(14 CFR) part 73 (part 73) to establish R–2507E, Chocolate Mountains, CA, as part of a USMC training initiative. The USMC has requested the establishment of this airspace to support its CAS within the Chocolate Mountains Range. The proposed R–2507E will be contiguous with the existing R–2507S, extending from the surface to flight level (FL) 400 and will encompass a portion of the Abel North MOA. The proposed time of designation will be from 0700 to 2300 hours daily. Since the Chocolate Mountains Range complex is joint-use airspace, the restricted areas would only be scheduled when needed for training, and would be available for transit by non-participating aircraft when not in use.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 73.25 [Amended]**

2. § 73.25 is amended as follows:

* * * * *

**R–2507E Chocolate Mountains, CA [New]**

*Boundaries.* Beginning at lat. 33°17′06″ N., long. 115°04′ 35″ W., to lat. 33°14′26″ N., long. 114°59′ 00″ W., to lat. 33°14′26″ N., long. 114°56′ 35″ W., to lat. 33°10′21″ N., long. 114°56′ 26″ W., to lat. 33°08′45″ N., long. 114°56′ 43″ W.

*Designated altitudes.* Surface to FL 400.

*Time of designation.* 0700–2300 local daily other times by NOTAM.

*Controlling agency.* FAA, Los Angeles ARTCC.

*Using agency.* Commanding Officer, USMC Air Station, Yuma, AZ.

* * * * *

Issued in Washington, DC, on September 24, 2004.

**Reginald C. Matthews,**

*Manager, Airspace and Rules.*

[FR Doc. 04–22020 Filed 9–30–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## FEDERAL TRADE COMMISSION

## 16 CFR Parts 642 and 698

**RIN 3084–AA94**

## Prescreen Opt-Out Disclosure

**AGENCY:** Federal Trade Commission (FTC or Commission).

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

**SUMMARY:** The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) directs the FTC, in consultation with the federal banking agencies and the National Credit Union Administration, to adopt a rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance. In this action, the FTC is proposing, and seeking comment on, a proposed Rule that would implement this requirement of the FACT Act. In addition, the FTC is proposing model forms that creditors and insurers may use to comply with the Rule.

**DATES:** Comments must be submitted on or before October 28, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to ''FACTA Prescreen Rule, Project No. R411010'' 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 Prescreen Rule, Post Office Box 1030, Merrifield, VA 22116–1030. 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 H–159 (Annex R), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section.

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftcprescreen/* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftcprescreen/* weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to the FTC as indicated above, and should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments received by the Commission, whether filed in paper or in 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 *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from 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/privacy.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jeanne-Marie Burke or Kellie A. Cosgrove, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue,

NW., Washington, DC 20580, (202) 326–3224.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

Section 615(d) of the Fair Credit Reporting Act (FCRA) requires that any person who uses a consumer report in order to make an unsolicited firm offer of credit or insurance to the consumer, shall provide with each written solicitation a clear and conspicuous statement that:

(A) Information contained in the consumer's consumer report was used in connection with the transaction; (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral; (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [of the FCRA].

Section 615(d)(1) of the FCRA [15 U.S.C. 1681m(d)(1)].

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (FACT Act or the Act) was signed into law on December 4, 2003. Section 213(a) of the FACT Act amends FCRA Section 615(d) to require that the statement mandated by Section 615(d) ''be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.''

Therefore, having consulted with the federal banking agencies and the National Credit Union Association, the FTC proposes the following rule.

## II. Section-by-Section Analysis of Proposed Rule

This proposed Rule carries out the Commission's mandate to improve prescreen notices so that they are simple and easy to understand. There are two components to making a notice simple and easy to understand: (1) Language and syntax that effectively convey the intended message to readers; and (2) presentation and format that call attention to the notice and enhance its readability. The proposed Rule establishes certain baseline requirements for these two components to ensure that the notices meet the statutory mandate. Within that broad framework, however, the proposed Rule provides flexibility to those making prescreened offers in designing their specific disclosures. The determination of whether a notice meets the ''simple and easy to understand'' standard is based on the totality of the disclosure and the manner in which it is presented, not on any single factor. The proposed Rule also provides a model disclosure to aid companies' compliance.

