

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 792

RIN 3133-AD44

#### Revisions for the Freedom of Information Act and Privacy Act Regulations

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board is proposing changes to its Freedom of Information Act (FOIA) and the Privacy Act regulations. The changes to FOIA provisions largely relate to recent amendments to the Freedom of Information Act addressing several procedural issues concerning fee practices, time limits for complying with requests, and new reporting requirements. The changes to Privacy Act provisions reflect the agency's efforts to clarify the procedures whereby individuals may obtain notification of whether an NCUA system of records contains information about the individual and access or amend a record.

**DATES:** Comments must be received on or before June 24, 2008.

**ADDRESSES:** You may submit comments by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA Web Site:* [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Proposed Rule (FOIA/Privacy Act)" in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit

Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

**FOR FURTHER INFORMATION CONTACT:**

Linda K. Dent, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

**SUPPLEMENTARY INFORMATION:** NCUA's policy is to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each year. The changes in this proposed rule are the result of NCUA review under IRPS 87-2.

#### A. Background

##### *Freedom of Information*

The Openness Promotes Effectiveness in our National Government Act of 2007, (OPEN Government Act) was signed into law by the President on December 31, 2007. The OPEN Government Act of 2007 consists of several amendments to the Freedom of Information Act (FOIA) affecting FOIA administration. While many of the provisions are not effective until December 31, 2008, NCUA is using the opportunity of its periodic regulatory review to update its FOIA regulations to comply with the requirements of the Act. NCUA's FOIA provisions address: Types of agency records; their availability or exemption from release; procedures for requesting access to records; processing times; fees; appeals; and handling of FOIA requests involving confidential commercial information. NCUA publishes its FOIA rules at part 792, subpart A of the agency's regulations.

##### *Privacy*

The Privacy Act of 1974 places requirements on federal agencies regarding the collection, maintenance, distribution, and security of an individual's personal information that is contained in an agency's systems of records. Pursuant to the Privacy Act, NCUA publishes a Notice of Systems of Records that informs the public of each

system of records the agency maintains, describes the nature and routine use of records in the system, identifies the system manager responsible for the system including contact information, and provides procedures whereby individuals may determine whether a system contains a record pertaining to them, gain access to records pertaining to them, or seek to amend or correct information in a record about them. The Notice of Systems of Records is published in the **Federal Register** and also is available on NCUA's Web site at <http://www.ncua.gov>.

The Privacy Act also requires each federal agency to publish rules describing its Privacy Act procedures and any system of records it exempts from provisions of the Act, including the reasons for the exemption. NCUA publishes its rules at part 792, subpart E; the rules provide individuals with detailed information regarding the exercise of their rights under the Privacy Act, identifies and describes the NCUA systems of records that are exempt from provisions of the Privacy Act, and provides standards for NCUA employees regarding collecting, using, maintaining, or disseminating records.

#### B. Proposed Changes

##### *Freedom of Information*

The Board proposes several housekeeping changes to correct address information, cross-references, grammar and punctuation. More substantively, the Board proposes several changes designed to facilitate submissions of proper FOIA requests including where requests may be sent, how requests must be addressed, and what information must be included in a request. The Board also proposes to clarify the conditions and time periods for processing requests and to describe the circumstances that may halt or extend processing times.

Under the FOIA, federal agencies have a prescribed period of time to process requests for information. The Open Government Act clarifies the processing period begins on the date the request is first received by the appropriate information center, but in any event, no later than ten days after first received by any agency designated FOIA information center. The Open Government Act also clarifies the circumstances for tolling the processing time versus extending the processing

time in unusual circumstances. The proposed changes incorporate this information into the regulation by clearly identifying NCUA's Information Centers and their addresses, and describing required content for the request letter. The changes are intended to minimize delays caused by requests being sent to an inappropriate office or lacking necessary and sufficient information. The proposed rule clarifies that for the purpose of computing the time from which the agency must respond to the request, a FOIA request will not be considered received until these requirements are met.

In § 792.11, paragraph (a)(6), the Board proposes to clarify two circumstances where records, typically exempt from disclosure, may be released. Generally, an individual's records are exempt from disclosure to other persons if the release would constitute an invasion of personal privacy. However, where the requester provides the subject person's written consent to the release of his or her records or proof of the subject person's death, disclosure is permissible.

