

FEDERAL TRADE COMMISSION**16 CFR Parts 610 and 698****[RIN 3084-AA94]****Free Annual File Disclosures****AGENCY:** Federal Trade Commission (FTC or Commission).**ACTION:** Proposed rule, request for comment.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the FTC to adopt rules to require the establishment of a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; a standardized form for such requests; and a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. In this action, the FTC is proposing, and seeking comment on, a proposed rule that would establish the centralized source, standardized form, and streamlined process required by the FACT Act.

DATES: Comments must be received by April 16, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "FACTA Free File Disclosures Proposed Rule, Matter No. R411005" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116-1031. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form.

An electronic comment can be filed by (1) clicking on <http://www.regulations.gov>; (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Country," "Comment," and

"Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

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, New Executive Office Building, Room 10102, Washington, DC 20503, Attention: Desk Officer for Federal Trade Commission. Such comments should also be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116-1031. Because courier and overnight deliveries cannot be accepted at this address, they should instead be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

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

FOR FURTHER INFORMATION CONTACT:

Helen Goff Foster or Sandra Farrington, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3224.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Overview of Proposed Rule
 - A. Definitions and Rule of Construction
 - B. Centralized Source for Requesting Annual File Disclosures From Nationwide Consumer Reporting Agencies

- C. Standardized Form for Annual File Disclosures
- D. Streamlined Process for Requesting Annual File Disclosures From Nationwide Specialty Consumer Reporting Agencies
- E. Effective Dates
- F. Substantially Nationwide Consumer Reporting Agencies
- III. Invitation To Comment
- IV. Communications by Outside Parties to Commissioners and Their Advisors
- V. Paperwork Reduction Act
- VI. Regulatory Flexibility Act
 - A. Description of the Reasons That Action by the Agency Is Being Considered
 - B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule
 - C. Small Entities to Which the Proposed Rule Will Apply
 - D. Projected Reporting, Recordkeeping and Other Compliance Requirements
 - E. Duplicative, Overlapping, or Conflicting Federal Rules
 - F. Significant Alternatives to the Proposed Rule
- VII. Questions for Comment on the Proposed Rule

I. Introduction

The Fair and Accurate Credit Transactions Act of 2003, Public Law 108-159, 117 Stat. 1952 (FACT Act or the Act) was signed into law on December 4, 2003. In part, the Act amends the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.*, by imposing new requirements on consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (nationwide consumer reporting agencies), and nationwide specialty consumer reporting agencies, as defined by sections 603(p) and 603(w) of the FCRA, 15 U.S.C. 1681a(p) and (w), respectively. These additional requirements include the obligation to provide, upon request, one free file disclosure—commonly called a credit report—to the consumer annually.¹

The proposed rule requires nationwide consumer reporting agencies to establish a centralized source to enable consumers, with a single request, to receive annual file disclosures from all nationwide consumer reporting agencies, in accordance with the FACT Act, section 211(d)(1)(A). The proposed rule also includes a standardized form for such requests, as specified in the FACT Act, section 211(d)(1)(B). Further,

¹ The FACT Act refers to the requirement to make "all disclosures pursuant to [FCRA] section 609 once during any 12-month period" without charge as free consumer reports. FACT Act 211(a). Section 609 of the FCRA requires disclosure of "[a]ll information in the consumer's file at the time of the request." 15 U.S.C. 1681g(a)(1). To avoid confusion, the proposed rule refers to disclosures made pursuant to FCRA section 609 as "file disclosures" and to the free annual disclosures required under the FACT Act as "annual file disclosures."

the proposed rule requires nationwide specialty consumer reporting agencies to establish a streamlined process for consumer requests for annual file disclosures, as provided in the FACT Act, section 211(a)(2).

The centralized source required by the proposed rule will provide consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet Web site, toll-free telephone number, and postal address. The proposed rule also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement.

Under the proposed rule, the centralized source would not be available to all consumers on the rule's proposed effective date—December 1, 2004. Proposed rule § 610.2(i)(1). In order to ensure a smooth transition, and in response to concerns regarding the volume of consumers who may request annual file disclosures when the rule first becomes effective, under the proposed rule the centralized source will become available to consumers in cumulative stages that roll-out from west to east. See discussion *infra*, section B, *Transition*. The proposed rule also provides that, during periods of extraordinary request volume, the centralized source may redirect, or decline to accept, some requests, provided that the nationwide consumer reporting agencies implement reasonable procedures to anticipate and respond to consumer demand for annual file disclosures. See discussion *infra*, section B, *Adequate Capacity*.

The proposed rule requires nationwide specialty consumer reporting agencies to establish a streamlined process for consumers to request annual file disclosures. Proposed rule § 610.3(a). Under the proposed rule, this streamlined process includes a toll-free telephone number for consumers to make such requests. The proposed rule requires nationwide specialty consumer reporting agencies to make their streamlined process toll-free number available to consumers in specific ways. See discussion *infra*, Section D, *Requirement to Redirect Requests*.

II. Overview of Rule

A. Definitions and Rule of Construction

Definitions

Section 610.1(b) of the proposed rule sets forth certain definitions for the purposes of the proposed rule.

The term “consumer reporting agency” is defined under proposed rule § 610.1(b)(5) as provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f). The proposed rule would apply to two specific types of consumer reporting agencies: “nationwide consumer reporting agencies” and “nationwide specialty consumer reporting agencies.” Under proposed rule § 610.1(b)(8), the term “nationwide consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in FCRA section 603(p), 15 U.S.C. 1681a(p). Similarly, the term “nationwide specialty consumer reporting agency” is defined under section 610.1(b)(9) of the proposed rule, in accordance with FCRA section 603(w), 15 U.S.C. 1681a(w), as a consumer reporting agency that compiles and maintains files on consumers relating to medical records or payments, residential or tenant history, check writing history, employment history, or insurance claims, on a nationwide basis.

Section 610.1(b)(2) of the proposed rule defines an “associated consumer reporting agency” as a consumer reporting agency that maintains consumer files within systems operated by a nationwide consumer reporting agency. Some nationwide consumer reporting agencies have contractual relationships with a number of regional or local consumer reporting agencies. These regional or local consumer reporting agencies, traditionally called “service bureaus” or “affiliates,” generally are independently owned and operated entities—they are not corporate affiliates² of a nationwide consumer reporting agency. Rather, typically, they have a right to house some or all of the consumer data that they own on the systems of one or more nationwide consumer reporting agencies. The nationwide consumer reporting agency with whom such an entity is associated, in turn, has the right to sell that consumer data to its customers.³ The proposed rule

² That is to say, associated consumer reporting agencies generally are not under common ownership or control with a nationwide consumer reporting agency. See 16 CFR 313.3(a).

³ The associated consumer reporting agency may also have the right to sell consumer information owned by the nationwide consumer reporting agency.

addresses these consumer reporting agencies as “associated consumer reporting agencies.” See discussion *infra*, section B, *Disclosure of All Files*.

The proposed rule, section 610.1(b)(7), defines a “file disclosure” as any disclosure made pursuant to section 609 of the FCRA.⁴ Section 612(a) of the FCRA, 15 U.S.C. 1681j(a), as amended by the FACT Act, provides that nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies must provide “all disclosures pursuant to [FCRA] section 609 once during any 12-month period upon request of the consumer and without charge to the consumer.” Accordingly, under proposed rule section 610.1(b)(1), the term “annual file disclosure” is a file disclosure that is made upon request, free of charge, in compliance with section 612(a) of the FCRA, 15 U.S.C. 1681j(a), as amended. Although FCRA sections 612(b)–(e) provide for other types of free file disclosures, the term “annual file disclosure,” as defined in the proposed rule, refers only to free file disclosures made pursuant to FCRA section 612(a).⁵

Proposed rule section 610.1(b)(10) defines “request method” as the method by which a consumer chooses to communicate a request for an annual file disclosure. The FACT Act requires nationwide consumer reporting agencies, subject to regulations to be promulgated by the Commission, to establish a centralized source that will permit consumers to make such requests by three specific request methods: Internet Web site, toll-free telephone number, and mail.

The proposed rule also addresses “extraordinary request volume.” The Commission recognizes that there may be times when the volume of consumer requests for file disclosures may be higher than anticipated, such as may overwhelm the systems of a nationwide consumer reporting agency or a

⁴ Section 609 of the FCRA, 15 U.S.C. 1681g, requires every consumer reporting agency, upon request of the consumer, to disclose to the consumer, among other things, “all information in the consumer’s file at the time of the request.”

⁵ It should be noted that the FCRA, as amended by the FACT Act, requires consumer reporting agencies to provide a free file disclosure to consumers under a number of different circumstances. In addition, under FCRA sec. 612(f), 15 U.S.C. 1681j(f), a consumer reporting agency must provide file disclosures to consumers for a fee, upon request. The requirement for nationwide consumer reporting agencies to provide annual file disclosures supplements, but does not replace, these other provisions. In other words, a consumer should be able to obtain a free annual file disclosure through the centralized source, once in any 12-month period, even if that consumer has obtained other free or paid file disclosures in that time period. See FCRA sec. 612, 15 U.S.C. 1681j.

nationwide specialty consumer reporting agency. The proposed rule limits the liability of a nationwide consumer reporting agency or a nationwide specialty consumer reporting agency during times of such "extraordinary request volume." See proposed rule secs. 610.2(e) and 610.3(c). Section 610.1(b)(6) of the proposed rule defines "extraordinary request volume" as occurring when the number of consumers requesting file disclosures in a 24-hour period is more than twice the daily rolling 90-day average of consumers requesting file disclosures. In other words, "extraordinary request volume" is reached only when the volume of requests in a 24-hour period is more than two times the daily average request volume of the last 90 days. Due to special considerations during the transition period defined by the proposed rule, however, extraordinary request volume is defined differently during those periods. See discussion *infra* section B, *Transition*.

Under the proposed rule, extraordinary request volume is measured by requests for all types of file disclosures, rather than only requests for annual file disclosures. Although the FACT Act requires the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to develop the centralized source and streamlined process described in the proposed rule for the purpose of receiving requests for annual file disclosures, Congress specifically directed the Commission to consider "the significant demands that may be placed on consumer reporting agencies in providing [annual file disclosures]," and "appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands." FACT Act sec. 211(d)(2). The significant demands of providing annual file disclosures include demands associated with simultaneously responding to requests for other types of file disclosures, such as free file disclosures resulting from adverse action under FCRA section 612(b), 15 U.S.C. 1681j(b), and free file disclosures provided in response to suspected fraud under FCRA section 612(c)(3), 15 U.S.C. 1681j(c)(3). Further, consumer reporting agencies may face additional significant demands in responding to inquiries, or requests for reinvestigation,⁶ generated through each of these types of file disclosures.⁷ Delays in this system

caused by excess demand may adversely impact consumers with a specific, immediate need for access to their file disclosures and to reinvestigation procedures. Accordingly, it is appropriate to consider the volume of request for all types of file disclosures in determining "extraordinary request volume" for the purpose of limiting liability under the proposed rule. Proposed rule sec. 610.1(b)(6).

