as that principally used in the advertisement. This proposal draws from identical language in section 308.3(a)(1) of the Pay Per Call Rule.<sup>25</sup> The Commission believes that a disclosure in a language different from that which is principally used in an advertisement would be deceptive.

b. Proposed section 610.4(c)(2): Visual disclosures

Proposed section 610.4(c)(2) requires that a visual disclosure be: (1) of a color or shade that readily contrasts with the background of the advertisement; (2) in a font that is easy to read; and (3) parallel to the base of the advertisement. These proposed requirements draw from comparable provisions in the Pay Per Call Rule. Specifically, section 308.3(a)(2) of the Pay Per Call Rule provides that television, video, and print advertising disclosures be of a color or shade that readily contrasts with the background of the advertisement. The Commission believes that a contrast between the disclosure and the background on which it appears is fundamental to ensure readability.<sup>26</sup> In addition, the font used for the disclosures should be easily readable. For example, if the required disclosure were sufficiently large, but in an old English text font, the disclosure would not be easily readable. Finally, section 308.3(3) of the Pay Per Call Rule requires that the disclosures in print advertisements be parallel with the base of the advertisement. The Commission has found that visual disclosures that are parallel to the base of the advertisement are more noticeable to consumers.<sup>27</sup>

<sup>25</sup> See also 16 CFR 429.1(a) (requiring disclosure of right to cancel door-to-door sales "in the same language, e.g., Spanish, as that principally used in the oral sales presentation").

<sup>26</sup> See, e.g., *In re Tender Corp.*, C-4261 (2009); *In re Budget Rent-A-Car System, Inc.*, C-4212 (2008) (requiring disclosures to appear in "print that contrasts with the background against which it appears"); see also Federal Trade Commission Guidance, Dot Com Disclosures: Information about Online Advertising, at 12, available at (<http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf>) ("Dot Com Disclosures") ("A disclosure in a color that contrasts with the background emphasizes the text of the disclosure and makes it more noticeable. Information in a color that blends in with the background of the advertisement is likely to be missed.")

<sup>27</sup> See, e.g., *In re Swisher Int'l, Inc.*, C-3964 (2000) (requiring warnings on cigar advertisements to appear "parallel . . . to the base of the

c. Proposed section 610.4(c)(3): Audio disclosures

Proposed section 610.4(c)(3) requires that audio disclosures for "free credit reports" be delivered in a slow and deliberate manner and in a reasonably understandable volume. This provision is identical to section 308.3(a)(4) of the Pay Per Call Rule and is necessary to ensure that audio disclosures can be heard and understood by consumers.<sup>28</sup>

d. Proposed section 610.4(c)(4): Program-length advertisements

Proposed section 610.4(c)(4) requires that any program-length television, radio, or Internet-hosted multi-media advertisement for "free credit reports" provide the required disclosures at the beginning, near the middle, and at the end of the advertisement. This provision is identical to section 308.3(a)(6) of the Pay Per Call Rule.<sup>29</sup> It is designed to enable consumers tuning in to the program-length advertisement at different stages of the broadcast to receive the required disclosure.

e. Proposed section 610.4(c)(5): Inconsistent and contrary information

Proposed section 610.4(c)(5) prohibits anything "contrary to, inconsistent with, or in mitigation of, the required disclosure" in any advertisement in any medium. This section also prohibits any audio, visual, or print technique that is likely to detract significantly from the communication of any required disclosure. This provision is identical to section 308.3(a)(5) of the Pay Per Call Rule,<sup>30</sup> and is designed to prevent circumvention of the Rule requirements through the conveyance of contrary or

advertisement); Regulation under Section 4 of the Fair Packaging and Labeling Act, 16 CFR 500.4 (requiring statement of identity for packaged goods to appear "in lines generally parallel to the base on which the packaging or commodity rests as it is designed to be displayed").

<sup>28</sup> See, e.g., *In re Kmart Corp.*, C-4197 (2007) (requiring audio disclosures to be made "in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it"); *In re Darden Restaurants, Inc.*, C-4189 (2007) (same); *In re Palm, Inc.*, C-4044 (2002) (same); Dot Com Disclosures at 14 (Audio disclosures should be "in a volume and cadence sufficient for a reasonable consumer to hear and understand it").

<sup>29</sup> Cf. *In re Synchronal Corp.*, 116 FTC 1189 (1993) (requiring video or commercial advertisements 15 minutes or longer to disclose that program is a paid advertisement within the first 30 seconds and immediately before presentation of ordering instructions).

<sup>30</sup> Cf. Franchise Rule, 16 CFR 436.9(a) and Business Opportunity Rule, 16 CFR 437.1(a)(21) (prohibiting the making of any claim or representation, orally or visually, or in writing, that contradicts the information required to be disclosed by the Rule); Guides for Environmental Marketing Claims, 16 CFR 260.6(a) (noting that an absence of contrary claims will help make disclosures clear and prominent).

inconsistent information, or other actions that undermine the disclosures to consumers.

4. Proposed section 610.4(d): Media-specific advertising disclosures

Proposed section 610.4(d) incorporates the statutory requirements relating to prominence in specific media. The proposed wording and presentation of required advertising disclosures for each type of media are described below.

a. Proposed section 610.4(d)(1): Disclosures for television advertisements

As mandated by section 205 of the Act, proposed section 610.4(d)(1) of the amended Rule requires that all advertisements for "free credit reports" broadcast on television include the following disclosure: "This is not the free credit report provided for by Federal law."