The proposed Rule: (1) Sets forth the purpose and scope of the Rule; (2) defines ''simple and easy to understand''; (3) requires a layered notice consisting of an initial, prominent statement that provides basic opt-out information, and a separate longer explanation that offers further details; (4) sets an effective date for the Rule; and (5) proposes model notices that may be used for compliance with the Rule and the FCRA.

### *A. Purpose and Scope*

Proposed paragraph 642.1 sets forth the purpose and scope of the proposed Rule. Section 615(d) of the FCRA and this proposed Rule apply to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, pursuant to Section 604(c) of the FCRA [15 U.S.C. 1681b(c)].

### *B. Definitions*

Proposed paragraph 642.2 contains a definition for ''simple and easy to understand,'' the term used by Section 213(a) of the FACT Act.

Subparagraph (a) defines ''simple and easy to understand'' to mean plain language designed to be understandable to ordinary consumers. Factors to be considered in determining whether a statement is simple and easy to understand are provided. These factors generally are consistent with those cited in other recent rulemaking proceedings requiring understandable consumer notices.[1] Within these factors companies retain flexibility in determining how best to meet this standard.

### *C. Prescreen Opt-Out Notices*

Paragraph 642.3 of the proposed Rule sets forth certain baseline formatting and language requirements for the disclosures required by Section 615(d) of the FCRA. This paragraph requires a ''layered'' notice—that is, both a short and long notice. Research in the area of consumer notices shows that disclosures tend to be more effective if they are written in a clear and concise manner that is easily understandable by the average consumer, and convey a limited amount of information.[2] One way to accomplish this, especially in instances when the information to be disclosed is voluminous or complex, is through a layered approach—imparting the most important information in a prominent location, with reference to a second location that provides additional details.[3]

The Commission understands that, in prescreened solicitations, space is at a premium. The Commission also recognizes that prescreened notices, under various laws, must disclose a

[1] *See* 16 CFR 313.3(b)(2) (financial privacy rule; examples of how a notice can be made to be ''reasonably understandable''); *see also* 69 FR 33324, 33327 (June 15, 2004) (notice of proposed affiliate marketing rule; examples of ''reasonably understandable'').

[2] G. Ray Funkhouser, *An Empirical Study of Consumers' Sensitivity to the Wording of Affirmative Disclosure Messages,* 3 J. Pub. Pol. & Mktg. 26 (1984). Comment #2 on Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, Hunton & Williams (The Center for Information Policy Leadership) (available at *http://www.ftc.gov/os/comments/glbaltprivacynotices/03–31992–0002.pdf).*

[3] *See Id.;* Comment #24 on Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, Peter Swire (available at *http://www.ftc.gov/os/comments/glbaltprivacynotices/03–31992–0024.pdf).*

significant amount of information.[4] The Commission believes that a layered notice will convey effectively the required information, while at the same time not unnecessarily increasing costs to those making prescreened offers.

In creating Section 213 of the FACT Act, Congress intended to ''enhance[] disclosure of the means available to opt out of prescreened lists.'' [5] Although there are several items of information that must be conveyed by the FCRA Section 615(d) notice, the purpose of Section 213(a) of the FACT Act amendments was to highlight for consumers their right to opt out of receiving prescreened solicitations and the available means of exercising that right.[6]

Therefore, the proposed Rule requires the short notice to inform consumers about the right to opt out of receiving prescreened solicitations and to specify a toll-free number for consumers to call to opt out. The long notice provides consumers with all of the additional information required by Section 615(d) of the FCRA. The Commission considers the layered notice prescribed by the proposed Rule to be an appropriate means of effecting the statutory purpose, but invites comment on whether there are more effective methods of communicating consumers' opt-out rights.

Under the proposed Rule, the short notice must be: (1) Prominent, clear, and conspicuous; (2) in a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12-point type; (3) on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the first screen; (4) located on the page and in a format so that the statement is distinct from other text; and (5) in a typeface that is distinct from other typeface used on the same page.

