FEDERAL TRADE COMMISSION

16 CFR Chapter I

[RIN 3084–AA94]

Fair and Reasonable Fee for Credit Score Disclosure

AGENCY: Federal Trade Commission (FTC).

ACTION: Advance notice of proposed rulemaking, request for comment.

SUMMARY: Section 212(b) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') amends the Fair Credit Reporting Act (''FCRA'') by adding a new section 609(f), which mandates that consumer reporting agencies make available upon request a consumer's credit score, together with other information. Section 609(f)(8) provides that a consumer reporting agency may charge a ''fair and reasonable fee, as determined by the [Federal Trade] Commission'' for such disclosure.

In this document, the Federal Trade Commission (''FTC'' or ''Commission'') is publishing for comment an advance notice of proposed rulemaking that would implement the requirement in section 609(f)(8) of the FCRA that it determine a fair and reasonable fee to be charged by a consumer reporting agency for providing the information required under FCRA section 609(f).

DATES: Comments must be received by January 5, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FACTA Credit Score Fee, Project No. R411004'' 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/ Office of the Secretary, Room H–159 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2004).[1]

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-CreditScoreFee* 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/ftc-CreditScoreFee* weblink. You may also visit *http://www.regulations.gov* to read this advance notice of proposed rulemaking, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

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 *http://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: Christopher Keller, Attorney, (202) 326–3224, Division of Financial Practices, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The FCRA, enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is collected and communicated by consumer reporting agencies. 15 U.S.C. 1681–1681x. Since its inception in 1970, the FCRA has provided generally that a consumer may learn of the information that consumer reporting agencies maintain concerning the consumer. As originally enacted, the FCRA provided that a consumer could obtain disclosure of the ''nature and substance'' of the information in his or her file at the consumer reporting agency.

In 1996, the Consumer Credit Reporting Reform Act, Pub. L. 104–208, 110 Stat. 3009, amended the FCRA to provide that a consumer may obtain disclosure of ''[a]ll information in the consumer's file at the time of the request * * *,'' as well as a summary of consumer rights under the FCRA. However, the 1996 amendment specifically excluded from the information required to be disclosed to consumers ''any information concerning credit scores or any other risk scores or predictors relating to the consumer.''

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952, amends the FCRA to add a new subsection 609(f) to the FCRA, giving consumers the right to obtain disclosure of credit scores and related information.[2] The requirement to disclose a credit score applies to consumer reporting agencies that ''distribute scores that are used in connection with residential real property loans,'' or ''develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.''[3] The provision requires only the disclosure of a ''mortgage score'' or ''educational score,'' and does not require disclosure of other risk scores based on credit information, such as those used to underwrite auto loans, personal loans, credit cards, or insurance products.[4]

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

[2] In relevant part, Section 212(b) of the FACT Act provides:

(b) DISCLOSURE OF CREDIT SCORES—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

''(f) DISCLOSURE OF CREDIT SCORES—

''(1) IN GENERAL—Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

''(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

''(B) the range of possible credit scores under the model used;

''(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4 * * *;

''(D) the date on which the credit score was created; and

''(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.''

[3] FCRA section 609(f)(4).

[4] Section 609(f)(7)(A) provides that ''In complying with this subsection, a consumer reporting agency shall supply the consumer with [1] a credit score

New subsection 609(f)(8) provides that the consumer reporting agency may charge a ''fair and reasonable fee, as determined by the Commission'' for such disclosure.

New section 609(f)(2)(A) of the FCRA defines a credit score as ''a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default.'' Generally, the higher the score, the lower the predicted risk.[5]

Currently, there appears to be an extensive and dynamic market for credit score products. In addition, several sellers are developing and introducing diverse new scoring products. Many of these sellers are not consumer reporting agencies, and thus would not be subject to the Commission's fee determination under FCRA section 609(f)(8). Consumers can buy scores from several companies, including subsidiaries of nationwide consumer reporting agencies and Fair Isaac and Company (FICO), the company that initially developed credit scoring. Other companies have also entered the market.[6]

Scores are available to consumers in a wide variety of forms and delivery methods, both directly from the companies that provide the scores and score products themselves, and indirectly through entities that have existing relationships with consumers (*e.g.*, credit card issuers) who ''partner'' with the score suppliers. Some companies that offer consumer credit scores also provide a variety of educational material, including tutorials and interactive exercises that allow consumers to see how modifications in credit behavior (such as closing an account or making a larger payment) might affect their credit score.[7]