Proposed section 610.4(d)(1) also requires that the disclosure appear simultaneously in the audio and visual parts of the advertisement, be at least four (4) percent of the vertical picture height, and appear for a minimum of four seconds. This proposal is consistent with the Act, which specifically requires that all television advertising disclosures be provided simultaneously in the audio and visual parts of the advertisement.<sup>31</sup> In addition, the proposed requirement that the visual disclosure be at least four (4) percent of the vertical picture height and appear on the screen for four seconds is consistent with comparable Federal Election Commission requirements for the disclosure of the funding source of a political advertisement on television.<sup>32</sup>

b. Proposed section 610.4(d)(2): Disclosures for radio advertisements

Proposed section 610.4(d)(2) requires that all advertisements for "free credit reports" broadcast on radio include the following disclosure: "This is not the free credit report provided for by

<sup>31</sup> See generally Maria Grubbs Hoy and J. Craig Andrews, *Adherence of Prime-Time Televised Advertising Disclosures to the "Clear and Conspicuous" Standard: 1990 Versus 2002*, 23 J. Mktg. Pub. Pol. 170 (2004) (citing numerous studies demonstrating that disclosures made in "dual modality" – audio and video simultaneously – are more effective at communicating information to consumers); see also *In re Kraft, Inc.*, 114 F.T.C. 40 (1991), *aff'd*, 970 F.2d 311 (7th Cir. 1992) (in which the Commission noted that "given the distracting visual and audio elements and the brief appearance of complex superscript in the middle of the commercial," it was unlikely that a visual disclosure alone would be effective as a corrective measure).

<sup>32</sup> See 11 CFR 110.11(c)(3)(iii)(B).

Federal law.” This section incorporates the Act’s specific required disclosure language for radio advertisements.

c. Proposed section 610.4(d)(3):  
Disclosures for print advertisements

Proposed section 610.4(d)(3) requires that all advertisements for “free credit reports” in print include the following disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)) or call 877-322-8228.” Proposed section 610.4(d)(3) further requires that each letter of the disclosure be, at a minimum, one half the size of the larger of the largest letter or numeral used in the name of the website or the telephone number to which consumers are referred to receive what is advertised as a free credit report.

Section 205 of the Act does not specify the wording of the advertising disclosure required in print advertisements; rather, it only requires that the disclosure be “prominent” and authorizes the Commission to determine the appropriate wording of the advertising disclosure through this rulemaking. The Commission’s proposal adopts the wording for the disclosure for television and radio advertisements, but also adds language directing consumers to [AnnualCreditReport.com](http://AnnualCreditReport.com) or the toll free number where they can obtain their free annual file disclosures provided by law. The Commission believes that this additional language will assist consumers in obtaining their free annual file disclosures, consistent with the purpose of the Act.

The proposed type size requirement in this section – a minimum of one-half the size of the larger of the largest letter or numeral used in the name of the website or the telephone number to which consumers are referred to obtain their “free credit report” – is identical to section 308.3(b)(v)(2)(i) of the Pay Per Call Rule. Tying the type size of the proposed disclosure to that of the website or telephone number promoting the “free credit report” ensures that the disclosure is “prominent” and increases the likelihood that the required disclosure will be effectively communicated to consumers.

d. Proposed section 610.4(d)(4):  
Disclosures for Internet websites

Proposed section 610.4(d)(4) requires that any website on which “free credit reports” are offered for sale must first display on a separate landing page the following visual disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)) or

call 877-322-8228.” Proposed section 610.4(d)(4) also requires that the landing page contain no other information aside from the statement: “Go to [hyperlink to company’s website.]” Further, this proposed disclosure must: (1) be visible to consumers without requiring them to scroll down the web page; (2) contain an operational hyperlink directing consumers to ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)) that appears before the hyperlink to the advertised company’s commercial website; and (3) be in a type at least twice the size as the hyperlink to the company’s website or display of the company’s Uniform Resource Locator. Finally, the proposed Rule provides that the landing page must occupy the full screen and that no other information, graphics, or material may be shown to the consumer unless and until the consumer has affirmatively selected one of the two hyperlinks, described above.

The Commission believes that this proposal implements the clear purpose and language of the Act. First, the Act specifies that the disclosures be “prominent.” In specifying this language, Congress was aware of the prolific and confusing advertising with respect to “free credit reports,” as well as the disclosures currently being used to distinguish such offers from the free annual file disclosures mandated by federal law.<sup>33</sup> Thus, its use of the word “prominent” must be viewed as an expression of intent that the new disclosures be more noticeable and more effective than those currently required or used in advertising for “free credit reports.” To fulfill this statutory mandate, the Commission proposes that the disclosure be on a separate landing page and in a prominent type size with little additional text; these format requirements are designed to ensure that consumers see the disclosure and are not distracted by competing messages.<sup>34</sup>

<sup>33</sup> See 155 Cong. Rec. S6178, S6179 (June 4, 2009) (statement of Sen. Levin) (“[Section 205] will not achieve its purpose unless the mandated disclosure is made in a clear, prominent, and effective manner, a standard that disclosures in many current promotions do not achieve. The cleverly deemphasized disclosure currently on [FreeCreditReport.com](http://FreeCreditReport.com), for example, would not be sufficient.”); see also Robert N. Mayer and Tyler Barrick, Univ. of Utah, “Web Sites Offering ‘Free’ Credit Reports” (Apr. 26, 2007), available at (<http://www.consumerwebwatch.org/pdfs/creditsites.pdf>) (“[C]onsumers using the alternative sites because of confusion about [annualcreditreport.com](http://annualcreditreport.com) and its alternatives may end up paying needlessly for something they are entitled by law to receive for free.”).