Rule of Construction

Section 610.1(c) of the proposed rule sets out a rule of construction to clarify the effect of the examples used in the proposed rule. Given the complexity of the rule and its potential impact on a variety of entities, the Commission has elected, in some instances, to provide examples of conduct that would, and would not, comply with the proposed rule. This section provides that these examples are not intended to be exhaustive; rather they are intended to illustrate how the proposed rule would apply in specific circumstances. The Commission invites comment on whether including examples in the rule is useful, and suggestions on additional or different examples that may be helpful.

B. Centralized Source for Requesting Annual File Disclosures

As noted above, the FACT Act directs the Commission to prescribe regulations, applicable to nationwide consumer reporting agencies, to require the establishment of "a centralized source" through which consumers may, with a single request, obtain annual file disclosures from each nationwide consumer reporting agency. FACT Act sec. 211(d)(1)(A). In making such regulations, the FACT Act requires the Commission to consider: (1) The significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; (2) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of annual file disclosures; and (3) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to annual file disclosures. FACT Act sec. 211(d)(2). The Commission has considered all of these factors in formulating the proposed rule.

Purpose of Centralized Source

In accordance with section 211(d) of the FACT Act, proposed rule section 610.2(a) requires the nationwide consumer reporting agencies to establish a "centralized source" for the purpose of enabling consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies. Under § 610.2(b) of the proposed rule, the nationwide consumer reporting agencies must jointly design, fund, implement, maintain, and operate the centralized source for that purpose.

In addition, the centralized source must be designed, funded, implemented, maintained, and operated to meet specific requirements. Under the FACT Act, nationwide consumer reporting agencies are required to provide annual file disclosures to consumers who request them only through the centralized source established pursuant to the proposed rule. FACT Act section 211(a)(2), *codified at* FCRA section 612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B). Thus, consumers' ability to access the centralized source is the key to their ability to receive annual file disclosures. Accordingly, the standards contained in the proposed rule are designed, in accordance with FACT Act section 211(d)(2)(C), to ensure "the ease by which consumers should be able to contact consumer reporting agencies with respect to access to [annual file disclosures]."

Required Request Methods

As specified under the FACT Act, section 211(d)(3), proposed rule section 610.2(b)(1) requires the centralized source to include a toll-free telephone number, an Internet Web site, and a mail process for consumers to make requests for annual file disclosures. The centralized source, and each of these request methods, must have adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source. Proposed rule § 610.2(b)(2). The reasonably anticipated volume must be determined in compliance with proposed rule § 610.2(c), as discussed below.

The FACT Act requires that consumers be able to request their annual file disclosures through specific request methods, but does not mandate the method by which the nationwide consumer reporting agencies may deliver those file disclosures. FCRA section 610(b), 15 U.S.C. 1681h(b), specifies that disclosures may be made in such form as may be specified by the consumer and available from the

⁶ See FCRA section 611(a), 15 U.S.C. 1681i(a).

⁷ The Commission notes that the FACT Act has expanded consumers' rights to obtain a free file

disclosure in a number of ways. See, e.g., FACT Act secs. 112 and 311.

agency. Thus, the proposed rule allows nationwide consumer reporting agencies flexibility in determining what methods of annual file disclosure delivery to make available to consumers.

Collection of Information and Identification of Consumers

Under proposed rule section 610.2(b)(2)(ii), the centralized source may collect only as much information as is reasonably necessary to properly identify the consumer, in compliance with FCRA section 610(a)(1), 15 U.S.C. 1681h(a)(1), and to process the transactions requested by the consumer.⁸ This provision of the proposed rule reflects the need to balance two competing goals: (1) Creating a centralized source that will be easy for consumers to use; and (2) allowing the nationwide consumer reporting agencies to identify properly consumers who request their file disclosures through the centralized source, in compliance with FCRA sec. 610(a)(1).

The Commission is concerned that a centralized source that collects too much information may discourage some consumers from requesting their annual file disclosures. Accordingly, the proposed rule limits the amount of information that each consumer reporting agency may collect through the centralized source to only what is reasonably necessary to properly identify the consumer and to complete the request for file disclosure or other transaction requested by the consumer.

The proposed rule permits, however, each nationwide consumer reporting agency the flexibility to implement its own identification procedures for consumers who make file disclosure requests through the centralized source, in order to allow proper identification of consumers and to protect against fraud. File disclosures contain a great deal of very sensitive information. If misdirected to, or fraudulently obtained by, someone other than the consumer to whom it relates, a file disclosure would provide the ideal means for identity theft and other fraudulent activity. In addition, the nationwide consumer reporting agencies each maintain slightly different information in their consumer files, making it difficult to devise a common identification scheme.

Moreover, a flexible approach allows the nationwide consumer reporting agencies to adjust to changing threats and patterns of fraudulent activity over time.

In light of these competing concerns, the proposed rule permits each nationwide consumer reporting agency to design and implement its own methods of identifying consumers who make requests through the centralized source, provided that the nationwide consumer reporting agency requires no more information than is reasonably necessary. A consumer who utilizes the centralized source Internet Web site, for example, may be asked for his or her personally identifiable information (*i.e.*, name, address, social security number, date of birth, etc.) once at the beginning of the request process. Each nationwide consumer reporting agency may then, however, require additional information to identify the consumer. Such additional information may include questions regarding the consumer's accounts, such as the amount of the consumer's monthly mortgage payment, or the name of a particular type of creditor. The nationwide consumer reporting agency may then compare the consumer's response to the information contained in the agency's files, to verify the identity of the consumer requesting a file disclosure. Although a centralized source that may require the consumer to respond to additional identification questions does increase the burden on the consumer using the centralized source, the goal of ensuring the security of file disclosures justifies some additional consumer burden.

The Commission is concerned about whether the consumer personally identifiable information collected by nationwide consumer reporting agencies through the centralized source could be used and disclosed by the nationwide consumer reporting agencies, affiliated entities, and third parties, in ways that would adversely affect consumers. This information would include identifying information such as name, address, and social security number, and may also include credit card account number or other method of payment (*i.e.*, if a credit score or a paid product is purchased, or if the account is used as a means of identification). The nationwide consumer reporting agencies presumably already collect these same types of information currently in providing file disclosures and other products to consumers,⁹ but it is unclear how they use or disclose it. Therefore,

the Commission solicits comment on how the differing types of information currently collected in providing file disclosures are used and disclosed by the nationwide consumer reporting agencies and whether such information should be treated differently when it is collected through the centralized source. See *infra*, section VII, Questions 5b, c, and d.

Information and Instructions

To ensure that consumers may access the centralized source request method of their choice, the proposed rule requires the centralized source toll-free telephone number and Internet Web site to provide information regarding how to make a request for file disclosure through all available request methods. Proposed rule § 610.2(b)(2)(iii).

In addition, proposed rule section 610.2(b)(2)(iv) requires the centralized source to provide clear and easily understandable information and instructions to consumers. This provision of the proposed rule requires the nationwide consumer reporting agencies to communicate to consumers, through the centralized source, information and instructions that may be needed by a consumer to request a free annual file disclosure. Such communications include informing consumers of the progress of their request for a file disclosure while they are engaged in the process of making the request. Proposed rule § 610.2(b)(2)(iv)(A). For a Web site request method, the proposed rule also requires the centralized source to provide access to a "help" or "frequently asked questions" screen. Proposed rule § 610.2(b)(2)(iv)(B). Finally, in the event that a consumer cannot be properly identified through the centralized source, the proposed rule requires the nationwide consumer reporting agencies to notify the consumer of that fact, and to provide instructions on how to complete the request. Proposed rule § 610.2(b)(2)(iv)(C).

Although proposed rule § 610.2(b)(2)(iv) lists types of information that must be provided to consumers in a clear and easily understandable manner, additional information may be required in order to ensure that all instructions are clear and easily understandable in compliance with the proposed rule. If consumers are unable to understand centralized source instructions on how to obtain their annual file disclosures, the FACT Act provisions requiring such disclosures would be effectively thwarted. Thus, the intent of proposed rule § 610.2(b)(2)(iv) is to ensure that all centralized source

⁸ Proposed rule section 610.2(b)(2)(ii) refers to "transaction(s) requested by the consumer." The proposed rule would permit nationwide consumer reporting agencies to advertise and to offer products and services in addition to the required annual file disclosure through the centralized source, provided that these activities do not interfere, detract from, contradict or undermine the purpose of the centralized source. See discussion *infra*, section B, *Communications Through the Centralized Source*.

⁹ In addition, much of this information is already in the consumer files of the nationwide consumer reporting agencies.

materials are provided to consumers in plain language, and that the centralized source is easy for consumers to use. Evaluation of centralized source communications by consumer communication experts, and consumer testing, may be instructive in determining whether centralized source materials meet this standard.

Adequate Capacity

Under the FACT Act, nationwide consumer reporting agencies must fulfill consumers' requests for free annual disclosures "only if the request from the consumer is made using the centralized source established for such purpose." FACT Act section 211(a)(2), codified at FCRA section 612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B). In recognition of the importance of a centralized source with adequate capacity to ensure the ability of consumers to obtain annual file disclosures, the proposed rule contains two requirements relating to capacity. The first is the requirement, contained in proposed rule § 610.2(b)(2)(i), that the centralized source have adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source.

The second is the requirement, contained in proposed rule § 610.2(c), that nationwide consumer reporting agencies implement reasonable procedures to anticipate and respond to the volume of consumers who will contact¹⁰ the centralized source. This requirement includes developing and implementing contingency plans to address circumstances that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source itself. Examples of the types of circumstances for which the nationwide consumer reporting agencies should develop contingency plans are natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses,

coordinated hacker attacks, and seasonal or other fluctuations in consumer request volume. Under the proposed rule, the required contingency plans must include measures to minimize the impact of such circumstances, including taking all reasonable steps to restore the centralized source to normal operating status as quickly as possible.