With respect to the requirement that the notice appear on the front side of the first page of the principal promotional document, the question of what constitutes the ''principal promotional document'' is fact specific. In general, prescreened mailers contain several documents, including a cover letter describing the offer, an application form, and in some instances additional promotional materials. In these situations, the Commission generally would consider the cover letter to be the principal promotional document. The Commission also generally would consider a marketer to be in compliance with the proposed Rule if it includes the notice on the front of the document that is designed for consumers to see first when they open the envelope.

The proposed Rule does not mandate any specific language for the short notice; rather, it imposes a more general performance standard that the notice must be a ''simple and easy to understand'' statement that conveys consumers' opt-out right and how they can exercise their opt-out right. The proposed Rule also prohibits the addition of extraneous information in the short notice. The Commission considers the short notice to be the primary vehicle for conveying consumers' opt-out right, and the effectiveness of this communication could be diminished by adding additional language or concepts, however useful that information might be.[7]

The long notice must contain all information required by Section 615(d) of the FCRA and must also be presented in a manner that is simple and easy to understand. The proposed Rule does not prohibit marketers from including additional information in the long notice, provided that the additional information does not interfere with, detract from, contradict, or otherwise undermine the purpose of the opt-out notices.[8] The Commission invites comment on whether marketers should be prohibited from including additional information in the long notice and, if not, what restrictions would be appropriate.

The long notice must be clear and conspicuous and begin with a heading identifying it as the ''*OPT-OUT NOTICE.*'' The long notice must also be: (1) In a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type; (2) in a typeface that is distinct from other typeface used on the same page; and (3) set apart from other text on the page.

The proposed Rule requires that the long notice appear in the solicitation and that the consumer be directed to the location of the long notice, but does not require that the long notice necessarily be in the same document as the short notice. This provision provides added flexibility to marketers in making the disclosures required by the proposed Rule. In the Commission's view, it is unnecessary to require both notices to appear in the same document as long as the marketer notifies the consumer about where to find the long notice. The Commission invites comment on whether the long notice should be required to appear in the same document as the short notice.

### *D. Effective Date*

Paragraph 642.4 of the proposed Rule provides that the Rule would become effective 60 days after it is final. The Commission considers this amount of time adequate and appropriate to implement the limited requirements of the Rule. The Commission invites comment and specific information on whether a different time period to comply with the proposed Rule is necessary and appropriate.

### *E. Model Prescreen Opt-Out Notices*

In addition to the requirements for the prescreen opt-out notices prescribed by Paragraph 642.3 of the proposed Rule, the Commission proposes model notices, to be published at 16 CFR Part 698, Appendix A. These notices include model language and also are intended to illustrate the proper placement and display of the language. The proposed illustrations are modeled on actual solicitations, but, except for the operative model language, substitute dummy text for the remainder of the solicitation to demonstrate more clearly proper format, manner, and type size of prescreen opt-out notices.

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[4] In addition to Section 615(d) of the FCRA, other federal laws may require disclosures in prescreened solicitations. For example, the Truth in Lending Act (TILA) and its implementing Regulation Z require, in certain credit offers relating to the cost of credit, a number of disclosures. Various state laws may also require disclosures.

[5] Section 213 of the FACT Act. Section 213 is titled, ''Enhanced Disclosure of the Means Available to Opt Out of Prescreened Lists.'' Although the title of a statutory section cannot limit that section, it may assist in explaining what was intended by that section.

[6] *See, e.g.*, 149 Cong. Rec. S13851–52 (daily ed. Nov. 4, 2003) (statement of Sen. Sarbanes) (noting that the amendments to the FCRA ''will require a summary of consumers' rights to opt-out of prescreened offers.''); 149 Cong. Rec. S13855 (daily ed. Nov. 4, 2003) (statement of Sen. Johnson) (noting that the amendments to the FCRA ''take[] important new steps to empower consumers to reduce unwanted credit solicitations.''); 149 Cong. Rec. S15806–07 (daily ed. Nov. 24, 2003) (statement of Sen. Sarbanes) (noting that the amendments to the FCRA will ''help ensure that consumers are aware of how to opt out of the prescreening process * * *. The FTC * * * will be required to write rules on the size and prominence of the disclosure of the opt-out telephone number that is included with offers of credit to consumers.'')