<sup>34</sup> Commission precedent establishes that disclosures in fine print or buried in dense blocks of text are not prominent. The mandate that disclosures be “clear and conspicuous” or “clear and prominent” dates back more than 60 years. See, e.g., *Hillman Periodicals v. FTC*, 174 F.2d 122 (2d

Second, the Act gives the Commission discretion to determine the timing, placement, and format of Internet disclosures, subject to the overarching goal that the disclosures be prominent. Specifically, section 205 of the Act directs the Commission to promulgate a rule “for advertisements on the Internet [that] shall include whether the disclosure . . . shall appear on the advertisement or the website on which the free credit report is made available.” Consistent with case law construing similar uses of the word “or,” as well as the Act’s clear purpose, the Commission believes that the word “or” indicates alternatives and requires that alternatives be considered separately, thus allowing the Commission maximum flexibility to select the most effective option.<sup>35</sup> In this case, the Commission believes that a separate disclosure on the website where consumers go to obtain advertised “free credit reports” is likely to be the most effective way to ensure prominence and prevent consumer confusion.

Indeed, the Commission notes that some Internet advertising, such as pop-up screens and banner ads, are size-restricted. In light of such restrictions, it would be difficult to design a disclosure in this context that would satisfy the statutory “prominence” requirement.<sup>36</sup> Further, based on its experience in designing disclosures, the Commission has found that certain disclosures are most effective when given at the moment that a consumer is making a decision regarding a product or

*Cir.* 1949) (upholding Commission order that company selling shortened versions of books disclose that its publications are abridged “in immediate connection with the title and in clear, conspicuous type”).

<sup>35</sup> See *Azure v. Morton*, 514 F.2d 897, 900 (9th Cir. 1975) (“As a general rule, the use of a disjunctive in a statute indicates alternatives and requires that they be treated separately.”); see also *Garcia v. United States*, 469 U.S. 70, 73 (1984) (“Cannons of construction indicate that terms connected in the disjunctive . . . be given separate meanings.”); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979); *FCC v. Pacific Foundation*, 438 U.S. 726, 739-740 (1978). See also 155 Cong. Rec. at S6179 (statement of Sen. Levin) (“Section 205(b)(2)(B) . . . is intended to allow the FTC to require disclosures on an internet ad, on the website to which the ad is linked, on the ‘home’ website of the company advertising ‘free’ credit reports, or on any combination of the three.”).

<sup>36</sup> Indeed, Congress expressed concern not only with deceptive advertising that directs consumers to contact commercial websites that are unaffiliated with [AnnualCreditReport.com](http://AnnualCreditReport.com), but with the inadequate disclaimers and disclosures that are buried in fine print or appear in places where most consumers will not see them. See 155 Cong. Rec. at S6179 (statement of Sen. Levin) (“[B]uried in the small print it is revealed that customers that request a free credit report must also opt out of a credit monitoring service or else they will be charged \$15 a month, indefinitely.”).

service.<sup>37</sup> Here, the proposed disclosure would occur at the moment that a consumer is seeking to exercise his federal right to obtain his free annual disclosure online – a critical time to prevent deception and the possible purchase of unwanted goods and services.<sup>38</sup>

Third, the proposed requirement for Internet advertising is consistent with the Act's specific mandates for television advertising. As noted above, while the Act provides the Commission with discretion for many forms of advertising, it contains specific mandates for television advertising to ensure that such advertising be sufficiently prominent. Specifically, with respect to television, the Act states that the disclosures must appear in both the audio and visual portions of the advertisement. This approach reflects the well-established principle of marketing communication that dual-modality disclosures "have been found to achieve much higher levels of message recall than single-modality disclosures."<sup>39</sup> Similarly, required disclosures for Internet advertisements should reflect the same clarity, prominence, and unavoidability that are the hallmarks of the form of disclosure Congress mandated for television advertisements.<sup>40</sup>

Overall, the Commission believes that requiring a clear and unavoidable disclosure is a necessary step in the evolution of efforts to combat pervasive and confusing marketing of free credit reports. As discussed above, the Commission has combated such confusion through warning letters to companies, increased consumer outreach, and law enforcement. Despite these efforts, a robust industry selling "free credit reports" tied to the purchase of products and services continues unabated. Indeed, the Commission continues to receive consumer complaints demonstrating ongoing confusion in the "free credit report" marketplace.<sup>41</sup> The Commission thus

proposes a disclosure on the landing page to ensure that the disclosure is prominent and that consumers view it at the most relevant time – when they seek to exercise their federal right to obtain free annual file disclosures online. As noted above, however, nothing in this proposal is intended to prevent the truthful advertising and marketing of products and services that consumers may choose to purchase.

e. Proposed section 610.4(d)(5): Disclosures for Internet-hosted multi-media advertising

Proposed section 610.4(d)(5) requires that all Internet-hosted multi-media advertisements for "free credit reports" disseminated in both audio and visual format include the following disclosure: "This is not the free credit report provided by Federal law. To get your free report, visit ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)) or call 877-322-8228." This section further requires that the disclosure appear simultaneously in the audio and visual part of the advertisement and that the visual disclosure be in a type at least the same size as the largest hyperlink to the company's website, display of the Uniform Resource Locator of the company's website, or display of the company's telephone number appearing in the advertisement.