Even with careful planning and preparation, however, it may be difficult for the nationwide consumer reporting agencies to anticipate consumer request volume accurately under all circumstances. In light of these uncertainties, and in consideration of the possible impact of unexpected and extraordinary demand for file disclosures on the ability of the nationwide consumer reporting agencies to provide annual file disclosures, the proposed rule limits the liability of nationwide consumer reporting agencies in times of "extraordinary request volume." When a centralized source request method, the centralized source as a whole, or an individual nationwide consumer reporting agency experiences extraordinary request volume, the agency will not be deemed in violation of the proposed rule's adequate capacity requirement (proposed rule § 610.2(b)(2)(i)) provided that it has implemented reasonable procedures to anticipate and respond to the volume of consumers who will contact the centralized source, in compliance with proposed rule § 610.2(c).

In other words, the proposed rule would allow a nationwide consumer reporting agency that complies with § 610.2(c) to decline to accept some requests for annual file disclosures during times when a centralized source request method, the centralized source as a whole, or the nationwide consumer reporting agency experiences extraordinary request volume.¹¹ The FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures within 15 days of when the request is received. By permitting nationwide consumer reporting agencies to decline to accept some requests for annual file disclosures during times of extraordinary request volume, the proposed rule allows the nationwide consumer reporting agencies to postpone receiving those requests—

and thereby postpone the running of the 15-day delivery requirement—for a reasonable period of time. The proposed rule would allow the nationwide consumer reporting agencies to ask those consumers to make their requests again at a time when the centralized source is reasonably expected to be able to accept them, proposed rule § 610.2(c)(2)(i)(B), or to collect the request information in a queue to be accepted for processing at a reasonable later time, proposed rule § 610.2(c)(2).

As described under *Definitions* above, extraordinary request volume is any 24-hour volume greater than twice the daily rolling 90-day average request volume. A request volume that is two times greater than the 90-day daily rolling average is likely a fluctuation of sufficient magnitude to warrant relief from the adequate capacity requirement of the rule. The trigger for this relief is linked to the "rolling average" of requests received in order to accommodate request volume that may increase gradually over time. The proposed rule contemplates that the centralized source should adapt to such changes and be able to handle additional volume over time, if needed.

During the initial months after the rule becomes effective, however, the previous 90-day average of file disclosures likely will not adequately reflect the volume that may be expected, because free annual file disclosures have not previously been available from a centralized source. For this reason, the proposed rule addresses consumer request volume differently during the transition period, when request volume will be hardest to predict because of the lack of comparable historical data, and when publicity may be greatest. See discussion *supra*, this section, *Transition*.

The Commission has considered, as required under FACT Act section 211(d)(2) "appropriate means to ensure that consumer reporting agencies can satisfactorily meet [the demands of providing annual file disclosures], including the efficacy of a system of staggering the availability to consumers of such [annual file disclosures]." In particular, the Commission considered whether a centralized source that made annual file disclosures available to specific segments of the population for a limited period of time (for example, during a birth month or birth quarter) each year would be effective and appropriate. Based upon the information currently available, there is no basis for concluding ongoing staggering of the availability of annual file disclosures is necessary.

¹⁰ It is important to note that nationwide consumer reporting agencies are required to anticipate the number of consumers who will contact the centralized source. Because nationwide consumer reporting agencies must meet this requirement during the transition periods defined by the proposed rule under § 610.2(i), this language is intended to include consumers who contact the centralized source at a time when it is not yet available in their state. Under this requirement, the nationwide consumer reporting agencies must adjust their estimations of anticipated request volume in light of such consumers, and must respond to such consumers. They would not be required, however, to accept requests from such consumers prior to the time that the centralized source is available to consumers residing in those states.

¹¹ It is important to note that, in the event of extraordinary request volume affecting a particular request method, the proposed rule would require nationwide consumer reporting agencies to direct consumers to other available request methods. Proposed rule § 610.2(c)(2)(i)(A). Thus, extraordinary request volume affecting just one request method would not necessarily lead to a limitation on liability in relation to the operation of the other request methods.

The FACT Act, and the proposed rule, provide nationwide consumer reporting agencies with considerable flexibility in meeting the significant demands placed upon them. The FACT Act allows nationwide consumer reporting agencies 15 days from the time a request for an annual file disclosure is received to provide that disclosure. FACT Act section 211(a), *codified at* FCRA section 612(a)(2), 15 U.S.C. 1681j(a)(2). The Act also allows nationwide consumer reporting agencies a significantly longer period of time to resolve requests for reinvestigation when they originate from an annual file disclosure. FACT Act section 211(a), *codified at* FCRA section 612(a)(3), 15 U.S.C. 1681(a)(3). In addition, annual file disclosures must be provided only once in a 12-month period. The 12-month limitation may result in the mirroring of the demand-smoothing effects of the transition roll-out scheme. This provides an ongoing limitation on unexpected volume after the transition period—*i.e.*, a consumer who received an annual file disclosure when his or her state first became eligible under the transition provisions is not eligible to request another such disclosure for 12 months.¹² Moreover, the proposed rule limits the liability of nationwide consumer reporting agencies during times of extraordinary request volume, proposed rule § 610.2(e), and provides additional flexibility during the transition when uncertainty is greatest, proposed rule § 610.2(i)(2)–(3). After the transition period, the nationwide consumer reporting agencies may reasonably be expected to provide access to annual file disclosures through a centralized source to all consumers who request them. The Commission intends, however, to closely monitor the progress of the transition and the capability of the nationwide consumer reporting agencies to respond to actual request volume, and may adjust the rule, as necessary or appropriate, in the future.

Joint Establishment and New Entrants

As noted above, under § 610.2(b) of the proposed rule, all nationwide consumer reporting agencies must jointly design, fund, implement, maintain, and operate the centralized source. The Commission is aware of three entities that meet the FCRA section 603(p) definition of nationwide

consumer reporting agency.¹³ It is possible, however, that additional nationwide consumer reporting agencies may exist, or be created, in the future. Any entity that meets the definition of nationwide consumer reporting agency in FCRA section 603(p), 15 U.S.C. 1681a(p), cannot be excluded by the currently identified nationwide consumer reporting agencies from participating jointly in the centralized source. Moreover, all participants in the centralized source, including any new entrants, must comply with, and may be jointly liable for any violations of, proposed rule section 610.2.

Further, although the proposed rule requires nationwide consumer reporting agencies, which are presumably competitors, to jointly design, fund, implement, maintain, and operate the centralized source required under the FACT Act, nothing in the proposed rule would permit any activity that is otherwise prohibited by applicable United States antitrust laws.

Disclosure of All Files

Some nationwide consumer reporting agencies house data owned by an associated consumer reporting agency in systems operated by the nationwide consumer reporting agency. By virtue of such relationships with associated consumer reporting agencies, a nationwide consumer reporting agency, which does not itself own consumer files in a localized area or region of the country, is able to provide consumer reports on consumers residing in that area or region to its customers. These relationships raise the issue of whether the nationwide consumer reporting agencies will provide file disclosures through the centralized source for consumers whose information is owned by an associated consumer reporting agency. If the nationwide consumer reporting agencies do not provide annual file disclosures to those consumers, consumers in some areas would be able to obtain file disclosures from only one or two nationwide consumer reporting agencies through the centralized source. It appears, however, that Congress intended consumers in all areas of the country to be able to obtain annual file disclosures from all nationwide consumer reporting agencies through the centralized source. “The centralized system shall allow consumers to obtain free reports from *all three* [nationwide consumer reporting] agencies using a single request.” S. Rep. No. 108–166, at 17 (2003) (Emphasis

added).¹⁴ Accordingly, the proposed rule requires the nationwide consumer reporting agencies to provide annual file disclosures to any consumer that requests one if the consumer reporting agency has the ability to provide a consumer report to a third party relating to that consumer.¹⁵ Proposed rule § 610.2(d).

Security

As noted above, the information collected and disclosed through the centralized source may be extremely sensitive. Unauthorized access to this sensitive information could lead to identity theft and other consumer harm. To address this risk, the proposed rule requires nationwide consumer reporting agencies to comply with the Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4 (the Safeguards Rule), regarding all personally identifiable information collected through or disclosed by the centralized source. Proposed rule § 610.2(f).¹⁶ The requirements imposed by the Safeguards Rule form the core of a reasonable information security program and are therefore appropriate in this context.

¹⁴ Senator Sarbanes reiterated this intent, stating, “The bill allows consumers to receive a free credit report annually from *each of the three* national credit reporting agencies.” 149 Cong. Rec., S. 13851 (daily ed. Nov. 4, 2003) (Emphasis added). Both the Report of the Committee on Banking, Housing and Urban Affairs, and Senator Sarbanes’ statement addressed S. 1753, the Senate version of the FACT Act. S. 1753 contained a “centralized source” requirement that is virtually identical to that contained in the final FACT Act bill.

¹⁵ The Commission is not aware of any circumstances under which the nationwide consumer reporting agencies, through their relationships with associated consumer reporting agencies, are unable to provide consumer reports relating to consumers residing in a specific area of the country. Thus, this requirement will accomplish Congress’s intent for the centralized source: it will create a system whereby every consumer can get their annual file disclosures from all nationwide consumer reporting agencies with a single request.

¹⁶ That Rule requires financial institutions over which the FTC has jurisdiction to develop, implement, and maintain a comprehensive information security program that contains administrative, technical and physical safeguards. As part of its program, each financial institution must (1) designate one or more employees to coordinate its program; (2) assess risks to the security of customer information; (3) design and implement safeguards to address risks, and test and monitor their effectiveness over time; (4) oversee service providers and enter into contracts that require them to maintain safeguards; and (5) adjust the program to address changes that may affect safeguards. The Safeguards Rule is available on the Commission’s Web site at <http://www.ftc.gov/os/2002/05/67fr36585.pdf>. Guidance for businesses on complying with the Safeguards Rule and achieving better safeguards can also be found on the FTC’s Web site at http://www.ftc.gov/privacy/privacyinitiatives/safeguards_educ.html.

¹² It is important to note that the FACT Act requires annual file disclosures to be made *once in any 12 month period*. This language indicates that nationwide consumer reporting agencies are required to provide these disclosures to consumers, at most, once every 12 months, and not once in each calendar year.

¹³ These entities are Equifax, Inc., Experian, and Trans Union LLP.

Communications Through the Centralized Source

The centralized source established in compliance with this part will provide the nationwide consumer reporting agencies with the means to communicate with interested consumers about a variety of topics related to consumer reporting and file disclosures. This affords the nationwide consumer reporting agencies an unparalleled opportunity to contribute to consumer education and understanding regarding consumer reports and related products. It also presents the nationwide consumer reporting agencies with a unique opportunity to market credit-related products and services to a group of consumers who may be interested in such products.