[7] *See, e.g.*, Funkhouser, *An Empirical Study of Consumers' Sensitivity to the Wording of Affirmative Disclosure Messages,* 3 J. Pub. Pol. & Mktg. at 31, 33 (finding that *''information must be presented simply and straightforwardly,''* and ''affirmative disclosures should say *exactly* what they are intended to mean.'') (Emphasis in the original).

[8] As discussed in Section III below, the Commission conducted a consumer study to gain information about consumer understanding of prescreen opt-out notices. In that study, examples of additional information that the Commission believes would likely comply with the proposed Rule were included in the notices tested and are discussed in Section III.

As described above, the FCRA requires that prescreen opt-out notices contain several items of information about the nature and limitations of the offer, as well as about consumers' right to opt out of such offers. The model language contained in the proposed Rule is designed to convey this information in a manner that is understandable to ordinary consumers. Because prescreened solicitations can be offered for credit or insurance, the model language also allows for alternatives that may be used, depending on the product offered. The Commission considers the model notices compliant with the statutory requirements, as well as with the requirements of the proposed Rule.

The Commission requests comment on whether the language of the model notices provides consumers with sufficient information regarding how they were selected for the offer, the reasons that they might not receive the offer, the consumers' right to opt out of prescreened solicitations, and how they can exercise that right.

## III. Summary of Consumer Study

To gain a better understanding of consumer comprehension of prescreen opt-out notices in solicitations, the Commission commissioned a consumer study. This section briefly summarizes the key findings of the study to assist comment on this proposal. The report on the study is posted at *www.ftc.gov* (''Study Report''). Also posted is a report from the contractor who conducted the consumer survey (''Synovate Report'').

### *A. Overview*

The study was conducted to compare the noticeability and comprehension of three different versions of an opt-out notice embedded in prescreened offers of credit. Respondents were recruited in shopping malls across the country, and were asked to look at one of three pre-screened credit card offers.

- *Version #1 (current).* This version included virtually verbatim the language from Section 615(d) of the FCRA, and is representative in content and placement (back page of the offer) of what is currently used in many prescreened credit card offers.
- *Version #2 (improved).* This version used simpler language, similar to that of the model notices in the proposed Rule. As with version #1, the notice was on the back of the offer, but its prominence was enhanced through contrasting print color and format.
- *Version #3 (layered).* This version had the same text and formatting as version #2, as well as an added, boxed ''short notice'' at the bottom of the front page with (1) a statement about the opt-out right and how to exercise it, and (2) a referral to the back for additional details.

Each participant in the study was shown one of the versions of the offer. Interviewers first asked the participant to read the offer and then removed it from view (''initial exposure'') before asking a series of questions about the noticeability and understandability of the opt-out notice. Then, each participant was shown the offer a second time and was directed to the opt-out notice (''forced exposure''), followed by another series of questions. The complete questionnaire and tabulations of responses are provided in the Synovate Report.

The main purpose of the study was to compare the effectiveness of the different versions of the notice in communicating the messages that consumers can opt out of prescreened offers, and how they can do so (*i.e.*, by calling a toll-free number or mailing an opt-out request to the consumer reporting agency). A second purpose was to gauge whether additional, ancillary information could be communicated effectively as part of the notice. Versions #2 and #3 (back page) contained three added items of information that may be relevant and useful to consumers making an opt-out decision. The added items related to the possible usefulness of prescreened offers in making product choices, the fact that opting out would not eliminate all mailed solicitations for credit or insurance, and the need to provide a social security number when calling the opt-out phone number.[9]

### *B. Key Findings*

#### 1. Opt-Out Messages

The study found that the layered version communicated the two opt-out messages more effectively than did the current version following both the initial and forced exposures, while the improved version was more effective than the current version following the forced exposure. The difference in effectiveness between the layered and improved versions, however, was less clear. With respect to the second message (how to exercise the opt-out right), the layered version was significantly more effective than the improved version following the initial exposure, but not statistically significantly more effective after the forced exposure.

These findings support the approach required by the proposed Rule. The simpler language of the layered notice is substantially more understandable to consumers than the language commonly used today. Moreover, the layered approach appears to be more effective in communicating how consumers can opt out of future offers than either of the other approaches tested.