Most credit score products available to consumers include not only a score, but also a copy of the consumer's complete credit report and educational materials.[8] Some products include additional features, such as a monitoring function—*e.g.*, a service that alerts the consumer when new or negative information is added to the consumer's file or new accounts are opened in the consumer's name.[9] The ''bundled'' services are available at prices that range from $14 to $90, depending on the duration of the service and the range of options offered with the package. For those packages that include only the consumer's full report plus a score, the incremental cost of the score component of the product appears to be in the range of $4 to $7.[10]

Stand-alone scores, such as those required by section 609(f), appear to be available in those states that mandate free credit reports, and particularly in California and Colorado, where state laws require the disclosure of credit scores.[11] In California and Colorado, the laws requiring disclosure of scores also permit a consumer reporting agency to charge a ''reasonable'' fee.[12] In those states where a score-only product is available, the cost range is approximately $5 to $8.[13]

II. Possible Approaches for Commission Determination

Section 609(f)(8) of the FCRA states that consumer reporting agencies may charge a fair and reasonable fee ''as determined by the Commission.'' The law does not specify the manner in which that fee is to be determined. The Commission invites comments from all interested parties on any aspect of a proposed determination of a fair and reasonable fee for score disclosure. In setting out its background discussion above, and in reviewing various potential approaches to its determination below, the Commission does not wish to preclude comment on any alternatives, or the submission of appropriate background information. The Commission invites comment on approaches and factors that should be considered in determining a fee for the disclosures required under FCRA section 609(f), as well as comment on underlying premises that it should employ in considering various approaches and factors.

There are several possible approaches that the Commission could take to make the required determination. One approach would be to establish a single mandatory price that regulated entities must charge for a score disclosure. Such an approach could provide clarity and certainty for both the industry and consumers. On the other hand, a fixed price might result in a higher fee than a consumer would be asked to pay in a competitive market; where the price is set above the level the regulated seller would otherwise charge, consumers could pay more than they would without intervention. If the fee is set too low, however, it may discourage competition on other terms of the transaction. For example, the seller may choose to cut corners elsewhere, such as quality, service, or willingness to innovate. In a market such as this—with both regulated sellers (consumer reporting agencies who distribute mortgage scores or develop their own scoring models) and unregulated sellers (non-consumer reporting agencies and consumer reporting agencies that do not sell mortgage scores or develop proprietary scores)—a fixed price may place regulated sellers at a competitive disadvantage to unregulated sellers.

A maximum fee is another potential approach (setting a ''cap'' or upper limit on the fee that could be charged). A maximum fee may be preferable to a mandatory fee because it would allow

---

that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or [2] with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer.'' Section 609(f)(7), 15 U.S.C. 1681g(f)(7). Thus, consumer reporting agencies may provide consumers with a score derived from an actual model used to calculate scores for mortgage underwriting, or may opt to provide consumers with a so-called ''educational score,'' which shows a consumer how scoring works and the perceived credit risk that the consumer presents relative to other consumers.

[5] *See http://www.ftc.gov/bcp/creditscoring/present/index.htm* (describing the development and application of scoring models). Section 212(c) of the FACT Act (''Disclosure of Credit Scores by Certain Mortgage Lenders''), which adds subsection (g) to section 609 of the FCRA, specifies the text of an educational disclosure notice that mortgage lenders are required to supply to consumers. The notice describes how scores are derived and explains their significance to the consumer. Section 609(g)(1)(A) and (D); 15 U.S.C. 1681g(g)(1)(A), (D).

[6] For example, in April 2004, Intersections, Inc., a company specializing in providing various credit information products direct to consumers, made an initial public offering of common stock. *See American Banker,* ''Young Credit Monitoring Firm Gets Cap One Feather in Cap,'' Sept. 15, 2004.