The proposed rule would not prohibit the nationwide consumer reporting agencies advertising their products and services through the centralized source, nor offering those products and services, as well as additional file disclosures, directly through the centralized source. If done appropriately, access to some additional information, disclosures, products, or services through the centralized source—for example disclosure of the consumer's credit score—may be beneficial and convenient for consumers, and efficient for the nationwide consumer reporting agencies.

To ensure that the purpose of the centralized source, as expressed in proposed rule § 610.2(a), remains paramount in the centralized source's design, funding, implementation, operation and maintenance, however, the proposed rule § 610.2(g) specifies that any communications made through the centralized source may not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source. The proposed rule provides examples of conduct that would interfere with, detract from, contradict or undermine the purpose of the centralized source, in violation of § 610.2(g) of the proposed rule. In addition, the FTC Act's prohibition against unfair or deceptive acts or practices also would apply to the nationwide consumer reporting agencies in their joint operation of centralized source, just as it does in their individual operations. 15 U.S.C. 45(a).

Transition

Section 211(d)(4) of the FACT Act requires that the Commission's regulations provide for an "orderly transition" for nationwide consumer reporting agencies to fully implement the centralized source. The FACT Act

directs that this transition should be conducted in a manner that does not temporarily overwhelm such consumer reporting agencies with requests for disclosures beyond their capacity to deliver; and does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

The Commission staff considered many different proposals for achieving a smooth transition, including staggering availability of annual file disclosures according to the birth month or birth quarter of the consumer. These proposals would require a year to fully roll-out, and there is concern that birth month or birth quarter scheme may be difficult to convey efficiently to consumers. Further, it is clear that once the centralized source is designed and implemented, its capacity cannot be expanded quickly, *i.e.*, in a month or less. As a result, these proposals were ultimately rejected.

Accordingly, the proposed rule requires a cumulative regional roll-out for the centralized source. Under proposed rule § 610.2(i), the centralized source will become available to consumers by region, starting in the West and moving eastward across the country, at preset intervals. Consumers residing in the western part of the United States (California and 12 other western states) will have access to the centralized source beginning on December 1, 2004.¹⁷ Each phase of the transition will last three months. After three months, on March 1, 2005, consumers in 12 midwest states also will become eligible to request their annual file disclosures from the centralized source. On June 1, 2005, the centralized source will become available to consumers in 11 southern states. Finally, on September 1, 2005, the centralized source will become available to all remaining consumers, including those residing in eastern states, the District of Columbia, and all U.S. territories and possessions.¹⁸ This regional roll-out plan is designed to provide for an orderly transition to a national system of free annual file disclosures in a manner that complies

with section 211(d)(4) of the FACT Act. Further, the regional roll-out can be easily understood by consumers, and will be complemented by local and regional press coverage which will remind consumers when the centralized source becomes available to their state or media market.¹⁹

Predicting accurately the volume of consumer requests that will result when this new annual file disclosure first becomes available is extremely difficult. The absence of comparable historical data, the unpredictable effect of nationwide media coverage and other publicity events, and the uncertain reaction of consumers make any analysis of anticipated request volume in the months immediately following the effective date of the rule inherently uncertain. To address these uncertainties, the proposed rule contains a multi-faceted approach to consumer request volume.

From the beginning of the transition and beyond, the nationwide consumer reporting agencies must be prepared to accept requests from the reasonably anticipated number of consumers who will contact them when the centralized source is first made available. Proposed rule § 610.2(l)(2)(i). Although the precise demand for consumer free annual file disclosures on a nationwide basis is largely unknown, there is some available information that appears to be instructive in anticipating request volume when the rule becomes effective. For example, according to a Congressional Research Service Report to Congress, the consumer request rate for file disclosures in states where free annual disclosures are not currently available is 0.5% to 2%. In those states where consumers are, by state law, already guaranteed the right to a free annual disclosure, the request rate ranges from 3.5% to 10%. This represents an average disclosure rate that is 231% higher than the request rate in other states.²⁰ Based upon these statistics alone, and taking into account also the publicity likely to be generated by the promulgation of the final rule, it would be reasonable to anticipate that the number of requests for annual file disclosures will be 300% of the current disclosure rate, absent any unanticipated intervening factors.²¹ During

¹⁷ According to the 2000 U.S. Census, these states account for 22.1% of total U.S. population.

¹⁸ According to the 2000 U.S. Census, the first phase (western region) contains approximately 63.1 million people, phase two (midwest region) contains approximately 64.4 million people, phase three (southern region) contains approximately 76.7 million people, and phase four (eastern region and all others) contains approximately 81.4 million consumers.

¹⁹ The regional divisions do not divide metropolitan statistical areas.

²⁰ Loretta Nott and Angie Welborn, "A Consumer's Access to Free Credit Report: A Legal and Economic Analysis," Congressional Research Service, Library of Congress, July 21, 2003, pp. 11.

²¹ This estimate does not relieve the nationwide consumer reporting agencies of their obligation to plan for anticipated volume. Rather, absent unforeseen mitigating factors, the current data

the initial week of operations, extraordinary request volume is defined as twice the reasonably predicted consumer request volume.

After centralized source operations commence, however, the nationwide consumer reporting agencies will have actual request volume data for the centralized source. The proposed rule provides two separate request volume triggers during this second period—from December 8, 2004 through the end of the transition on August 31, 2005,—that are based on the actual volume of consumer requests received in the immediately preceding period, *i.e.*, after the centralized source is operational.

First, the proposed rule generally provides relief for the nationwide consumer reporting agencies when request volume reaches twice the rolling daily average of requests in the immediately preceding seven-day period. During such times, the proposed rule provides that the nationwide consumer reporting agencies are not in violation of the proposed rule's adequate capacity requirement as long as they continue to implement reasonable procedures to anticipate and respond to demand. As a practical matter, this would allow the nationwide consumer reporting agencies to delay accepting requests for file disclosures until such time as the request volume falls below the extraordinary request volume level. Twice the daily rolling seven-day average volume is intended as a reasonable approximation of extraordinary volume during the transition.²² It provides a reasonable level of protection for the nationwide consumer reporting agencies, when balanced against the goal of providing consumers with annual file disclosures in as easy a manner as possible.

Second, the proposed rule provides nationwide consumer reporting agencies with an option, in the transition period, during times of high request volume that do not meet reach the extraordinary request volume benchmark. Under proposed rule § 610.2(i)(3), when consumer request volume exceeds 115% of the rolling daily seven-day average, the nationwide consumer reporting agencies may place requests into a queue for processing at a reasonable later time. This alternative procedure

will benefit both consumers and the nationwide consumer reporting agencies. It will eliminate the need for consumers to reinitiate contact with the centralized source in order to obtain an annual file disclosure, and provides a measure of relief to the nationwide consumer reporting agencies during periods of high demand.

Further, the nationwide consumer reporting agencies' duty to plan for and minimize the impact of circumstances that may materially and adversely impact the operation of the centralized source, a particular request method, or an individual nationwide consumer reporting agency, under § 610.2(c), continues to apply during the initial transition period.

C. Standardized Form for Annual File Disclosures

Section 211(d) of the FACT Act directs the Commission to prescribe a regulation requiring that nationwide consumer reporting agencies employ a standardized form for consumers to request, either by mail or through an Internet Web site, free annual file disclosures from the centralized source. Section 610.2(b)(3) of the proposed rule requires that the nationwide consumer reporting agencies establish this form, and make it available through the centralized source. In addition, the Commission proposes a model form, to be published in 16 CFR part 690, Appendix D. Nationwide consumer reporting agencies may use this form to comply with section 610.2(b)(3) of the proposed rule. The proposed form contains instructions and requests personally identifiable information that appears to be reasonably necessary for the processing of consumer requests. Nationwide consumer reporting agencies may require additional categories of information, provided such information is reasonably necessary to process the request, consistent with the standard set forth in section 610.2(b)(2)(ii) of the proposed rule.

Consistent with the FACT Act's amendment to section 609(a)(1) of the FCRA, 15 U.S.C. 1681g(a)(1), beginning December 1, 2004, nationwide consumer reporting agencies must offer consumers the option of receiving their file disclosures with truncated social security numbers. The model form proposed in proposed rule § 690, Appendix D, provides consumers with the ability to elect to have their Social Security number truncated accordingly. In addition, pursuant to FCRA section 610(b), 15 U.S.C. 1681h(b), a consumer using the standardized form may elect to use any method of delivery made available by the nationwide consumer

reporting agencies operating the centralized source.

D. Streamlined Process for Requesting Annual File Disclosures

Section 211 of the FACT Act also requires nationwide specialty consumer reporting agencies to provide annual file disclosures to consumers, once during any 12-month period upon the request of the consumer and without charge to the consumer. Under section 603(w) of the FCRA, 15 U.S.C. 1681a(w), a "nationwide specialty consumer reporting agency" means "a consumer reporting agency 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."

The FACT Act directs the Commission to prescribe regulations to require the establishment of "a streamlined process" for consumers to request their free annual file disclosures from the nationwide specialty consumer reporting agencies. Moreover, the statute requires that, at a minimum, the streamlined process shall include the establishment by each nationwide specialty consumer reporting agency of a toll-free telephone number for such requests. FACT Act section 211(a), *codified at* FCRA section 612(a), 15 U.S.C. 1681j(a). In promulgating the regulations applicable to nationwide specialty consumer reporting agencies as required by the FACT Act, the Commission must consider: the significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such file disclosures; and the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such file disclosures. FACT Act, section 211(a)(2)(a)(C)(ii).

Streamlined Process Requirements

In accordance with the statutory mandate, the rule requires each nationwide specialty consumer reporting agency to establish a streamlined process for accepting and processing consumer requests for annual file disclosures. Proposed rule § 610.3(a). The proposed rule requires that the streamlined process include toll-free telephone numbers for consumers to request their annual file disclosures. Because some consumers

indicates that the initial volume of requests is reasonably likely to be approximately three times the current nationwide request volume. The Commission solicits comment on this estimate.

²² Because it is tied to a short time period—*i.e.*, seven days—this standard for extraordinary request volume in fact requires rapid expansion of the system. If extraordinary levels of demand persist, the system's capacity would have to double every week to remain in compliance.

may prefer to request file disclosures by mail or other methods that may be offered by the nationwide specialty consumer reporting agency, the proposed rule requires that when consumers contact the nationwide specialty consumer reporting agency via its toll-free telephone number, they must be given access to clear and easily understood instructions for making the request by any available request method offered by the nationwide specialty consumer reporting agency.