#### 2. Ancillary Messages

In general, the study had mixed results on the communication effectiveness of the three ancillary messages embedded in the improved and long notices. The study asked communication questions about two of the three ancillary messages (the possible benefits of prescreened offers and the fact that opting out would not eliminate all offers). After the initial exposure, neither the improved nor layered versions communicated either ancillary message effectively. After the forced exposure, however, as would be expected, communication levels of both messages were considerably higher. As described above, the proposed Rule would prohibit ancillary information in the short portion of the notice, but permit it in the long portion if it does not detract from the opt-out message.[10]

## IV. 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 submitted on or before October 28, 2004. Comments should refer to ''FACTA Prescreen Rule, Project No. R411010'' 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 Prescreen Rule, Post Office Box 1030, Merrifield, VA 22116–1030. 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 H–159 (Annex R), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which

[9] These items were selected as exemplars of the many types of information that may be relevant and useful to consumers.

[10] Whether additional information added to the long notice would detract from the opt-out message depends on individual circumstances, including the volume of the information added and whether that information in any way contradicted or interfered with the opt-out message. In general, the Commission would not consider the three items of information included in the notices tested in the survey to detract from the communication of the opt-out message.

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.'' [11]

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftcprescreen/* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftcprescreen/* weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to the FTC as indicated above, and should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments received by the Commission, 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 *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*.

[11] 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).

## V. 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. See 16 CFR 1.26(b)(5).

## VI. 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 of 1995 (''PRA''), 44 U.S.C. 3501–3517. As required by the FACT Act, the proposed Rule sets forth the format and manner of the disclosure notifying consumers of their right to opt out of prescreened solicitations.

The Commission staff estimates the paperwork burden of the Act and proposed Rule based on its knowledge of prescreened solicitations. The FTC expects that providing the notice to consumers would not significantly burden industry. The FCRA previously required that notices be given to consumers in prescreened solicitations; the FACT Act and this proposed Rule require that those notices be in a format, type size, and manner that is simple and easy to understand. The proposed Rule provides entities making prescreened solicitations with a general model form (provided in 16 CFR Part 698, Appendix A) that they may use to comply with the proposed Rule. The notices are standardized and machine-generated. Entities making prescreened solicitations would face a one-time burden to reprogram and update systems to revise the existing notice and to re-format solicitations.

The FTC estimates that between 500 and 750 entities make prescreened solicitations. The estimated time to revise the notice and re-format solicitations is approximately 8 hours (one business day); therefore, the total annual burden is estimated to be between 4,000 and 6,000 hours. The FTC estimates that the total cost for all affected firms will be between $110,000 and $167,000. This estimate is based on Bureau of Labor Statistics data (as of July, 2002), as follows: 2 hours of managerial/professional time [12] at $31.55 per hour; plus 6 hours of skilled technical labor at $26.44 per hour; multiplied by 500 and 750 entities, for a total of between $110,870 and $166,305.

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.

## VII. 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 FCRA previously mandated the opt-out disclosure. The Act requires the Commission to adopt a rule to make the required disclosure simple and easy to understand. The proposed Rule applies to any entity that makes prescreened offers of credit or insurance. The Commission has been unable to determine the number of small entities that purchase prescreened lists from consumer reporting agencies. However, the Commission believes that very few small entities make prescreened offers. Based on discussions with various trade associations, the Commission estimates that very few small businesses engage in prescreened solicitations because many small businesses find it more cost effective to engage in point-of-sale solicitations and/or solicitations of existing customers. Although there may

[12] The legal, professional, and training costs of implementing this Rule are likely to be inconsequential. Such costs were already incurred when the FCRA first required prescreen opt-out disclosures. The nature of this proposed Rule limits additional costs in these areas by providing models for compliance with the proposed Rule. Therefore, the primary cost incurred by this proposed Rule will be incurred by the reformatting of solicitations.

be some small entities among the entities making prescreened offers, the economic impact of the proposed Rule is not likely to be significant on a particular entity, nor is the proposed Rule likely to have a significant economic impact on a substantial number of small entities. The minimal impact on creditors and insurers would likely consist of revising disclosures that they already give in order to make the disclosures simple and easy to understand, and the proposed Rule would provide model notices to aid in this undertaking.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed Rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, 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 Act directs the FTC to adopt a rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance. In this action, the FTC is proposing, and seeking comment on, a proposed Rule that would implement this requirement of the FACT Act.