[7] *See, e.g., http://www.myfico.com/.*

[8] *See, e.g., http://www.transunion.com/; http://www.experian.com/; https://www.econsumer.equifax.com/; http://www.freecreditadvice.com/; http://www.consumerinfo.com/; http://www.truecredit.com/.*

[9] *See, e.g., http://www.freecreditreport.com/.*

[10] We look only at report-plus-score products because where the ''bundle'' includes added services or products, the cost of the additional items would be difficult to ascertain. The score component calculation is based on an assumption that, of the total fee for the package, the basic cost of the full credit report accounts for approximately $9, which is the price generally charged by consumer reporting agencies for a stand-alone copy of a consumer report.

[11] Sections 1785.10 and 1785.15.1 of the California Civil Code, effective July 1, 2001; Section 12–14.3–104.3 of the Colorado Revised Statues. Section 212(b) of the FACT Act is based on the California statute.

[12] Section 1785.15.2(b) of the California Civil Code, and section 12–14.3–104.3(5) of the Colorado Revised Statutes, respectively. Although the statutes permit consumer reporting agencies to charge a ''reasonable fee,'' they do not specify a fee or a mechanism for determining one.

[13] TransUnion offers a stand-alone score for $4.95 through its Web site. *See http://www.transunion.com/Personal/CreditReportandScoreFees.jsp.* Based on telephone inquiries in California made in mid-2004, Experian sells a score alone for $6, and Equifax charges $8.

regulated entities to compete on price.[14] If the price cap is set below the level the regulated seller would otherwise charge, however, it shares many of the drawbacks of a mandatory price. Furthermore, as academic commenters have recognized, a maximum price can become a de facto mandatory price.[15] For example, the nine-dollar maximum fee specified in the Fair Credit Reporting Act's section 609(f) for the disclosure of consumer report information to consumers has become, in practice, the industry norm: the three major nationwide consumer reporting agencies all charge $9 for consumer file disclosures, despite the opportunity to compete on price below the statutory limit.

Moreover, any set fee, whether mandatory or maximum, runs the risk of becoming obsolete.[16] A set fee may become too low—*e.g.*, if the costs of producing or delivering a score rise; or it may become too high—*e.g.*, if new technology lowers the costs of selling a score or if market participants would compete on price absent the regulation.

Some of these problems may be addressed by adjusting the set price periodically by a preannounced external factor—*e.g.*, the consumer price index. There is a variety of ways in which such adjustments might be undertaken—they could be automatic and required within any rule that the Commission adopts as its determination, or they could be initiated by the Commission in the context of periodic review of its determination. If the adjustments were automatic, the Commission could itself make the adjustment based on preannounced criteria,[17] or it could provide a formula for periodic adjustment that those subject to the rule would be required to apply and implement.

One limitation to the usefulness of an externally-derived price adjustment is the fact that it would not take into account possible changes, *e.g.*, in technology or costs, that are internal to a specific firm or the industry. In order to account for such changes, the Commission could readjust fees based on an examination of the internal operations of each individual firm. In the public utility context, this is typically done by a detailed examination of a firm's operating costs and profits, capital employed, cost of capital, and rate of return on capital. Of course, this would be a potentially difficult and complex inquiry for the Commission to undertake in this proceeding, especially because it may be difficult to specify which cost elements should be included in the calculations or how to allocate fixed costs, such as the cost of developing the scoring model.

Another approach that the Commission might consider would be to make a determination that looks to those charges produced by a competitive market as the basis for a fair and reasonable fee. Such a determination might be done with varying degrees of Commission involvement. For example, the Commission might conduct a periodic market survey to determine the range of prices charged and whether those prices are the product of competition, and set a price or a range of prices.

A market-based approach is attractive because a competitive market generally provides the most rational, responsive, and efficient form of pricing. Typically, the market is able to produce and account for relevant factors: prices, quality, service, costs, encouragement of investment, and promotion of competition. The government often sets cost-based fees in the public utility context, because regulators often have no competitive market to which they can refer. In the case of direct-to-consumer credit scores, however, there currently exists a market with many buyers and sellers on which the Commission might base a determination. In its consideration of whether a market-based determination is appropriate and feasible, the Commission seeks comment on whether there is reason to believe that the fees being charged consumers for credit scores today are not fair and reasonable, that there is not active price competition, or that the market is not producing appropriate pricing incentives.[18]

More specifically, the Commission seeks comment on an appropriate methodology for determining a fair and reasonable fee if it elected a market-based approach. One method that the Commission might consider would take advantage of the market in credit scores by determining a fee that fluctuates based on that market. For example, the Commission's survey of the market to be regulated shows that prices between $5 and $8 currently are charged.[19] A determination that reflects a dynamic, competitive market might include a set or maximum fee based on a calculated weighted mean figure. This approach could require the fee to be readjusted as the weighted mean price for credit scores rises and falls. If the Commission adopted such an approach, it would need to specify whether the Commission itself would make such market-based readjustments, or whether affected parties would be required to determine and apply readjustments based on a Commission-supplied formula.