It is also important that the required toll-free telephone number required by the FACT Act and the proposed rule be readily available to consumers. Thus, the proposed rule requires the number to be published in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is listed, proposed rule § 610.3(a)(1)(ii), and that it be posted on any Web site that the nationwide specialty consumer reporting agency owns or maintains, proposed rule § 610.3(a)(1)(iii).²³ It is important to note that nothing in the rule requires a nationwide specialty consumer reporting agency to establish a Web site; however, if an agency chooses to have a Web site, it must post its toll-free number and streamlined process instructions on that site.

The proposed rule does not require a nationwide specialty consumer reporting agency to provide specific request methods, other than the toll-free telephone number described above. In the past, nationwide specialty consumer reporting agencies may have had limited demand for file disclosures, as compared to the demand that nationwide consumer reporting agencies may typically encounter. As a result, many nationwide specialty consumer reporting agencies may be relatively inexperienced in providing file disclosures to consumers on a large scale. The proposed rule's requirements relating to establishment of a toll-free telephone number for file disclosure requests is likely sufficient to facilitate consumer access to annual file disclosures from nationwide specialty consumer reporting agencies, and also takes into account the significant demands that may be placed upon those agencies in providing annual file disclosures to all consumers upon request.

Similar to the requirements relating to the centralized source discussed in section B, above, the proposed rule also requires the streamlined process to have adequate capacity to accept reasonably anticipated volume, proposed rule § 610.3(a)(2)(i); to collect only as much personal information as is reasonably necessary to properly identify the consumer, proposed rule § 610.3(a)(2)(ii); and to provide clear and easily understandable information and instructions, proposed rule § 610.3(a)(2)(iii). Nationwide specialty consumer reporting agencies, like nationwide consumer reporting agencies, must implement reasonable procedures to anticipate and respond to the volume of consumers who will contact the nationwide specialty consumer reporting agency to request annual file disclosures. Proposed rule § 610.3(b). Provided that they implement such reasonable procedures, they will not be deemed in violation of the adequate capacity requirement in times of "extraordinary request volume." Proposed rule § 610.3(c). Nationwide specialty consumer reporting agencies also must comply with the FTC Safeguards rule, 16 CFR part 314, for information collected and disclosed through the streamlined process. Proposed rule § 610.3(d). These requirements are nearly identical to those imposed upon nationwide consumer reporting agencies under section 610.2 of the proposed rule. See discussion *supra*, section B.

Requirement To Accept or Redirect Requests

The FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures upon request, but only through the centralized source. There is no similar statutory limitation applicable to the streamlined process for the specialty consumer reporting agencies. Many consumers may request their free annual file disclosures through a method other than the streamlined process established in compliance with this part. Therefore, the rule requires specialty consumer reporting agencies either to honor those requests, or to redirect the consumer to the streamlined process. Proposed rule § 610.3(e).

Transition for the Streamlined Process

The proposed rule outlines a transition for the streamlined process that is more limited than that for the centralized source, due to the more limited requirements imposed on nationwide specialty consumer reporting agencies compared to those imposed on nationwide consumer

reporting agencies. Although nationwide specialty consumer reporting agencies must establish and operate a streamlined process with adequate capacity to meet consumer demand for free annual file disclosures, they will be excused from this requirement during the first three months after the rule is effective when experiencing extraordinary request volume of more than twice the anticipated request volume. After February 28, 2005, extraordinary request volume will be calculated as twice the rolling daily 90-day average.

E. Effective Dates

The provisions of the proposed rule relating to the centralized source, proposed rule § 610.2, and those relating to the streamlined process rule, proposed rule § 610.3, are proposed to become effective on December 1, 2004.

The FACT Act requires that the Commission issue centralized source regulations in final form no later than six months after the enactment date of the FACT Act, and that these rules take effect no later than six months after the date on which the regulations are issued in final form. After considering the FACT Act requirements under section 211(d),²⁴ the Commission proposes to make the centralized source final rule effective on December 1, 2004, nearly a full six months after the final regulations will have been issued.

For the portions of the rule relating to nationwide specialty consumer reporting agencies and the streamlined process, the statute allows the Commission to set an effective date of up to nine months from the date on which the final regulations will issue. In proposing its rule for the nationwide specialty consumer reporting agencies, the Commission has considered the factors required by section 211(a) of the FACT Act and determined that

²⁴ The FACT Act requires the Commission to consider: the significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such disclosures; and the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports. FACT Act sec. 211(d)(2). In addition, section 211(d)(4) of the Act requires that the Commission regulations provide for an orderly transition for nationwide consumer reporting agencies to the centralized source, in a manner that: does not temporarily overwhelm such consumer reporting agencies with requests for disclosures beyond their capacity to deliver; and does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period.

²³ This provision is not intended to require nationwide specialty consumer reporting agencies to post their toll-free telephone number on every page of a Web site. Rather, it is intended to require them to provide a clear and prominent link to such information on any Web site that the nationwide consumer reporting agency owns or maintains.

December 1, 2004, is an appropriate effective date for these provisions as well. The Commission recognizes that while nationwide specialty consumer reporting agencies will need some time to develop and implement the streamlined process required under the proposed rule, it appears that six months is adequate, given the limited requirements of the rule. The Commission invites comment and specific information on whether a longer time period to establish the streamlined process required under the proposed rule is necessary and appropriate.

F. Substantially Nationwide Consumer Reporting Agencies

Section 211(d)(6)(A) of the FACT Act directs the Commission to determine, by rulemaking, "whether to require a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act, to make free consumer reports available upon consumer request, and if so, whether such consumer reporting agencies should make such free reports available through the centralized source described in paragraph (1)(A)."

The term "a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act" (hereinafter "substantially nationwide consumer reporting agencies") is not defined under the FCRA or under the FACT Act. The characteristics and role of entities that meet this description require extensive evaluation. The FACT Act requires the Commission to consider the number of consumer reports sold by such entities, the overall scope of such entities' operations, the costs to such entities of providing annual file disclosures to consumers, and the competitive viability of such entities if they are required to provide free annual file disclosures. In light of the information currently available to it, the Commission proposes a determination that substantially nationwide consumer reporting agencies should not, at this time, be required to provide annual file disclosures, and it is therefore not proposing a rule that would require any such agency to provide such disclosures. The Commission invites comment relating to substantially nationwide consumer reporting agencies. The Commission may, at a later time, determine that such entities should provide annual file disclosures,

and that such disclosures should be made through the centralized source required by this proposed rule.

III. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before April 16, 2004. Comments should refer to "FACTA Free File Disclosures Proposed Rule, Matter No. R411005" to facilitate the organization of comments. In addition, commenters should key their comments to the particular question or section of the proposed rule to which they relate. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116-1031. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."²⁵

An electronic comment can be filed by (1) clicking on <http://www.regulations.gov>; (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Country," "Comment," and "Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

²⁵ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

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, New Executive Office Building, Room 10102, Washington, DC 20503, Attention: Desk Officer for Federal Trade Commission. Such comments should also be mailed to the following address: Federal Trade Commission, FACTA Free Reports, Post Office Box 1031, Merrifield, VA 22116-1031. Because courier and overnight deliveries cannot be accepted at this address, they should instead be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

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

IV. Communications by Outside Parties to Commissioners and 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. 16 CFR 1.26(b)(4).

V. Paperwork Reduction Act

The Commission has submitted this proposed 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. 3501-3517. The FACT Act and proposed Rule require nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to disclose information to third parties by requiring those consumer reporting agencies to

provide to consumers, upon request, one annual file disclosure. Overall, the Commission staff estimate that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 198,960 hours. The estimated annual labor cost associated with these paperwork burdens is \$8.41 million.

The Commission staff estimate, based on their knowledge of the industry, that consumers currently receive approximately 15.2 million free file disclosures.²⁶ The staff estimate that in 2005 and 2006, the nationwide consumer reporting agencies and the nationwide specialty consumer reporting agencies will receive 35.1 million requests per year from consumers for annual file disclosures.²⁷ Thus, the staff predict that consumer reporting agencies will receive an average of 16.6 million new annual file disclosure requests per year during the period for which clearance is requested.²⁸

Annual File Disclosures Provided Through the Internet

Both nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies will likely handle the overwhelming majority of consumer requests through internet Web

sites.²⁹ The annual file disclosures requests processed through the internet will not impose any hours burden per request on the nationwide and nationwide specialty consumer reporting agencies, even though there will be some periodically recurring time and investment required to adjust the internet capacity needed to handle the new changing request volume. Consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contacts annually or as conditions change. Negotiating and re-negotiating such contracts requires the time of trained personnel. The staff estimate that negotiating such contracts will require a total of 8,320 hours and will cost a total of \$390,707.³⁰ Such activity is treated as an annual burden of maintaining and adjusting the changing internet capacity requirements.

Annual File Disclosures Requested Over the Telephone

Most of the telephone requests for annual file disclosures will also be handled in an automated fashion, without any additional personnel being required to process the requests. As in the case of the internet, there will be some time and investment required to increase and administer the automated telephone capacity needed to handle the new increased volume of requests. The nationwide and nationwide specialty consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contacts annually or as conditions change. The staff estimates that it will require a total of 6,240 hours and will cost a total of \$282,422.³¹ This also is

treated as an annual recurring burden necessary to obtain, maintain and adjust automated call center capacity.

A small percentage of those phoning the centralized source or the nationwide specialty consumer reporting agencies will not have phone equipment compatible with an automated system and may need to be processed by a live operator.³² The staff estimate based on their knowledge of the industry that each of these requests will take 5 minutes to process, for a total of 3,319 additional hours of operator time. $[(39,824 \times 5 \text{ minutes}) / 60 \text{ minutes} = 3,319 \text{ hours}]$.

Annual File Disclosures That Require Processing by Mail

The staff estimates, based on their knowledge of the industry, that a small percentage of consumers (estimated at 1% of 16.6 million or 166,000) will request an annual file disclosure through U.S. postal service mail. The staff estimates that 10 minutes per request is required to handle these requests, thereby requiring 27,667 hours of time by clerical personnel. $[(166,000 \times 10 \text{ minutes}) / 60 \text{ minutes} = 27,667 \text{ hours}]$.