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

The objective of the proposed Rule is to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance by establishing a format, type size, and manner of the notice so that the notice will be simple and easy to understand. The proposed Rule is authorized by and based upon section 213(a) of the FACT Act, Pub. L. 108–159, 117 Stat. 1952.

*C. Small Entities to Which the Proposed Rule Will Apply*

As described above, the proposed Rule applies to any entity, including small entities, that makes prescreened offers of credit or insurance. The Commission has been unable to ascertain a precise estimate of the number of small entities that are creditors or insurers. Entities covered by the Rule include any entity that extends credit or insurance, including insurance companies, retailers, department stores, and banking institutions, if they are engaging in prescreened offers of credit. For these kinds of entities, the Small Business Administration defines small business to include, in general insurance companies and retailers whose annual receipts do not exceed $6 million in total receipts, and department stores whose annual receipts do not exceed $23 million in total receipts. For banking institutions, the Small Business Administration defines small business to include entities whose total assets do not exceed $150 million.[13]

However, not all businesses that extend credit or insurance are required to comply with the Rule. Rather, only such entities that make prescreened solicitations will be subject to the Rule's requirements. Although the number of small businesses that offer credit or insurance is large, the Commission estimates that only a small number of those businesses engage in prescreened solicitations. Based on discussions with various trade associations, the FTC understands that many small businesses do not find prescreened solicitations to be cost-effective. The Commission invites comment and information on this issue.

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

Under the proposed Rule, any entity making a prescreened offer of credit or insurance will be required to provide recipients of the offer with a disclosure regarding their right to opt out of such offers. These disclosures are to be in a form that is simple and easy to understand. As noted in the Paperwork Reduction Act analysis above, the estimated time to revise the notice and re-format solicitations is approximately 8 hours (one business day), and the total cost for all entities to comply with this Rule is between $110,00 and $167,000. The FTC is seeking comment on these cost and burden estimates.

[13] These numbers represent size standards for most entities in the industries mentioned above. A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/size/indextableofsize.html*.

*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. The statutory requirements are specific as to the information that must be conveyed in the disclosure. The Commission is given some flexibility in establishing the format, type size, and manner of the disclosure, so long as the disclosure is simple and easy to understand. The proposed Rule allows companies to retain flexibility in determining how best to meet the standards set forth by the proposed 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; (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the Rule on such small entities; (3) whether the length or format of the disclosure should be adjusted to make it less burdensome while still satisfying the statutory requirements; (4) whether the effective date is appropriate; and (5) whether any particular small business has a need for a longer compliance period. 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.

## VIII. 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.

1. Are the proposed requirements for format and manner of disclosure appropriate and adequate to fulfill the purpose of enabling consumers to understand their right to opt out of receiving prescreened offers?

2. Does the layered notice requirement provide a simple and easy format for disclosing the required information? Are the type sizes proposed for the short notice and the long notice appropriate? Should they be larger? Should they be smaller?

3. Is the requirement that the short notice be ''on the first page of the principal promotional document in the solicitation'' sufficient to ensure that the short notice is prominent and noticeable? Should ''principal promotional document'' be a defined term? Should there be a safe harbor for placing the short notice on the first page of the document that is designed to be seen first by the consumer? What other factors should be considered in determining whether a document is the ''principal promotional document''?

4. Is there additional information that should be required in the short notice to enhance its simplicity and understandability? If additional information is needed, identify the information and state why it is needed.

5. Should the Rule allow additional information in the short notice? If so, what, if any, restrictions or conditions should apply to the inclusion of additional information?

6. Is there additional information that should be required in the long notice to enhance its simplicity and understandability? If additional information is needed, identify the information and state why it is needed.

7. Should the Rule prohibit information beyond that required by the statute from being included in the long notice?

8. Should the Rule require the long notice to appear in the same document as the short notice?

9. Is the effective date adequate and appropriate? If not, please specify what an appropriate effective date would be and provide specific information regarding why an effective date other than the date in this proposed Rule is necessary and appropriate. For example, is the effective date adequate for marketers to exhaust their existing inventories of solicitation forms, re-design the opt-out notice in order to incorporate the layered approach, and print solicitations with the new layered notices? Is there any small business that has a particular need for a longer period for compliance?