The Commission also seeks comment on whether a fee determination based on ongoing assessment of the market might be an appropriate method on which to base its determination, and also whether such an approach might have drawbacks. Any market-based approach assumes that the market in direct-to-consumer credit scores will persist. The Commission seeks comment on both the current state of the market for credit scores and anticipated changes in the market. For example, a factor that could lead to changes in market forces is consumers' new right under the FACT Act to obtain a free annual copy of their consumer reports from each of the nationwide consumer

[14] ''[C]utting prices in order to increase business is often the very essence of competition.'' Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986).

[15] *See, e.g.*, Scherer, *Industrial Market Structure and Economic Performance* at 190–93, 204 (1980); Scherer, ''Focal Point Pricing and Conscious Parallelism,'' in Scherer, *Competition Policy, Domestic and International,* at 89–97 (2000). Although uniform prices might be the result of collusion, the outcome also can be due more innocently to a phenomenon sometimes referred to as ''focal point pricing.'' In this situation, competitors in a market coalesce around an externally imposed ''focal point,'' such as a government price control. *See also Arizona* v. *Maricopa County Med. Soc.,* 457 U.S. 332, 348 (1982) (stating that a maximum price fixing agreement ''may be a masquerade for an agreement to fix uniform prices, or it may in the future take on that character'').

[16] 'The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow.'' *United States* v. *Trenton Potteries Co.,* 273 U.S. 392, 397 (1927).

[17] Such an adjustment procedure would be analogous to the statutory adjustment, undertaken annually by the Commission, to the fee that consumer reporting agencies can charge consumers for disclosure of their credit files. (In 1996, Congress specified an $8 ''cap'' on the fee that consumer reporting agencies can charge for full-file disclosure to consumers. Section 612(a)(1)(A)(i) of the FCRA, 15 U.S.C. 1681j(f)(1)(A)(i). FCRA section 612(f)(2) provides that the Federal Trade Commission shall increase the amount based proportionally on changes in the Consumer Price Index. The current limit is $9. See *http://www.ftc.gov/os/2002/12/fedcreditstatutesfrn.htm.).*

[18] While there seems to be little variation in the price of the underlying consumer credit file that is being scored, which as noted is capped currently at $9, the several participants in the market appear to compete vigorously in other aspects of the direct-to-consumer score package (*e.g.*, the score itself, accompanying educational materials, and follow-up services). Furthermore, there is price dispersion in the market for bundled scores, as well as the market for stand-alone scores. *See supra* notes 7–13 and accompanying text (the current range for bundled scores is $4 to $7 and the current range for stand-alone scores is $5 to $8).

[19] Prices for credit scores appear to range between $4 and $7 in the unregulated market.

reporting agencies through a ''centralized source.''[20] Nationwide consumer reporting agencies may choose to market scores to consumers (and may choose to fulfill their statutory obligation under section 609(f)) through the centralized source.[21] The centralized source may increase demand for scores by promoting consumer awareness of score availability, and might further competition among the nationwide consumer reporting agencies that sell scores through the centralized source. On the other hand, the centralized source might provide a competitive advantage to these consumer reporting agencies vis-a-vis other sellers of scores due to the ''captive'' audience of consumers that it supplies.[22]

The Commission is seeking to make a determination that would preserve for consumers the benefits of competition in both the regulated and unregulated market, while protecting consumers from the non-competitive prices that might occur in these markets in the event that competition deteriorates. Optimally, the Commission seeks to identify and implement an approach that will result in a fee that is fair to consumers; will provide regulated entities with a sufficient level of certainty; will encourage regulated entities to compete on price, quality, and service; will encourage innovation and cost-cutting; will avoid unduly interfering with the unregulated market for credit scores; and does not involve a lengthy rate-making proceeding or reliance upon proprietary cost or revenue data.