This proposed section is intended to address innovative forms of advertising for "free credit reports" in multi-media platforms, such as smart phone applications, youtube.com, and comparable visual and audio mechanisms. The Commission believes that, as with the disclosure for television advertising, the required disclosures for Internet-hosted multi-media advertising must appear simultaneously in the audio and visual part of the advertisement.

Further, to be prominent, the visual disclosure must be in a type at least the same size as the largest hyperlink to the company's website, display of the company's web address, or display of the company's telephone number

discussions. See, e.g. Robert N. Mayer and Tyler Barrick, Univ. of Utah, "Web Sites Offering 'Free' Credit Reports" (Apr. 26, 2007), available at (<http://www.consumerwebwatch.org/pdfs/creditsites.pdf>) ("Consumers unaware of their right to obtain free credit reports from [annualcreditreport.com](http://annualcreditreport.com) may buy expensive services from other sites, believing they are getting a credit report for free."); Byron Acochido and Jon Swartz, "Free" credit reports sometimes aren't free; And it's not easy to figure out which score to use" USA Today, Nov. 28, 2007, available at ([http://www.usatoday.com/money/perfi/credit/2007-11-27-credit-scores\\_N.htm](http://www.usatoday.com/money/perfi/credit/2007-11-27-credit-scores_N.htm)) ("Consumers are also getting tricked into paying for basic credit reports before obtaining the ones they can get free, as mandated by the federal government in 2003.").

appearing in the advertisement. The Commission believes that tying the size of the disclosure to the size of the company's web address or telephone numbers will ensure that the disclosures are more readily noticed and understood by consumers.

f. Proposed section 610.4(d)(6): Disclosures for telephone requests

Proposed section 610.4(d)(6) requires that when consumers call any telephone number appearing in any advertisement for free credit reports other than the number of the centralized source, consumers must first receive the following audio disclosure: "You have reached [name of company or service]. This is not the source for the free credit report provided for by Federal law. To get your free credit report, call 877-322-8228 or visit ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com))." The Commission believes that the Act's broad mandate to require advertising disclosure "for any advertisement for a free credit report in any medium" includes inbound telemarketing.<sup>42</sup> To prevent confusion, the Commission believes that consumers calling telephone numbers advertised in the marketing of "free credit reports" must be informed that they have reached a telephone number that is not related to the federally-recognized source of free reports. Finally, to satisfy the standard of prominence, the Commission believes that this disclosure should be made at the outset of the call. The proposed requirements are drawn from the Commission's Telemarketing Sales Rule which, among other things, prohibits telemarketers from failing to disclose that the purpose of the call is to sell goods or services and the nature of the goods or services.<sup>43</sup>

g. Proposed section 610.4(d)(7): Telemarketing solicitations

Section 610.4(d)(7) requires that any telemarketing call made to a consumer that offers a "free credit report" include, at the first mention of "free credit report," the following disclosure: "This is not the source for the free credit report provided by Federal law. To get your free credit report, call 877-322-8228 or visit ([www.AnnualCreditReport.com](http://www.AnnualCreditReport.com))." As noted above, the Commission believes that the Act's broad mandate to cover

<sup>42</sup> Cf. Telemarketing Sales Rule, 16 CFR 310.2(bb) (defining a telemarketer as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer"); 16 CFR 310.2(cc) (defining telemarketing as a "plan, program, or campaign which is conducted to induce the purchase of goods or services").

<sup>43</sup> 16 CFR 310.3.

<sup>37</sup> See Dot Com Disclosures at 11 (disclosures are more likely to be effective if they are provided when the consumer is considering the purchase).

<sup>38</sup> See generally *FTC v. TALX Corp.*, Civ. No. 4:09-cv-01071 (E.D. Mo. 2009) (requiring "clear and prominent" disclosures on the principal website screen or landing page where the disclosures are most relevant).

<sup>39</sup> Michael B. Mazis and Louis A. Morris, *Channel*, in *Warnings and Risk Communication*, 106 (Michael S. Wogalter, et al., eds., 1999) (citations omitted).

<sup>40</sup> See Dot Com Disclosures (noting that general advertising law principles apply regardless of the medium used).

<sup>41</sup> The confusion and frustration consumers experience when trying to exercise their federal right to obtain a free annual file disclosure has also been the subject of numerous articles and online

“any advertisement for a free credit report in any medium” includes telemarketing solicitations.

#### *D. Elimination of Obsolete “Roll-out” Provisions of the Current Rule*

Finally, the Commission proposes to eliminate from the current Rule the “roll-out” provisions contained in sections 610.2(i) and 610.3(g). When the Commission promulgated the current Rule, it provided for a structured “roll-out” of the availability of free file disclosures, beginning in the western states on December 1, 2004, and concluding with eastern states on September 1, 2005. This provision of the current Rule is now obsolete and retaining it in the amended Rule would serve no useful purpose. Accordingly, the proposed amended Rule would delete sections 610.2(i) and 610.3(g) of the current Rule.<sup>44</sup>

### III. Request for Comments

The Commission invites comment on all aspects of the proposed amendments to the Free Reports Rule and on the specific issues on which comment is solicited elsewhere in this document:

- The extent to which the advertising or marketing of credit products and services through the centralized source interferes with or undermines consumers’ ability to obtain their free annual file disclosures, and whether the proposed limitation on advertising would address this concern.
- Whether the Commission should adopt a ban on all advertising through the centralized source, and what the benefits and costs of such a ban would be.
- Are there effective methods other than those proposed by the Commission to reduce confusing and deceptive advertising regarding “free credit reports”? How do the costs and benefits of these methods compare with those proposed by the Commission?
- Whether there are additional examples of communications or instructions that may “interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source” that the Commission should consider adding to the list of examples in proposed section 610.2(g)(3).
- Whether the proposed definitions of “free credit report” and “(www.AnnualCreditReport.com) and 877-322-8228” are complete and accurate, and whether there are

alternative definitions the Commission should consider.