10. Are the model notices simple and easy to understand? Are there terms used in the model notice that are not likely to be understood by ordinary consumers? If so, what are those terms, and what other terms would be understandable? For example, is the term ''criteria'' understandable to ordinary consumers? Are ordinary consumers more likely to understand a term such as ''credit standards'' or ''requirements''?

11. Do the model notices adequately provide consumers with the information necessary to exercise their right to opt out? If additional information is needed, identify such information and state why it is needed.

12. Do the model notices offer helpful guidance for complying with the Rule?

13. The model long notice includes the name of the consumer reporting agency to whom the consumer can write to exercise the opt-out right. Is this helpful to consumers? Should the notice include the names of all nationwide consumer reporting agencies?

14. To what extent do credit and insurance providers make prescreened solicitations electronically? Describe the circumstances under which a prescreened solicitation would be made electronically. Are electronic prescreened offers likely to become more prevalent? Does the proposed rule adequately address prescreened offers that are made electronically?

15. What is the number and nature of entities that are covered by the Rule? Are any of these entities small businesses? (See *http://www.sba.gov/size/indextableofsize.html* for guidance on what constitutes a ''small business.'') If so, what is the number and nature of any such small business entities? How many of these small entities make prescreened offers of credit or insurance?

16. 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 above analysis. 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, as well as notice reformatting, mailing, or other implementation costs.

17. 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.

18. Please describe whether and how technological developments could reduce the costs to small entities of complying with the proposed Rule.

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

20. 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 642*

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. Add new part 642 to read as follows:

## PART 642—PRESCREEN OPT-OUT NOTICES

Sec.
642.1 Purpose and scope.
642.2 Definitions.
642.3 Prescreen opt-out notices.
642.4 Effective date.

**Authority:** Public Law 108–159, sec. 213(a); 15 U.S.C. 1681m(d).

### § 642.1 Purpose and scope.

(a) *Purpose.* This part implements section 213(a) of the Fair and Accurate Credit Transactions Act of 2003, which requires the Federal Trade Commission to establish the format, type size, and manner of the notices to consumers, required by section 615(d) of the Fair Credit Reporting Act (''FCRA''), regarding the right to prohibit (''opt out'' of) the use of information in a consumer report to send them solicitations of credit or insurance.

(b) *Scope.* This part applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)).

### § 642.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Simple and easy to understand* means plain language designed to be

understood by ordinary consumers. For purposes of this part, factors to be considered in determining whether a statement is simple and easy to understand include:

(1) Use of clear and concise sentences, paragraphs, and sections;

(2) Use of short explanatory sentences;

(3) Use of definite, concrete, everyday words;

(4) Use of active voice;

(5) Avoidance of multiple negatives;

(6) Avoidance of legal and technical business terminology;

(7) Avoidance of explanations that are imprecise and reasonably subject to different interpretations; and

(8) Use of language that is not misleading.

(b) [Reserved]

### § 642.3 Prescreen opt-out notices.

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to the person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with the following notifications, both of which shall be in the same language as the offer of credit or insurance:

(a) *Short notice.*

(1) *Content.* The short notice shall be a simple and easy to understand statement that the consumer has the right to opt out of receiving prescreened solicitations, and the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice required by paragraph (b)(2)(iv) of this section. The short notice shall not contain any other information.

(2) *Form.* The short notice shall be:

(i) Prominent, clear, and conspicuous;

(ii) In a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12-point type;

(iii) On the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the first screen;

(iv) Located on the page and in a format so that the statement is distinct from other text, such as inside a border; and

(v) In a typeface that is distinct from other typeface used on the same page, such as bolding, italicizing, underlining, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color.

(b) *Long notice.*

(1) *Content.* The long notice shall be a simple and easy to understand statement that includes the information required by section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)). The long notice shall not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the opt-out notices.