The Commission seeks comment on the relative merits of each approach, as well as comments and suggestions on other appropriate factors to take into account in determining a fair and reasonable fee or periodically adjusting that fee.

[20] Section 211(d) of the FACT Act. Under the Commission's rule implementing this requirement, this centralized source will first be available to some consumers beginning December 1, 2004, with full implementation by September 1, 2005. *See* 16 CFR 610, 69 FR 35468 (June 24, 2004). *See also http://www.ftc.gov/os/2004/05/040520factafrn.pdf and http://www.ftc.gov/os/2004/06/040624factafreeannualfrn.pdf.*

[21] *Id.*

[22] The FACT Act also contains a new requirement that mortgage lenders disclose a credit score to home loan applicants, along with an explanatory notice. Section 212(c) of the FACT Act adds new FCRA section 609(g), effective December 1, 2004, mandating score disclosure and providing the text of the educational ''Notice to the home loan applicant.'' This mandated disclosure and notice may increase consumer awareness of credit scores, which might increase consumer demand for scores, but also could diminish demand for score purchases, because those consumers who apply for home loans will receive scores for free.

Effective Date

The Commission proposes an effective date of thirty days after promulgation of its final determination.

The Commission recognizes that the provisions of FCRA section 609(f) will become effective on December 1, 2004 without regard to whether the Commission has made a determination or given guidance on how it will determine whether a particular fee is fair and reasonable.[23] Although Congress has directed credit scores be available for a fair and reasonable fee as determined by the Commission, it did not impose a deadline for a determination nor has it required that the determination be made in any particular manner. Furthermore, there is no indication that Congress meant to require regulated entities to make the required disclosures free of charge. For these reasons, the Commission interprets section 609(f) to allow regulated entities to charge a fee for required disclosures in advance of any specific Commission determination or other guidance, so long as that fee is fair and reasonable. Thus, absent additional Commission action on or before December 1, 2004, consumer reporting agencies must disclose mortgage or educational scores to consumers and may charge a fair and reasonable fee for those disclosures. Indeed, this process is currently used in the states that require similar disclosure.

The Commission's enforcement of the ''fair and reasonable'' requirement will be by reference to the extant market in credit scores. Thus, at present the Commission may question any fee that significantly exceeds the current market rates for credit scores, which are currently in the range of $4 to $8.

III. Request for Comments

The Commission welcomes comment on all aspects of the determination it will make, including policy and pragmatic considerations associated with any potential approach to determining a fair and reasonable fee for credit score disclosure, costs and benefits to all affected parties, implementation considerations, and any other issues bearing on the Commission's determination. Specifically, the Commission seeks comment on the range of approaches outlined above, as well as suggestions for alternative approaches to fee determination, and comments prompted by the following considerations and questions. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by January 5, 2005.

[23] See 16 CFR 602.1(c)(3)(x) (establishing December 1, 2004 as the effective date for FACTA Section 212(b)).

(1) The Commission believes that the current market in direct-to-consumer scores is competitive and healthy—there appears to be price dispersion, innovation, and a variety of products and sellers. Is this an accurate characterization of the market? If so, why? If not, why? The Commission believes that one nationwide consumer reporting agency—TransUnion—sells stand-alone credit scores to consumers for $4.95 in states that mandate free file disclosures. Three nationwide consumer reporting agencies sell stand-alone scores in California and Colorado for prices ranging from $4.95 to $8. Is this accurate? Are these the only circumstances under which consumers can obtain stand-alone credit scores? The Commission believes that most scores are sold as part of a package or are bundled with a consumer report and other information or services. Is this accurate? What is the range of prices for these products? By what method should the score component of a package or bundle or goods and services be valued?

(2) The Commission recognizes that its determination under FCRA Section 609(f) will apply only to a portion of the market—consumer reporting agencies that distribute ''mortgage'' scores or develop their own credit scores—and only to two scoring products currently offered to consumers—''mortgage'' scores and ''educational'' scores. How many consumer reporting agencies would be subject to this requirement? What percentage of the credit score market would be regulated, and what percentage unregulated?

(3) The Commission is aware that many non-consumer reporting agencies offer scores and related products to consumers. What is the relevant market for purposes of the Commission determination? What would be the competitive effects of the imposition of a maximum price requirement that applies only to a part of the market for scores? Would a maximum price requirement in the limited market for ''statutory'' scores (*i.e.*, mortgage or educational scores provided by consumer reporting agencies) have effects on the broader, unregulated market for scores?