- Whether the Commission’s proposal for Internet-hosted multi-media advertising is sufficient to ensure that the Rule would continue to cover advertising for “free credit reports” in the evolving technology marketplace.

- When the amendments to the Free Reports Rule should go into effect, in light of the requirement for interim advertising disclosures in section 205 of the Act? Are there particular sections of the proposed Rule amendments that require more time for covered entities to comply with the proposed Rule’s requirements?

- Ways to minimize any burdens imposed by the proposed Rule, while also ensuring that consumers have unfettered access to their free file disclosures.

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Free Annual File Disclosures, Rule No. R411005” to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as any individual’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . .,” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>45</sup>

<sup>45</sup>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 FTC Rule 4.9(c), 16 CFR 4.9(c).

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>). If this document appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (<http://www.ftc.gov>) to read the document and the news release describing it.

A comment filed in paper form should include the “Free Annual File Disclosures Rulemaking, Rule No. R411005” 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 H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. 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 on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (“OMB”), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of

<sup>44</sup>In addition to the proposed revisions and additions discussed above, proposed section 610.2(b)(2)(iv)(D) removes an erroneous reference to “national credit reporting agencies.”

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 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.shtm>).

#### IV. Communications by Outside Parties to the Commissioners or 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.<sup>46</sup>

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ("RFA")<sup>47</sup> requires the Commission to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, and a Final Regulatory Flexibility Analysis ("FRFA") with a final rule, unless the Commission certifies that the rule will have no significant economic impact on a substantial number of small entities.<sup>48</sup>

The Commission anticipates that the proposed Rule amendments will have no significant economic impact on a substantial number of small entities. As noted above, proposed section 610.2 will amend the Rule to limit advertising through the centralized source and prohibit other conduct in connection with the provision of annual file disclosures to consumers. By its terms, amended section 610.2 will apply exclusively to the nationwide CRAs that currently operate and maintain the centralized source pursuant to section 612(a) of the FCRA, 15 U.S.C. 1681j(a). None of the three nationwide CRAs is a small entity.<sup>49</sup>

<sup>46</sup> See 16 CFR 1.26(b)(5).

<sup>47</sup> 5 U.S.C. 601-612.

<sup>48</sup> 5 U.S.C. 603-605.

<sup>49</sup> Covered entities under the proposed amended Rule will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System ("NAICS"). The closest NAICS size standard relevant to this rulemaking is for "credit bureaus," which is \$7 million maximum in annual receipts. See ([http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf)).

See also 69 FR 35468, at 35494-495 (June 24, 2004) ("[T]he Commission is aware of three entities that meet the rule definition . . . of a 'nationwide consumer reporting agency.' The Commission has concluded that none of these is a small entity."). In the original Notice of Proposed Rulemaking for the Free Reports Rule, the Commission specifically asked several questions related to the existence, number and nature of small business entities

In addition, proposed section 610.4 sets forth prohibitions and disclosures concerning the advertising or marketing of "free credit reports" tied to the purchase of other goods or services, such as credit scores or credit monitoring services, pursuant to section 205 of the Act. The Commission believes that the universe of entities offering "free credit reports" is likely to be small, comprised mostly of the three nationwide CRAs and their subsidiaries and affiliates. Further, staff estimates, based upon its knowledge of industry practices and members, that there may also be a small number of independently operating credit reporting agencies or resellers of consumer reports that, in theory, might offer "free credit reports" subject to the Rule. For example, when the Rule was first implemented, several resellers of reports appeared, using imposter websites, such as those misspelling AnnualCreditReport.com, or using sound-alike websites names that did not link to AnnualCreditReport.com. In 2005, the Commission staff sent warning letters to the known operators of those suspect sites, totaling 29 operators. While this suggests that the total number of independent resellers of reports may be small, Commission staff does not know the exact number of any such independent reporting agencies or how many of those independent agencies, if any, might be small businesses.<sup>50</sup> Nonetheless, Commission staff believes that the number of small entities offering "free credit reports" is likely to be insubstantial. The overall economic impact of the proposed rule amendments set forth at section 610.4 is not likely to have a significant impact on a substantial number of small entities.

Accordingly, this document serves as notice to the Small Business Administration of the Commission's certification of no economic impact. Nonetheless, the Commission has determined to prepare the following analysis:

covered by the proposed Free Reports Rule. The Commission received no comments responsive to those questions. 69 FR at 35495.

<sup>50</sup>A Consumer Reports WebWatch study of 24 websites offering "free" credit reports found that 18 were owned by or were closely associated with one of the three major CRAs – Experian, Equifax, and TransUnion. The remaining six sellers of free credit reports may be independently operating consumer reporting agencies. See Robert N. Mayer and Tyler Barrick, Univ. Of Utah, "Web Sites Offering 'Free' Credit Reports" (Apr. 26, 2007), available at (<http://www.consumerwebwatch.org/pdfs/creditsites.pdf>) (concluding that the marketing of "free" credit reports is concentrated in the hands of the three major CRAs).