#### *Privacy*

The Board proposes several housekeeping changes to the regulation to correct cross-references, grammar and punctuation. The Board also proposes a change in nomenclature and additional definitions to improve understanding of rights and requirements under the regulation. For example, the term "system manager" would replace "NCUA official" to more specifically identify the person responsible for a system of records and to use nomenclature consistent with that used in the Notice of Systems of Records published in the **Federal Register**. Definitions would be added for "Notice of Systems of Records," "system manager" and "working day."

The Board proposes to revise language in various sections of the regulation to clarify that requests must be submitted in writing to the appropriate system manager generally, or to other staff as specified, and identifying the nature of the request on both the envelope and letter. The Board proposes to remove language which permitted individuals to submit requests via telephone because of the difficulties telephone requests present in meeting the regulation's identification requirements. These changes are intended to facilitate recordkeeping and the timely processing of Privacy Act requests. Revisions are proposed also for sections concerning medical records and the basis for exemptions of certain of NCUA's

systems of records from provisions of the Privacy Act.

#### **Request for Comment**

The NCUA Board is interested in receiving comments on the proposed amendments to subparts A and E of part 792.

#### **Regulatory Procedures**

##### *Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the proposed rule and determined it does not contain a collection of information subject to the PRA.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule does not impose any requirements on federally-insured credit unions. Therefore, it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

##### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

##### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

#### **List of Subjects in 12 CFR Part 792**

Administrative practice and procedure, Credit unions, Freedom of Information, Information, Privacy, Records, System of records.

By the National Credit Union Administration Board on April 17, 2008.

**Mary Rupp,**

*Secretary of the Board.*

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 792 as set forth below:

#### **PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION**

1. The authority citation for part 792 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p.235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p.333.

2. In § 792.3, revise the fourth sentence of the introductory text and the last sentence of paragraph (c) to read as follows:

##### **§ 792.3 How will I know which records to request?**

\* \* \* You may obtain copies of indices by making a request to the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-2387, Attn: FOIA Officer or as indicated on the NCUA Web site at <http://www.ncua.gov>. \* \* \*

(c) \* \* \* The Popular FOIA Index is available on the NCUA web site.

3. In § 792.4, revise paragraph (a) to read as follows:

##### **§ 792.4 How can I obtain these records?**

\* \* \* \* \*

(a) You may obtain copies of the records referenced in § 792.2 by obtaining the index referred to in § 792.3 and following the ordering instructions it contains, or by making a written request to NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428, Attn: FOIA Officer or as indicated on the NCUA Web site.

\* \* \* \* \*

4. In § 792.7, revise the first sentence of paragraph (a) and paragraph (b) to read as follows:

##### **§ 792.7 Where do I send my request?**

(a) You must send your written request to one of NCUA's Information Centers. \* \* \*

(b) If you are seeking any NCUA record, other than those maintained by the Office of Inspector General, you should send your request to NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314-3428, Attn: FOIA Officer or as indicated on the NCUA Web site at <http://www.ncua.gov>.

\* \* \* \* \*

5. In § 792.8, revise the introductory text and revise paragraph (a) to read as follows:

**§ 792.8 What must I include in my request?**

Until an Information Center receives your FOIA request, it is not obligated to search for responsive records, meet time deadlines, or release any records. A request will not be considered received if it does not include all of the items in paragraphs (a) through (c) of this section.

(a) Your request must be in writing and include the words "FOIA REQUEST" on both the envelope and request letter. The request letter must also include your name, address and a telephone number where you can be reached during normal business hours. If you would like us to respond to your FOIA request by electronic mail (e-mail), you should include your e-mail address.

\* \* \* \* \*

6. In § 792.10, revise the second sentence of paragraph (a), the last sentence of paragraph (b) and the second sentence of paragraph (e) to read as follows:

**§ 792.10 What will NCUA do with my request?**

(a) \* \* \* The date of receipt for any request, including one that is addressed incorrectly or is forwarded to NCUA by another agency, is the earlier of the date the appropriate Information Center actually receives the request or 10 working days after either of NCUA's Information Centers receives the request.

(b) \* \* \* All other requests will be handled under normal processing procedures in the order they were received.

\* \* \* \* \*

(e) \* \* \* If we notify you of a denial of your request, we will include the reason for the denial.