(4) It is the Commission's understanding that many consumer reporting agencies do not currently provide scores directly to consumers, but do so through non-consumer reporting agency subsidiaries. Will consumer reporting agencies choose to fulfill the statutory requirement in

FCRA Section 609 through non-consumer reporting agency subsidiaries?

(5) Consumer reporting agencies can fulfill FCRA Section 609's requirement by providing consumers with mortgage or educational scores. How will consumer reporting agencies choose to fulfill this requirement and what type of score are they most likely to provide to consumers? Why?

(6) Among the potential approaches available to the Commission is determining a fee based on the market for scores. In that context, what is the appropriate market to consider: the market for stand-alone mortgage and educational scores sold by consumer reporting agencies, or the market for all credit scores sold by consumer reporting agencies and non-consumer reporting agencies? If a market-based approach is appropriate, are these two markets appropriate reference points? Are there other markets that should be considered? Overall, what is the appropriate market, and what are the factors that the Commission should consider in determining the appropriate market?

(7) The Commission welcomes comment on whether other factors, in addition to prices charged in a competitive market, should be taken into account in determining a fair and reasonable fee for required disclosures (*e.g.*, cost data, revenue data, other market conditions). Comments should discuss the pragmatic aspects of each factor advanced for consideration; for example, whether data underlying a given factor are readily available or difficult to obtain.

(8) For any determination involving a specified dollar amount for a fair and reasonable fee, should the Commission include within a final determination a mechanism for periodic adjustment of the specified amount? If so, what approach is desirable for such adjustment and what entity or entities should determine the specific adjustment? Should the Commission initiate new assessments of all of the factors underlying its determination at a fixed time interval, or only when a factor changes significantly? Should the Commission's determination include an ''automatic'' adjustment keyed to the consumer price index or similar economic index? Should periodic adjustments be required to be both determined and implemented by the regulated entities based on a formula set forth within the Commission's determination? Are there other bases for periodic adjustment that might be appropriate?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–24841 Filed 11–5–04; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF28

Revised Medical Criteria for Evaluating Impairments of the Digestive System

AGENCY: Social Security Administration.

ACTION: Proposed rules; limited reopening of comment period.

SUMMARY: We are reopening for limited purposes the comment period for the notice of proposed rulemaking (NPRM) that we published in the **Federal Register** on November 14, 2001 (66 FR 57009). We have decided to reopen the comment period for 60 days to solicit additional public comments on our proposal to revise and remove several of the chronic liver disease listings from the Listing of Impairments (the listings) because we believe that the revisions we propose are significant. We are reopening the comment period only to accept comments about chronic liver disease. Due to the limited reopening of the NPRM, we will not consider any comments on other aspects of the proposed listings for the digestive system.

DATES: To be sure your comments are considered, we must receive them by January 7, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa. gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at *http://policy.ssa. gov/pnpublic.nsf/LawsRegs* or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess. gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1767 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On November 14, 2001, we published ''Revised Medical Criteria for Evaluating Impairments of the Digestive System'' as an NPRM in the **Federal Register** (66 FR 57009). You may find this document at our Web site: *http://policy.ssa.gov/erm/rules.nsf/5da82b031a6677dc85256b41006b7f8d/a37bb476cb 227bdd85256b410067a74d?OpenDocument.*

This NPRM proposed to revise the criteria in the Listings that we use to evaluate claims involving impairments of the digestive system. We explained in the proposed rules that we were revising and removing several of the chronic liver disease listings because of the progress in medical and surgical advancements in treating these diseases. When we published the NPRM, we provided a 60-day comment period that ended January 14, 2002. We have reviewed and considered all the comments we received during the comment period. However, we received few comments regarding our proposed revisions to the listings that specifically involve chronic liver disease. Because we believe that the revisions we propose are significant, we want to ensure that the public has another opportunity to review and comment on those proposals involving the evaluation of chronic liver disease. In order to allow the public sufficient time to review and comment on our proposals, we have decided to provide an additional 60-day comment period within which to comment on our proposal to revise and remove several of the listings for evaluating chronic liver disease. If you have already provided comments on the proposals, your comments will be considered and you do not need to resubmit them.