In addition, whenever the requesting consumer cannot be identified using an automated method (a Web site or automated telephone service), it will be necessary to redirect that consumer to send identifying material along with the request by mail. The staff estimates that such a problem will occur in about 5% (or 821,370) of the new requests. The staff estimates that inputting and processing such requests will require approximately 10 minutes per redirected request. Thus, these annual file disclosures will require 136,895 hours of clerical time. $[(821,370 \times 10 \text{ minutes}) / 60 \text{ minutes} = 136,895 \text{ hours}]$.

Instructions to Consumers

The proposed rule also provides that certain instructions be provided to consumers. See proposed rule sections 610.2(b)(2)(iv)(A,B), 610.3(a)(2)(iii)(A,B). On the centralized source Web site, the instructions to consumers will be embedded in the Web site and will require no additional time or cost on the part of the nationwide consumer reporting agencies. Similarly, on the automated telephone systems, the

estimate for setup and maintenance cost is \$282,422 $(3 \times 2080 \times \$45.26)$ per year.

³² Based on their knowledge of the industry, the staff estimates that consumers will submit 24% (4.0 million) of the average 16.6 million new requests for annual file disclosures by telephone. Of those, an estimated 1% (or 40,000) will not have telephone equipment compatible with an automated system and may need to be serviced by live personnel.

²⁶ See Loretta Nott and Angie Welborn, "A Consumer's Access to a Free Credit Report: A Legal and Economic Analysis," Congressional Research Service, Library of Congress, July 21, 2003. Consumers are able to receive these file disclosures for free because of adverse action notices and state laws in certain states that give consumers the right to receive free file disclosures.

²⁷ The nationwide consumer reporting agencies have not provided a precise prediction of the number of additional requests they will receive but have voiced their concern that it will be very large. The staff's estimate is based on a rough comparison provided by the Consumer Data Industry Association of the percentage of eligible consumers who requested free file disclosures in states that already mandate free file disclosures for consumers and those that do not. Based on information that the staff have obtained from the consumer reporting industry, the staff estimates that the increase in annual file disclosures requested due to the Act and proposed rule will be 231%.

²⁸ The Commission will request a clearance from OMB for the proposed collection of information for the three-year period from June 2004 through June 2007. During this period, the staff predict that nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies will receive 19.9 million new annual file disclosure requests per year. However, the nationwide and nationwide specialty consumer reporting agencies are not required to issue annual file disclosures under this rule until December 2004. The staff predict 9.45 million new requests for annual file disclosures for the first year of the clearance [19.9 million / 2]. Thus, the staff predict that consumer reporting agencies will receive an average of 16.6 million new requests per year during the requested clearance period. $[(9.45 \text{ million} + 19.9 \text{ million} + 19.9 \text{ million}) / 3 = 16.6 \text{ million}]$.

²⁹ According to a HarrisInteractive poll, the percentage of households that have access to the internet is currently over 60% and increasing. See The Harris Poll #8, February 5, 2003, available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=356. In addition, internet users are probably more likely to request an annual file disclosure. Accordingly, the staff estimate that annually 75% (or 22.8 million) of the 30.4 million new requests will be made by internet.

³⁰ Based on the time required for similar activity in the Federal government (including at the FTC), the staff estimate that such contracting and administration will require approximately 4 full-time equivalent employees ("FTE") for the web service contract. Thus, the staff estimates that the setting up the contract will require 4 FTE, which is 8,320 hours per year $(4\text{FTE} \times 2080 \text{ hrs/yr})$. The cost is based on the reported Bureau of Labor Statistics rate for Computer System Manager (\$46.96). Thus, the estimated setup and maintenance cost for an internet system is \$390,707 per year. $(8,320 \text{ hours} \times \$46.96/\text{hour})$.

³¹ Similar to setup of the internet system, the staff estimates that recurrent contracting for automated telephone capacity will require approximately 3 FTE, and will therefore require 6,240 hours $(3 \times 2,080 \text{ hours})$. Applying a wage rate based on the BLS rate for Marketing Manager (\$45.26/hr), the

instructions required by the proposed rule will require no additional time or cost because the disclosures will be made automatically when consumers select certain options. For the postal service mail requests, the nationwide and nationwide specialty consumer reporting agencies may send printed forms to those consumers who choose to use this method. Of the predicted 987,370 requests for annual file disclosures that will be done by mail, the staff estimates based on their knowledge of the industry that 10% (or 98,737) will request instructions by mail. If printed instructions are sent to each of these consumers by mail, requiring 10 minutes of clerical time per consumer, this will require 16,456 hours. [(98,737 instructions × 10 minutes) / 60 minutes per hour].

Labor Costs

Labor costs are derived by applying hourly cost figures to the burden hours described above. Accordingly, the staff estimates that it will cost \$39,600 to provide annual file disclosures for requests that require a telephone service representative. [\$12.00 per hour × 3,300 hours].³³ The remaining processing of requests for annual file disclosures and instructions will be performed by clerical personnel, which will require 181,100 hours as described above, and will cost \$2,535,400. [(27,700 hours for handling initial mail request + 136,900 hours for handling requests redirected to mail + 16,500 hours for handling instructions mailed to consumers) × \$14.00 per hour].³⁴ As explained earlier, it is estimated that a total of 14,560 labor hours will be needed to obtain, maintain, and adjust the new capacity requirements for the automated telephone call center and the internet web services. It is estimated that this will cost approximately \$673,100 per year.³⁵

In addition, the staff believes it is likely that the consumer reporting agencies will use third-party contractors (instead of their own employees) to increase the capacity of their systems. 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 requests handled by the

systems. The staff estimates that the total annual amount to be paid for services delivered under these contracts is \$5.16 million.³⁶ Thus, these costs are added to the labor costs, for a total of \$8.41 million (\$3.248 million + \$5.16 million).³⁷

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 have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections 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.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA"), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The proposed rule applies to two types of consumer reporting agencies: (1)

Nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies.³⁸ The Commission has not identified any nationwide consumer reporting agencies that are small entities. Furthermore, the Commission estimates, based on industry sources, that there are fewer than 50 nationwide specialty consumer reporting agencies currently doing business in the U.S. The Commission has been unable to determine how many of these nationwide specialty consumer reporting agencies, if any, are small entities. Based on industry sources, however, the Commission believes that the number of such agencies that are small entities, if any, is insubstantial. While the economic impact of the proposed rule on a particular small entity could be significant, overall the proposed rule will not have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

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

The Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952 (FACT Act or the Act), directs the Commission to adopt rules to require the establishment of: (1) A centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for consumer use in making such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. In this action, the

³⁶ The staff estimates the total ongoing costs to be paid under these contracts is \$5.16 million. The automated telephone cost is estimated as \$4.73 million (\$1.20 per request × 3.94 million requests) and the internet web service cost is estimated as \$435,600 (\$0.035 per request × 12.45 million requests).

³⁷ The consumer reporting industry is a multi-billion dollar market. As of 2002, it is estimated to have more than \$4 billion dollars in sales of file disclosures. One study indicates that the nationwide consumer reporting agencies had approximately \$1.2 billion in earnings in 2002. See Michael Turner, Daniel Balis, Joseph Duncan, and Robin Varghese, "Free Consumer Credit Reports: At What Cost? The Economic Impact of a Free Credit Report Law to the National Credit Reporting Infrastructure," Washington, DC: Information Policy Institute, September, 2003. Thus, the total labor cost burden estimate of \$8.41 million represents a small percentage—approximately 0.7% (\$8.41 million divided by \$1.2 billion) of the overall market. This comparison is conservative, as it does not include the earnings of the nationwide specialty consumer reporting agencies.

³⁸ In addition, this notice solicits information about two other types of consumer reporting agencies. As discussed in section F, *supra*, the FACT Act directs the Commission to determine whether to promulgate a rule covering "a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis." The Commission, at this time, is not proposing a rule provision relevant to such an agency. However, the Commission is requesting information about the number, and nature of any such agencies and whether they should be subject to a requirement to provide annual file disclosures to consumers in the future. Furthermore, the Commission seeks information about associated consumer reporting agencies, *i.e.*, those consumer reporting agencies that maintain consumer files within the systems of nationwide consumer reporting agencies. The proposed rule, however, does not cover such agencies.

³³ The Bureau of Labor Statistics reports an average wage of \$12.00 per hour for retail trade employees.

³⁴ The staff estimates the wage rate for these clerical personnel to be \$14.00 per hour, which is between the Bureau of Labor Statistics rate for retail trade (at \$12.00) and the rate for financial activities (at \$17.37).

³⁵ As explained earlier, the estimated burden is 6,240 hours (\$282,422) for automated phone service and 8,320 hours (\$390,707) for web services.

Commission proposes, and seeks comment on, a rule that would fulfill the statutory mandate. The Act requires that the Commission promulgate this rule not later than six months after the date of enactment, or by June 4, 2004.

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

The objective of the proposed rule is to require the establishment of: (1) A centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for consumer use in making such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. The proposed rule is authorized by and based upon section 211(a) and (d) of the FACT Act, Public Law 108-159, 117 Stat. 1952.

C. Small Entities to Which the Proposed Rule Will Apply

The proposed rule will apply to two types of consumer reporting agencies: (1) Nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies. The Commission has not identified any nationwide consumer reporting agencies that are small entities. The Commission estimates that the number of nationwide specialty consumer reporting agencies that are small entities (with less than \$6,000,000 in average annual receipts) is either very small or none. However, the Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Under the proposed rule, nationwide specialty consumer reporting agencies³⁹ will be required to do the following: (1) Provide consumers with free annual file disclosures; (2) establish a streamlined process, including a toll-free telephone number, for accepting and processing such consumer requests; (3) provide consumers with clear instructions on how to obtain free annual file disclosures; and (4) make additional disclosures to consumers during situations when adverse circumstances or extraordinary request volume affect the ability of the agency to accept consumer requests.

³⁹ Nationwide consumer reporting agencies will have similar, but more extensive, obligations under the proposed rule. As stated above, however, the Commission believes that there are no nationwide consumer reporting agencies that are small entities.

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. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission is not, at this time, aware of what particular alternative methods of compliance may comport with the statute and also reduce the impact of the proposed rule on small entities that may be affected by the rule. Therefore, the Commission seeks comment and information with regard to (1) the existence of small business entities for which the proposed rule would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. (See section VII of this notice, *supra*, questions 4, and 18-22.) If the comments filed in response to this notice identify small entities that are significantly affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

VII. Questions for Comment on the Proposed Rule

The Commission seeks comment on all aspects of the proposed rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should include detailed, factual supporting information whenever possible.

Definitions and Examples

1. Are the definitions contained in section 610.1(b) of the proposed rule clear, meaningful, and appropriate?

2. Do the examples provided in various sections of the proposed rule offer helpful guidance for complying with the rule? What additional examples might be helpful if included?