#### A. Description of the Reasons That Action by the Agency Is Being Considered

The Commission proposes, and seeks comment on, amendments to the Free Reports Rule to implement section 205 of the Act, which mandates that advertisements offering "free credit reports" contain prominent prescribed disclosures informing consumers that federally mandated free file disclosures are available at AnnualCreditReport.com. Further, the Free Reports Rule requires, among other things, a centralized source through which consumers may request a free annual file disclosure from each nationwide CRA. Through this Notice, the Commission proposes, and seeks comment on, amendments to the Rule that would eliminate practices that interfere with consumers' ability to obtain free annual file disclosures through the centralized source, in violation of section 610.2(g) of the current Rule.

#### B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule Amendments

The proposed amendments to the Free Reports Rule implement section 205 of the Act, which directs the Commission to prevent deceptive advertising of "free credit reports." In addition, the Commission seeks to eliminate practices that interfere with consumers' ability to obtain file disclosures through the centralized source, in violation of section 610.2(g) of the current Rule.

#### C. Small Entities to Which the Proposed Rule Amendments Will Apply

As noted above, the proposed Rule amendments set forth in section 610.2 will apply to the nationwide CRAs that are required to provide free annual file disclosures through the centralized source pursuant to section 612(a) of the FCRA, 15 U.S.C. 1681j(a). The Commission has not identified any nationwide CRA that is a small entity. The proposed amendments to the Rule set forth in proposed section 610.4 pertaining to the advertising of free credit reports pursuant to section 205 of the Act will apply to the nationwide CRAs and their subsidiaries, as well as independent resellers of annual file disclosures. Commission staff believes, based upon its knowledge of the industry and its members, that few, if any, of these entities are likely to be small. Nonetheless, the Commission specifically requests additional comment on the number of entities likely to be affected by the proposed section 610.4 to the Rule and the

number of those, if any, that are small entities.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The amendments proposed in section 610.4 would set forth statutorily-mandated advertising disclosures for offering of “free credit reports” in television and radio advertisements, as well as other media, including print and Internet advertising. These proposed amendments to the Rule impose no reporting or recordkeeping obligations. The amendments proposed in section 610.2 would limit advertising on the centralized source until after consumers have obtained their free annual file disclosures, as well as prohibit practices that interfere with consumers’ ability to obtain free annual file disclosures through the centralized source. As discussed more fully below in connection with the Paperwork Reduction Act, Commission staff estimates that these proposed amendments to the Rule will impose no more than a de minimis, one-time burden of 12 hours to be completed by professional technical personnel and/or management personnel.

*E. Duplicative, Overlapping, or Conflicting Federal Rules*

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule amendments. The Commission invites comment on this issue.

*F. Significant Alternatives to the Proposed Rule Amendments*

As previously noted, the proposed amendments to the Rule will affect only nationwide CRAs and their subsidiaries, as well as independent resellers of credit reports. The Commission is unaware of any nationwide CRAs or independent resellers of credit reports that are small entities and therefore it does not include any special exemptions, delayed compliance dates, or other regulatory alternatives specifically to reduce burdens on such entities. Nonetheless, the Commission seeks additional comment regarding: (1) the existence of small entities for which the proposed rule amendments would have a significant economic impact; and (2) suggested alternatives that would reduce the economic impact of the proposed rule amendments on such small entities. If the comments filed in response to this document identify any small entities that would be significantly affected by the proposed rule amendments, as well as alternatives that would reduce compliance costs on

such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into any amended final rule.

**VI. Paperwork Reduction Act**

The Commission is submitting this proposed amended Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget (“OMB”) for review under the Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501-3521. In this Notice, the Commission proposes to amend the Free Reports Rule to implement section 205 of the Act. Specifically, the amendments would require any entity engaged in the marketing of “free credit reports” to include in its advertisements prescribed disclosures appropriate for the medium in which the advertisements appear. In addition, the Commission proposes to amend the Rule to eliminate unnecessary interference with consumers’ ability to obtain their annual file disclosures from the centralized source.

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will serve a useful purpose; (2) evaluate the accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques, or other forms of information technology.

*A. Current Rule and Associated PRA Burden*

The current Rule requires nationwide CRAs and nationwide specialty CRAs to disclose information to third parties by requiring those consumer reporting agencies to provide to consumers, upon request, one free annual file disclosure. It also requires the nationwide CRAs to provide consumers with the ability to request this disclosure through a centralized Internet website, a toll-free telephone number, and a postal address. In addition, the current Rule requires the nationwide CRAs to establish a standardized form for Internet and mail requests, and it provides a model

standardized form that may be used to comply with that requirement.

*B. Proposed Section 610.4*

Proposed section 610.4 would require all advertisements for “free credit reports” to contain certain prescribed disclosures tailored to the medium used. As such, these disclosures do not constitute a “collection of information,” as defined by OMB’s regulations that implement the PRA.<sup>51</sup> Accordingly, implementation of section 205 of the Act presents no associated PRA collection of information burden.

*C. Proposed Amended Section 610.2*

The proposed amendments to section 610.2 of the Rule are designed to prevent interference with consumers’ ability to obtain their free annual file disclosures through the centralized source, as permitted by law. The proposed amendments will not modify the nationwide CRAs’ current obligation to provide consumers with free annual file disclosures upon request. Nor are the proposed amendments to section 610.2 likely to increase or decrease the estimated number of annual file disclosures made available to consumers, whether through the Internet, telephone, or mail. Rather, the amendments are intended to make it easier for consumers to obtain their free annual file disclosures from the centralized source without distracting advertising, including advertising leading consumers to commercial websites.