(2) *Form.* The long notice shall:

(i) Be clear and conspicuous;

(ii) Appear in the solicitation;

(iii) Be in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type;

(iv) Begin with a heading in capital letters and underlined, and identifying the long notice as the ''OPT-OUT NOTICE'';

(v) Be in a typeface that is distinct from other typeface used on the same page, such as bolding, italicizing, underlining, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color; and

(vi) Be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

### § 642.4 Effective date.

This part shall become effective sixty (60) days after this part becomes final.

## PART 698—SUMMARIES, NOTICES, AND FORMS

2. Revise the authority citation in part 698 to read as follows:

**Authority:** 15 U.S.C. 1681e, 1681g, 1681j, 1681m(d), 1681s; Pub. L. 108–159, sections 151, 153, 211(c) and (d), 213, and 311, 117 Stat. 1952.

3. Amend § 698.1 by revising paragraph (b) to read as follows:

### § 698.1 Authority and purpose.

* * * * *

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), 609(d), 612(a), and 615(d) of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and Section 211 of the Fair and Accurate Credit Transactions Act of 2003.

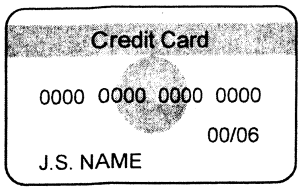
4. Add Appendix A to Part 698 as follows:

## Appendix A to Part 698—Model Prescreen Opt-Out Notices

In order to comply with section 615(d) of the FCRA (15 U.S.C. 1681m(d)) and part 642 of this chapter, the following model notices may be used. These notices include model language and also are intended to illustrate the proper placement and display of the language. The proposed illustrations are modeled on actual solicitations, but, except for the operative model language, substitute dummy text for the remainder of the solicitation to demonstrate more clearly proper format, manner, and type size of prescreen opt-out notices.

BILLING CODE 6750–01–P

**English Language Model Notice: Short Notice**




# Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

Sincerely,

John W. Doe
President, Credit Card Company

PFOR 00 MON
FIXED ABC

BALANCE TR
FOR 00 MONTHS

NO MONTHS FEE

INTERNET SECURITY
SECURITY

ONLINE FRAUD PRO
GUARANTEE

YOUR BALANCE
PAY YOUR BILL

FEE-FREE REWARDS
PROGRAM

**To stop receiving "prescreened" offers of [credit or insurance] from this and other companies, call toll-free, [toll-free number]. See OPT-OUT NOTICE on other side [or other location] for details.**

## English Language Model Notice: Long Notice

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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**TERMS AND CONDITIONS**

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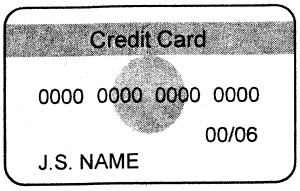
Act Notice: the a smart kind of credit card. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw.

**<u>OPT-OUT NOTICE</u>: This "prescreened" offer of [credit or insurance] is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria. If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address].**

**Notice to Some Residents:** te a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

**Spanish Language Model Notice: Short Notice**




# Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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Sincerely,

John W. Doe
President, Credit Card Company

PFOR 00 MON
FIXED ABC

BALANCE TR
FOR 00 MONTHS

NO MONTHS FEE

INTERNET SECURITY
SECURITY

ONLINE FRAUD PRO
GUARANTEE

YOUR BALANCE
PAY YOUR BILL

FEE-FREE REWARDS
PROGRAM

**Para no recibir más "ofertas de [crédito o seguro] pre-investigadas" de ésta y otras compañías, llame gratis [toll-free number]. Consulte los detalles en el AVISO DE EXCLUSIÓN VOLUNTARIA al otro lado de esta pagina.**

## Spanish Language Model Notice: Long Notice

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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**TERMS AND CONDITIONS**

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**AVISO DE EXCLUSIÓN VOLUNTARIA (*OPT-OUT*): Esta oferta de [crédito o seguro] está basada en información contenida en su informe de crédito que indica que usted cumple con ciertos criterios. Si usted no cumple con nuestros criterios, esta oferta no está garantizada. Si usted no desea recibir ofertas de [crédito o seguro] pre-investigadas de ésta y otras compañías, llame gratis [toll-free number]; o escriba a: [consumer reporting agency name and address].**

**Notice to Some Residents:** te a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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