\* \* \* \* \*

7. In § 792.11, revise paragraph (a)(6) by removing the first sentence and adding three sentences in its place to read as follows:

**§ 792.11 What kind of records are exempt from public disclosure?**

(a) \* \* \*

(6) Personnel, medical, and similar files (including financial files) pertaining to another person, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy without the subject person's written consent or proof of death. Written consent consists of a written statement by the subject person, authorizing the release of the information to you, and including either the subject person's notarized signature or a declaration made under penalty of perjury that the statement is true and correct. Proof of death consists of evidence that the subject of your request is deceased—such as a death certificate, a newspaper obituary, or some comparable proof of death. \* \* \*

\* \* \* \* \*

8. In § 792.15, revise paragraph (a) to read as follows:

**§ 792.15 How long will it take to process my request?**

\* \* \* \* \*

(a)(1) Where the running of such time is suspended while:

(i) The Information Center awaits additional information from the requester. A suspension of time for this purpose may occur only once during the processing period; and

(ii) The Information Center clarifies with the requester issues regarding the payment of fees pursuant to § 792.26.

(2) The Information Center's receipt of the requester's response to the request for additional information or clarification ends the tolling period;

\* \* \* \* \*

9. Revise § 792.17 to read as follows:

**§ 792.17 What can I do if the time limit passes and I still have not received a response?**

If NCUA does not comply with the time limits under § 792.15, or as extended under § 792.16, you do not have to pay search fees; requesters qualifying for free search fees will not have to pay duplication fees. You also can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. If NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court may consider your refusal to modify the scope of your request or arrange an

alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

10. In § 792.18, revise the first sentence of paragraph (b) to read as follows:

**§ 792.18 What if my request is urgent and I cannot wait for the records?**

\* \* \* \* \*

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten working days of receipt of the request. \* \* \*

\* \* \* \* \*

11. In § 792.19, revise paragraph (c)(1) to read as follows:

**§ 792.19 How does NCUA calculate the fees for processing my request?**

\* \* \* \* \*

(c) \* \* \*

(1) The per-page fee for paper copy reproduction of a document is \$.10;

\* \* \* \* \*

12. In § 792.27, revise paragraphs (a)(1) through (a)(4) to read as follows:

**§ 792.27 Can fees be reduced or waived?**

\* \* \* \* \*

(a) \* \* \*

(1) Whether the subject of the requested records concerns identifiable operations or activities of the government, with a connection that is direct and clear;

(2) Whether the disclosable portions of the requested records are meaningfully informative about government operations and activities in order to be likely to contribute to an understanding of government operations or activities. Information already in the public domain, either in a duplicate or substantially identical form where nothing new would be added to the public's understanding, would not be meaningfully informative;

(3) Whether disclosure of the requested information will contribute to public understanding, meaning a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. Representatives of the news media are presumed to satisfy this consideration; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The level of public understanding before disclosure must be

enhanced by the disclosure to a significant extent.

\* \* \* \* \*

13. In § 792.28, revise the first and third sentences of paragraph (a), and paragraph (c), to read as follows:

**§ 792.28 What if I am not satisfied with the response I receive?**

\* \* \* \* \*

(a) Make a determination with respect to any appeal within 20 working days after the receipt of such appeal. \* \* \* Where you do not address your appeal to the General Counsel, the time limitations stated above will be computed from the date of receipt of the appeal by the General Counsel.

\* \* \* \* \*

(c) Address your appeal to NCUA, Office of General Counsel—FOIA APPEAL, 1775 Duke Street, Alexandria, VA 22314–3428. The words “FOIA APPEAL” should appear on the envelope and in the letter. Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

14. Amend subpart E by removing the term “NCUA official” wherever it appears and adding in its place the term “system manager.”

15. In § 792.53, add new paragraphs (g), (h) and (i) to read as follows:

**§ 792.53 Definitions.**

\* \* \* \* \*

(g) “Notice of Systems of Records” means the annual notice published by NCUA in the **Federal Register** informing the public of the existence and character of the systems of records it maintains. The Notice of Systems of Records also is available on NCUA’s Web site at <http://www.ncua.gov>. (h) “System manager” means the NCUA official responsible for the maintenance, collection, use or distribution of information contained in a system of records. The system manager for each system of records is provided in the **Federal Register** publication of NCUA’s annual systems of records notice.

(i) “Working day” means Monday through Friday excluding legal public holidays.