Moreover, the proposed amendments to section 610.2 are unlikely to increase significantly the administrative burden on the nationwide CRAs providing consumers with annual file disclosures through the centralized source. As discussed above, the proposed amendments to section 610.2 would require the nationwide CRAs to remove links on the centralized source to their commercial or proprietary websites. Finally, if a nationwide CRA chooses to advertise products and services – such as credit scores or credit monitoring – through the centralized source, it can do so only after the consumer has obtained his or her free annual file disclosure. Accordingly, in order to advertise through the centralized source, the nationwide CRAs must establish a mechanism to verify that consumers have completed their transaction.

<sup>51</sup> See 5 CFR 1320.3(c)(2) (excluding from the definition of “collection of information” the “public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public”).

## 1. Estimated Hours Burden and Associated Labor Cost

Commission staff believes that the above-noted proposed administrative amendments to section 610.2 will impose no more than a de minimis, one-time burden, as the three nationwide CRAs reconfigure the centralized source and their own proprietary websites. Commission staff estimates that these steps will take approximately 12 hours to complete per CRA.<sup>52</sup>

Commission staff estimates labor costs by applying appropriate estimated hourly cost figures to the burden hours (12) described above. It is difficult to calculate with precision the labor costs association with the proposed Rule amendments, because they entail varying compensation levels of management (*e.g.*, administrative services, computer and information systems, systems analysts, and network and computer system administrators). FTC staff assumes that professional technical personnel and/or management personnel will implement the amendments, at an hourly rate of \$39.42.<sup>53</sup>

Based upon the above estimates and assumptions, the total labor cost for each of the three nationwide CRAs to comply with the proposed amendments to the Rule is \$473.00 (12 hours × \$39.42) or, cumulatively, \$1,419.

## 2. Estimated Capital/Other Non-Labor Cost Burden

Commission staff believes that the proposed Rule amendments will not impose any capital or other non-labor costs. Commission staff assumes that the nationwide CRAs will continue their current practice of using third-party contractors (instead of their own employees) to fulfill consumer requests for annual file disclosures, pursuant to the Rule. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of annual file disclosures requested by consumers. As discussed above, Commission staff believes that the proposed amendments, while making it easier for consumers to obtain their free annual file disclosures from the centralized source, will not increase the burden on industry to

supply such file disclosures, nor affect the overall number of file disclosures provided to consumers annually, because consumers will likely be redirected from websites that require consumers to pay for their “free credit report” to the centralized source.

### Proposed Rule

#### List of Subjects in 16 CFR Part 610

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

#### Authority and Issuance

For the reasons discussed in the preamble, the Federal Trade Commission proposes to amend title 16, Chapter I, Subchapter F, of the Code of Federal Regulations, part 610, as follows:

1. The authority citation for part 610 is revised to read as follows:

**Authority:** 15 U.S.C. 1681a, g, and h; sec. 211(a) and (d), Pub. L. 108-159, 117 Stat. 1968 and 1972 (15 U.S.C. 1681j). Pub. L. 111-24.

2. Revise § 610.2 to read as follows:

#### § 610.2 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a) *Purpose.* The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(b) *Establishment and operation.* All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized source for the purpose described in paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumers' option:

- (i) A single, dedicated Internet website,
  - (ii) A single, dedicated toll-free telephone number; and
  - (iii) Mail directed to a single address;
- (2) Be designed, funded, implemented, maintained, and operated in a manner that:

- (i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with paragraph (c) of this section;
- (ii) Collects only as much personally identifiable information as is reasonably

necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source website and telephone number regarding how to make a request by all request methods required under § 610.2(b)(1) of this part; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a website request method, providing access to a “help” or “frequently asked questions” screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Federal Trade Commission;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers' identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the website or telephone number for ordering free annual credit reports as required by federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Internet website required under § 610.2(b)(1) of this part, from the centralized source required by this part. The form provided at 16 CFR Part 698, Appendix D, may be used to comply with this section.

(c) *Requirement to anticipate.* The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact

<sup>52</sup>This figure derives from consultation with FTC staff experienced in web design and operations.

<sup>53</sup>This estimate is based on mean hourly wages found at ([http://www.bls.gov/ncs/ncswage2008.htm#Wage\\_Tables](http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables)) (National Compensation Survey: Occupational Earnings in the United States 2008, US Department of Labor released August 2009, Bulletin 2720, Table 3) for the various managerial and technical staff support exemplified above.

the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) The extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) The extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumers' request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of § 610.2(b)(2)(i) of this part if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d) *Disclosures required.* If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, regardless of whether the consumer report is owned by that nationwide consumer reporting agency or by an associated consumer reporting

agency, that nationwide consumer reporting agency shall, upon proper identification in compliance with section 610(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. 1681h(a)(1), provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *High request volume and extraordinary request volume* – (1) *High request volume.* Provided that a nationwide consumer reporting agency has implemented reasonable procedures developed in accordance with paragraph (c) of this section, entitled “requirement to anticipate,” the nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for any period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, if the nationwide consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has implemented reasonable procedures developed in compliance with paragraph (c) of this section, entitled “requirement to anticipate,” the nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for any period of time during which a particular centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the Fair Credit Reporting Act, made through the centralized source, may be used or disclosed by the centralized source or a nationwide consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the Fair Credit Reporting Act and this part; and

(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g) *Communications provided through centralized source.*

(1) Any advertising or marketing for products or services, or any communications or instructions that advertise or market any products or services, through the centralized source must be delayed until after the consumer has obtained his or her annual file disclosure.