Centralized Source for Nationwide Consumer Reporting Agencies

3. Are the proposed requirements for establishment and operation of the centralized source, set forth in section 610.2(b), appropriate and adequate to fulfill the purpose of enabling consumers to request easily their free

annual file disclosures from all nationwide consumer reporting agencies? Are there other issues or problems with respect to establishment and operation of the centralized source that the rule should address? If so, please identify and discuss how the rule could address the issue or problem.

4. Is the proposed rule's requirement that if nationwide consumer reporting agencies have the ability to sell a consumer report to a third party they must provide an annual file disclosure to that consumer through the centralized source appropriate?

(a) Should the rule specifically address the relationship between nationwide consumer reporting agencies and associated consumer reporting agencies, *i.e.*, those consumer reporting agencies that maintain consumer files within the systems of nationwide consumer reporting agencies? If so, how should the rule address this relationship?

(b) Is the definition of associated consumer reporting agency contained in section 610.1(b)(2) clear and adequate? To what other entities, besides those described under section II, above, might this definition apply?

(c) What will be the effect of the rule on the contractual relationships that exist between nationwide consumer reporting agencies and their associated consumer reporting agencies? How could the rule address these effects?

(d) What is the number and nature of associated consumer reporting agencies currently doing business in the U.S.? What is the scope of their operations? How many consumer reports are sold annually through these entities? Are any of these entities small businesses (*i.e.*, those with less than \$6,000,000 in average annual receipts)? If so, how many? What will be the economic impact of the proposed rule on these small entities? Could the proposed rule be modified, consistent with the requirements of the FACT Act, in a way that would lessen the economic impact of the rule on such entities? If yes, please describe.

5. Section 610.2 (b)(2)(ii) allows the nationwide consumer reporting agencies to collect, through the centralized source, only as much 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.

(a) Does the amount of information that is reasonably necessary depend on the request method or the method of delivery of the file disclosure or product

or service? What information is reasonably necessary for each request method and delivery method?

(b) What types of personally identifiable information do nationwide consumer reporting agencies currently collect in providing file disclosures to consumers? Do these practices differ from information collection practices related to the collection of personally identifiable information in providing other products (*i.e.*, those not mandated by statute), and if so, how?

(c) How is the personally identifiable information collected in providing file disclosures used and disclosed by the nationwide consumer reporting agencies, affiliated entities and third parties? For what other purposes might this information be used and disclosed? What are the potential benefits and consequences of such use and disclosure?

(d) Should the rule address the use of information collected by the centralized source (*i.e.*, by allowing, prohibiting, restricting, or limiting such use)? If so, how? If so, what information should such a rule address, *i.e.*, personally identifiable information collected in connection with file disclosures and/or information collected in connection with products provided through the centralized source? Should any restrictions or limitations differ from those that are applicable to the same information collected currently in connection with the provision of such disclosures and products? On what basis should a distinction between information collected through the centralized source and information currently collected by nationwide consumer reporting agencies be made?

(e) Are there compelling reasons why nationwide consumer reporting agencies should not be allowed to use separate identification procedures in the centralized source?

6. Section 610.2(c) of the proposed rule requires that nationwide consumer reporting agencies reasonably anticipate the volume of consumer requests to the centralized source and develop contingency plans to minimize the impact of adverse circumstances that may affect the operation of the centralized source.

(a) Is the list of possible adverse circumstances sufficiently inclusive? If there are additional circumstances that should be included in this provision, please identify them and describe their potential impact on the operation of the centralized source.

(b) Is the list of measures to be included in the contingency plans sufficiently inclusive? If there are additional measures that should be

included in this provision, please describe them.

7. Should the proposed rule provide relief for nationwide consumer reporting agencies during times of extraordinary request volume? If yes, does section 610.2(e) of the proposed rule adequately address those potential situations? If not, what additional provisions are needed and why?

8. Section 610.2(g) of the proposed rule governs the possible use of the centralized source for other communications, including marketing or advertising.

(a) Are the provisions of this section, along with the prohibitions of the FTC Act, adequate to ensure that consumers are protected against communications that may interfere with the purpose of the centralized source?

(b) Are there particular goods or services the marketing or advertising of which would be especially likely to interfere with or complement the purpose of the centralized source; for example, credit scores, credit monitoring, and credit counseling? If so, why? Should the marketing or advertising of such products or services be treated differently under the rule?

9. How could the rule address the potential for fraudulent Web sites, telephone numbers and other ploys that may mimic the centralized source in order to gain access to consumer personally identifiable information or for other illegal means? Should the rule require the nationwide consumer reporting agencies to undertake specific measures to prevent such illegal schemes? If yes, specify what measures would be appropriate and effective. Should the rule require the nationwide consumer reporting agencies to employ measures to reassure consumers that they are contacting the legitimate centralized source? If yes, specify what measure would be appropriate and effective.

10. What competitive concerns may be raised by the operation of the centralized source and/or other provisions of the proposed rule? How might the final rule address these concerns?

11. Is the geographic roll-out scheme for the centralized source during the transition period, described in section 610.2(i)(1) of the proposed rule, appropriate to protect the interests of both industry and consumers and to ensure an orderly phase-in of the free annual file disclosures requirement?

(a) Is the duration of the roll-out appropriate? Please provide any available information regarding the costs or benefits of different rollout durations.

(b) Does section 610.2(i) adequately address the potential problem of extraordinary request volume during the initial transition period?

(c) Discuss any additional issues that should be addressed with regard to the transition period.

Streamlined Process for Nationwide Specialty Consumer Reporting Agencies

12. Are the proposed requirements for a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies, as set forth in section 610.3(a), appropriate and adequate? Are there other issues or problems with respect to the streamlined process that this provision should address? If so, please identify and discuss how the rule could address the issue or problem.

13. Section 610.3(b) of the proposed rule requires that nationwide specialty consumer reporting agencies reasonably anticipate the volume of consumer requests for annual file disclosures and develop contingency plans to minimize the impact of adverse circumstances that may affect the operation of the streamlined process. Is the list of measures to be included in the contingency plans sufficiently inclusive? If there are additional measures that should be included in this provision, please describe them.

14. Does section 610.3(c) of the proposed rule adequately address the potential situation of extraordinary request volume for nationwide specialty consumer reporting agencies? If not, what additional provisions are needed and why?

15. Does section 610.3(g) adequately address the potential problem of extraordinary request volume during the transition period for the streamlined process? Discuss any additional issues that should be addressed with regard to the transition period.

Standardized Form

16. Section 690.1, Appendix D, sets out a model standardized form that can be used for mail or Internet requests to the centralized source. Is the form adequate and appropriate for this purpose? Does the form list the minimum information necessary to properly identify the consumer and process the request? If additional information is needed, identify such information and state why it is needed. Does the form include more personal information than is reasonably necessary to properly identify the consumer?

Substantially Nationwide Consumer Reporting Agencies

17. Are there consumer reporting agencies in the U.S. that compile and maintain files on consumers on substantially a nationwide basis, other than those consumer reporting agencies which, pursuant to the proposed rule, will provide free annual file disclosures through the centralized source? If so:

(a) Identify each such agency and state:

(i) the approximate number or portion of the adult population served by the agency and the number of states included in the agency's geographic coverage;

(ii) the number of requests for file disclosures to the agency and the number of consumer reports generated by the agency;

(iii) the categories of information contained in any consumer reports generated by the agency; and

(iv) the needs of consumers for access to file disclosures generated by the agency.

(b) What would be the advantages and disadvantages of a requirement that consumers be able to obtain annual file disclosures generated by such agencies free of charge? What would be the costs of such a requirement?

(c) What would be the advantages and disadvantages of requiring that such agencies provide annual file disclosures through the centralized source?

(d) What would be the effect on the ongoing competitive viability of such agencies if they were required to provide annual file disclosures to consumers free of charge?

Regulatory Flexibility Act Analysis

18. Are there any small business entities (*i.e.*, those with less than \$6,000,000 in average annual receipts) covered by the proposed rule?

a. Identify the number and nature of any such business entities.

b. Describe, with specificity, the likely economic impact of the proposed rule on any such small business entities.

19. Please provide comment on any or all of the provisions in the proposed rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the proposed rule on small entities in light of the analysis in section VI of this notice. Costs to "implement and comply" with the proposed rule should include expenditures of time and money for any employee training, attorney, computer programmer or other professional time.

20. Please describe ways in which the proposed rule could be modified, consistent with the FACT Act's mandated requirements, to reduce any costs or burdens for small entities.

21. Please provide any information quantifying the economic costs and benefits of the proposed rule for regulated entities, including small entities.

22. Please identify any relevant federal, state, or local rules that may duplicate, overlap or conflict with the proposed rule.

List of Subjects

16 CFR Part 610

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

16 CFR Part 698

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

Accordingly, for the reasons set forth in the preamble, the FTC proposes to amend chapter I, title 16, Code of Federal Regulations, as follows:

1. Revise the heading of subchapter F of this chapter to read as follows:

SUBCHAPTER F—FAIR CREDIT REPORTING ACT

2. Add new part 610 to subchapter F to read as follows:

PART 610—FREE ANNUAL FILE DISCLOSURES

Sec.

610.1 Definitions and rule of construction.

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

610.3 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

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).

§ 610.1 Definitions and rule of construction.

(a) The definitions and rule of construction set forth in this section apply throughout this part.

(b) *Definitions.*

(1) *Annual file disclosure* means a file disclosure that is provided to a consumer, upon consumer request and without charge, once in any 12-month period, in compliance with section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(2) *Associated consumer reporting agency* means a consumer reporting agency that maintains consumer files within systems operated by one or more nationwide consumer reporting agencies.

(3) *Consumer* means an individual.

(4) *Consumer report* has the meaning provided in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(5) *Consumer reporting agency* has the meaning provided in section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).

(6) *Extraordinary request volume*, except as provided in § 610.2(i)(2) of this part, occurs when the number of consumers requesting file disclosures during any 24-hour period is more than twice the daily rolling 90-day average of consumers requesting file disclosures. For example, if over the previous 90 days an average of 100 consumers per day requested file disclosures, then an extraordinary request volume would be any volume greater than two times 100, or 201 requests in a single 24-hour period.

(7) *File disclosure* means a disclosure by a consumer reporting agency pursuant to section 609 of the Fair Credit Reporting Act, 15 U.S.C. 1681g.

(8) *Nationwide consumer reporting agency* means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(9) *Nationwide specialty consumer reporting agency* has the meaning provided in section 603(w) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(w).