(i) In the case of requests made by mail or telephone, the consumer “has obtained his or her annual file disclosure” when the file disclosure is mailed, and a nationwide consumer reporting agency may include advertising for other products or services with the file disclosure.

(ii) In the case of requests made through the centralized source Internet website, the consumer “has obtained his or her annual file disclosure” when the file disclosure is delivered to the consumer through the Internet, and the nationwide consumer reporting agency that provided the disclosure may then advertise other products or services.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in paragraph (a) of this section.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product or service in order to receive or to understand the annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumers' credit standing; and

(iii) Centralized source materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of a file disclosure, such as a credit score or credit monitoring service, is free, or fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of

time, to avoid being charged, if such is the case.

(h) *Other practices prohibited through the centralized source.* The centralized source shall not:

(1) Contain hyperlinks to commercial or proprietary websites on the website for the centralized source.

(2) Ask or require consumers to set up an account as a prerequisite for obtaining an annual file disclosure; or

(3) Ask or require consumers to agree to terms and conditions as a prerequisite for obtaining an annual file disclosure.

3. In § 610.3, remove paragraph (g).

4. Add § 610.4 to read as follows:

**§ 610.4 Prevention of deceptive marketing of free credit reports**

(a) *Free credit report.* For purposes of this section, “free credit report” means a consumer report or file disclosure that is prepared by or obtained, directly or indirectly, from a nationwide consumer reporting agency (as defined in section 603(p) of the Fair Credit Reporting Act); that is represented, either expressly or impliedly, to be available to the consumer free of charge; and that is, in any way, tied to the purchase of a product or service.

(b) *www.AnnualCreditReport.com and 877-322-8228.* The disclosures mandated by this section use the Uniform Resource Locator address “[www.AnnualCreditReport.com](http://www.AnnualCreditReport.com)” and toll-free telephone number, 877-322-8228. These are the locator address and toll-free telephone number currently used by the centralized source. If the locator address or toll-free telephone number changes in the future, the new address or telephone number shall be substituted.

(c) *General requirements for advertising disclosures.* The disclosures covered by paragraph (d) of this section shall comply with the following requirements:

(1) All disclosures shall be made in the same language as that principally used in the advertisement;

(2) Visual disclosures shall be of a color or shade that readily contrasts with the background of the advertisement, in a font easily read by a reasonable consumer, and be parallel to the base of the advertisement;

(3) Audio disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume;

(4) Program-length television, radio, or Internet-hosted multi-media advertisement disclosures shall be made at the beginning, near the middle, and at the end of the advertisement; and

(5) Nothing contrary to, inconsistent with, or in mitigation of, the required

disclosures shall be used in any advertisement in any medium; nor shall any audio, visual, or print technique be used that is likely to detract significantly from the communication of any disclosure.

(d) *Medium-specific advertising disclosures.* All advertisements that include offers of free credit reports shall include the disclosures required by this section.

(1) *Television advertisements.* All advertisements for free credit reports broadcast on television shall include the following disclosure: “This is not the free credit report provided for by Federal law.” The disclosure shall appear simultaneously in the audio and visual part of the advertisement. The visual disclosure shall be at least 4 percent of the vertical picture height, and appear for a minimum of four seconds.

(2) *Radio advertisements.* All advertisements for free credit reports broadcast on radio shall include the following disclosure: “This is not the free credit report provided for by Federal law.”

(3) *Print advertisements.* All print advertisements for free credit reports shall include the following disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) or call 877-322-8228.” Each letter of the disclosure shall be, at minimum, one-half the size of the largest letter or numeral used in the name of the website or the telephone number to which consumers are referred to receive what is advertised as a free credit report.

(4) *Internet websites.*

(i) Any website offering free credit reports must first display a separate landing page to consumers before the consumer may obtain the report from that website.

(ii) The landing page must display the following visual disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) or call 877-322-8228.” The landing page may contain no other information aside from the statement: “Go to [hyperlink to company’s website.]” The required disclosure must:

(A) Be visible to consumers without requiring them to scroll down the webpage;

(B) Include an operational hyperlink that will direct consumers exclusively to [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) that appears before the hyperlink to the company’s website; and

(C) Appear in type at least twice the size as any hyperlink to the company’s

website or display of the Uniform Resource Locator of the company’s website.

(iii) The landing page must occupy the full screen and no other information, graphics, or material may be shown to the consumer unless and until the consumer has affirmatively selected one of the two hyperlinks described in paragraph (d)(4)(ii) of this section.

(5) *Internet-hosted multi-media advertising.* All advertisements for free credit reports disseminated through Internet-hosted multi-media in both audio and visual format shall include the following disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) or call 877-322-8228.” The disclosure shall appear simultaneously in the audio and visual part of the advertisement. The visual disclosure shall be in type at least the same size as the largest hyperlink to the company’s website, the Uniform Resource Locator of the company’s website, or the company’s telephone number appearing in the advertisement.

(6) *Telephone requests.* When consumers call any telephone number, other than the number of the centralized source, appearing in an advertisement that represents free credit reports are available at the number, consumers must first receive the following audio disclosure: “You have reached [name of company or service]. This is not the source for the free credit report provided for by Federal law. To get your free credit report, call 877-322-8228 or visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com).”

(7) *Telemarketing solicitations.* When telemarketing sales calls are made that include offers of free credit reports, the call must include at the first mention of a credit report the following disclosure: “This is not the source for the free credit report provided by Federal law. To get your free credit report, call 877-322-8228 or visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com).”

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E9–24729 Filed 10–14–09; 10:06 am]

**BILLING CODE 6750-01-S**