(10) *Request method* means the method by which a consumer chooses to communicate a request for an annual file disclosure.

(c) *Rule of construction.* The examples in this part are illustrative and not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 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 consumer's option:

(i) A single, dedicated Internet Web site;

(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 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 Web site and telephone number regarding how to make a request by all request methods required under section 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 Web site request method, providing access to a "help" or "frequently asked questions" screen, which includes specific information that consumers might reasonably need to order their file disclosure, 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; and

(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:

(1) A statement that the consumer's identity cannot be verified; and

(2) 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

(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 Web site required under § 610.2(b)(1) of this part, from the centralized source required by this part. The form provided at 16 CFR 690, 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 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 may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) Circumstances that may materially and adversely impact operations shall include, but are not necessarily limited to, natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses, coordinated hacker attacks, and seasonal and other fluctuations in the volume of consumer requests for annual disclosures.

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

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

(A) To the extent possible, providing information to consumers on how to use another available request method;

(B) To the extent possible, 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 consumer's request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as possible.

(ii) 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 possible, of

when the request will be accepted for processing.

(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, that agency shall provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has complied with paragraph (c) of this section, a 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:

(1) A particular centralized source request method experiences extraordinary request volume;

(2) The centralized source, through all request methods, experiences extraordinary request volume; or

(3) The nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Security.* A nationwide consumer reporting agency shall comply with Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4, for all personally identifiable information collected or disclosed by the nationwide consumer reporting agency or the centralized source, as a result of a transaction conducted, or request for annual file disclosure made, through the centralized source.

(g) *Communications provided by centralized source.*

(1) Any communications or instructions, including any advertising or marketing, provided through the centralized source shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in paragraph (a).

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

(i) A Web site that contains pop-up advertisements that hinder the consumer's ability to complete an online request for an annual file disclosure;

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

(iii) 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 consumer's credit standing; and

(iv) 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 failing to clearly and prominently disclose that consumers must cancel a service advertised as free to avoid being charged, if such is the case.

(h) *Effective date.* Section 610.2 shall become effective on December 1, 2004.

(i) *Transition.*

(1) *Regional roll-out.* The centralized source required by this part shall be made available to consumers in a cumulative manner, as follows:

(i) For consumers residing in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, the centralized source shall become available on or before December 1, 2004;

(ii) For consumers residing in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, the centralized source shall become available on or before March 1, 2005;

(iii) For consumers residing in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas, the centralized source shall become available on or before June 1, 2005; and

(iv) For all other consumers, including consumers residing in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and all United States territories and possessions, the centralized source shall become available on or before September 1, 2005.

(2) *Extraordinary request volume during transition.*

(i) *During the period of December 1, 2004 through December 7, 2004,* extraordinary request volume shall mean the following:

(A) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a 24-hour period is more than twice the daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through that request method.

(B) For the centralized source as a whole: Extraordinary request volume occurs when the number of consumers

contacting or attempting to contact the centralized source in a 24-hour period is more than twice the average daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through any request method.

(C) For a nationwide consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than twice the average daily total number of consumers that were reasonably anticipated to contact that nationwide consumer reporting agency to request their file disclosures, in compliance with paragraph (c) of this part.

(ii) *During the period of December 8, 2004 through August 31, 2005,* extraordinary request volume shall mean the following:

(A) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a 24-hour period is more than twice the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through that request method;

(B) For the centralized source as a whole: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source in a 24-hour period is more than twice the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through any request method; and

(C) For a nationwide consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than twice the rolling 7-day daily average of consumers who requested any type of file disclosure from that nationwide consumer reporting agency.

(3) *Option to defer requests during transition in times of high volume.*

(i) For purposes of this paragraph, high request volume shall mean the following:

(A) For an individual request method: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a

24-hour period is more than 115% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request their file disclosures through that request method;

(B) For the centralized source as a whole: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source in a 24-hour period is more than 115% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request their file disclosures through any request method; and

(C) For a nationwide consumer reporting agency: High request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than 115% of the rolling 7-day daily average of consumers who requested any type of file disclosure from that nationwide consumer reporting agency.

(ii) *During the period from December 8, 2004 through August 31, 2005,* a nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for a period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, provided that the nationwide consumer reporting agency.

(A) complies with paragraph (c) of this section; and

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

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

§ 610.3 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a) *Streamlined process requirements.* Any nationwide specialty consumer reporting agency shall have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process required by this part shall:

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by mail and by any additional available request methods;

(ii) Is published, in conjunction with all other published numbers for the

nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and

(iii) Is clearly and prominently posted on any Web site owned or maintained by the nationwide specialty consumer reporting agency, along with instructions for requesting disclosures by mail and by any additional available request methods; and

(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 nationwide specialty consumer reporting agency to request annual file disclosures, as determined in compliance with paragraph (b) of this section;

(ii) Collects only as much personal 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

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

(A) Providing information on the status of the consumer's request while the consumer is in the process of making a request;

(B) For a Web site request method, providing access to a "help" or "frequently asked questions" screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Federal Trade Commission; and

(C) In the event that a consumer requesting a file disclosure 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:

(1) A statement that the consumer's identity cannot be verified; and

(2) 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.

(b) *Requirement to anticipate.* A nationwide specialty consumer reporting agency shall implement

reasonable procedures to anticipate, and respond to, the volume of consumers who will request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that may materially and adversely impact the operation of the nationwide specialty consumer reporting agency, a request method, or the streamlined process.

(1) Circumstances that may materially and adversely impact operations shall include, but are not limited to, natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses, coordinated hacker attacks, and seasonal and other fluctuations in the volume of consumer requests for annual disclosures.

(2) The contingency plans required under this section shall include measures to minimize the impact of the circumstance referred to in paragraph (b)(1) of this section on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency to request an annual file disclosure.

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

(A) To the extent possible, providing information to consumers on how to use another available request method;

(B) To the extent possible, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumer's request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as quickly as possible.

(ii) 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 possible, of when the request will be accepted for processing.

(c) *Extraordinary request volume.* Provided that the nationwide specialty consumer reporting agency has complied with paragraph (b) of this section, a nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section for any period of time during which:

(1) A particular request method experiences extraordinary request volume; or

(2) The nationwide specialty consumer reporting agency experiences extraordinary request volume.

(d) *Security.* A nationwide specialty consumer reporting agency shall comply with Standards for Safeguarding Customer Information, 16 CFR 314.3 and 314.4, for all personally identifiable information collected or disclosed by the nationwide specialty consumer reporting agency as a result of a request for annual file disclosure.

(e) *Requirement to accept or redirect requests.* If a consumer requests an annual file disclosure through a method other than the streamlined process established by the nationwide specialty consumer reporting agency in compliance with this part, a nationwide specialty consumer reporting agency shall:

(1) Accept the consumer's request; or

(2) Instruct the consumer how to make the request using the streamlined process required by this part.

(f) *Effective date.* Section 610.3 shall become effective on December 1, 2004.

(g) *Extraordinary request volume during initial transition.* During the period of December 1, 2004 through February 28, 2005, extraordinary request volume shall mean the following:

(1) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency through a streamlined process request method in a 24-hour period is more than twice the daily total number of consumers who were reasonably predicted to contact that request method, in compliance with paragraph (b) of this section.

(2) For a nationwide specialty consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency to request file disclosures in a 24-hour period is more than twice the number of consumers who were reasonably anticipated to contact the nationwide specialty consumer reporting agency to request their file disclosures, in compliance with paragraph (b) of this section.

3. Add new part 698 to subchapter F to read as follows:

PART 698—SUMMARIES, NOTICES, AND FORMS:

Sec.

698.1 Authority and purpose.

698.2 Legal effect.

Appendixes A–C to Part 698 [Reserved]
Appendix D to Part 698—Standardized Form
for Requesting Free File Disclosure

Authority: Secs. 151, 153, 211(c) and (d),
213, and 311, Pub. L. 108–159, 117 Stat.
1961, 1966, 1970 and 1972 (15 U.S.C. 1681g
and s).

§ 698.1 Authority and purpose.

(a) *Authority.* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), as most recently amended by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (Dec. 4, 2003).

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), and 612(a) of the Fair Credit Reporting Act, as amended, and section 211 of the Fair and Accurate Credit Transactions Act of 2003.

§ 698.2 Legal effect

These summaries, forms and notices prescribed by the FTC do not constitute a trade regulation rule. They carry out the directives in the statute that the FTC prescribe these documents, which will constitute compliance with the part of any section of the FCRA requiring that such summaries, notices, or forms be used by or supplied to any person.

Appendixes A–C to Part 698 [Reserved]

Appendix D to Part 698—Standardized form for requesting annual file disclosures.

REQUEST FOR FREE CREDIT REPORT

Note to Consumers: You have the right to get a free copy of your credit report, once every 12 months, from each of the nationwide consumer reporting agencies. Your report may contain information on where you work and live, the credit accounts that have been opened in your name, if you've paid your bills on time, and whether you have been sued, arrested, or have filed for bankruptcy. Businesses use this information in making decisions about whether to offer you credit, insurance, or employment, and on what terms.

Use this form to request your credit report from any, or all, of the nationwide consumer reporting agencies.

The following information is required to process your request:

Your Full Name: _____

Your Street Address: _____

Your City, State & Zip Code: _____

Your Telephone Numbers (with area code): _____

Day: _____

Evening: _____

Your Social Security number: _____

Your Date of Birth: _____

Place a check next to each credit report you want.

☐ I want a credit report from each of the nationwide consumer reporting agencies

OR

☐ I want a credit report from:
_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]

_____ [name of nationwide consumer reporting agency]

Please check how you would like to receive your report. (Note: because of the need to accurately identify you before we send you your credit report, we may not be able to offer every delivery method to every consumer. We will try to honor your preference.)

_____ [available delivery method]

_____ [available delivery method]

_____ [available delivery method]

_____ Check here if, for security purposes, you want your copy of your credit report to include only the last four digits of your Social Security number (SSN), rather than your entire SSN.

If we need additional information to process your request, we may contact you by mail at the address you have provided. If you prefer that we contact you by phone or e-mail, please indicate:

☐ Telephone:

_____ Day or _____ Evening

☐ E-mail at: _____

For more information on obtaining your free credit report, visit [insert appropriate Web site address], call [insert appropriate telephone number], or write to [insert appropriate address].

Mail this form to:

[insert appropriate address]

You can expect to receive your report within 15 days after we receive your request.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–6268 Filed 3–18–04; 10:58 am]

BILLING CODE 6750–01–P