16. Revise § 792.54 to read as follows:

**§ 792.54 Procedures for requests pertaining to individual records in a system of records.**

(a) Individuals desiring to know if a system of records contains records pertaining to them, and individuals requesting access to records in a system of records pertaining to them should

submit a written request to the appropriate system manager as identified in the Notice of Systems of Records. An individual who does not have access to the **Federal Register** and who is unable to determine the appropriate system manager to whom to submit a request may submit a request to the Privacy Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, in which case the request will be referred to the appropriate system manager. (b) Individuals requesting notification of, or access to, records should include the words “PRIVACY ACT REQUEST” on both the letter and the envelope, describe the record sought, the approximate dates covered by the record, and the systems of record in which records are thought to be included. Individuals must also meet the identification requirements in § 792.55.

17. In § 792.55, revise paragraphs (a)(1) through (a)(3) and (c) to read as follows:

**§ 792.55 Times, places, and requirements for identification of individuals making requests and identification of records requested.**

(a) \* \* \*

(1) Individuals appearing in person, if not personally known to the system manager responding to the request, must present a single document bearing a photograph (such as a passport or identification badge) or two items of identification which do not bear a photograph but do bear both a name and address (such as a driver’s license or voter registration card);

(2) Individuals submitting requests by mail may establish identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver’s license or other document. If inadequate identifying information is provided, the system manager responding to the request may require further identifying information before any notification or responsive disclosure.

(3) Individuals appearing in person or submitting requests by mail, who cannot provide the required documentation or identification, may provide an unsworn declaration subscribed to as true under penalty of perjury.

\* \* \* \* \*

(c) A record may be disclosed to a representative of an individual to whom the record pertains provided the system manager receives written authorization

from the individual who is the subject of the record.

\* \* \* \* \*

18. In § 792.57, revise paragraph (b) to read as follows:

**§ 792.57 Special procedures: Information furnished by other agencies; medical records.**

\* \* \* \* \*

(b) Medical records may be disclosed on request to the individuals to whom they pertain unless disclosing the medical information directly to the requesting individual could have an adverse effect on the individual. Where medical information is potentially adverse to the requesting individual, the system manager responsible may advise the requesting individual that the medical records will be transmitted only to a physician designated in writing by the individual.

19. In § 792.58, revise paragraph (a) and the second sentence of paragraph (b) to read as follows:

**§ 792.58 Requests for correction or amendment to a record; administrative review of requests.**

(a) An individual may request amendment of a record concerning that individual by submitting a written request, either in person or by mail, to the system manager identified in the Notice of Systems of Records. The words “PRIVACY ACT—REQUEST TO AMEND RECORD” should be written on the letter and the envelope. The request must describe the system of records containing the record sought to be amended, indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. An individual who does not have access to NCUA’s Notice of Systems of Records, and to whom the appropriate address is otherwise unavailable, may submit a request to the Privacy Act Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428, in which case the request will then be referred to the appropriate system manager. The date of receipt of the request will be determined as of the date of receipt by the system manager.

(b) \* \* \* The appropriate system manager will promptly (under normal circumstances, not later than 30 working days after receipt of the request) advise the individual that the record will be amended or corrected, or inform the individual of rejection of the request to amend the record, the reason for the rejection, and the procedures established by § 792.59 for the

individual to request a review of that rejection.

20. In § 792.59, revise the second sentence of paragraph (a) and the first two sentences of paragraph (c) to read as follows:

**§ 792.59 Appeal of initial determination.**

(a) \* \* \* Appeals must be addressed to the Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428 with the words "PRIVACY ACT—APPEAL" written on the letter and the envelope.\* \* \*

\* \* \* \* \*

(c) If an appeal under this section is denied in whole or in part, an individual may file a statement of disagreement concisely stating the reason(s) for disagreeing with the denial for amendment or correction, and clearly identifying each part of any record that is disputed. The statement must be sent within 30 working days of the date of receipt of the notice of General Counsel's refusal to authorize amendment or correction, to the General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.\* \* \*

\* \* \* \* \*

21. In § 792.60, revise paragraph (j) read as follows:

**§ 792.60 Disclosure of record to person other than the individual to whom it pertains.**

\* \* \* \* \*

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accountability Office;

\* \* \* \* \*

22. In § 792.61, revise the first sentence of paragraph (a) to read as follows:

**§ 792.61 Accounting for disclosures.**

(a) Each system manager identified in the "Notice of Systems of Records" must establish a system of accounting for all disclosures of information or records under the Privacy Act made outside NCUA.\* \* \*

\* \* \* \* \*

23. In § 792.63, revise paragraphs (a), (b)(1), and (b)(4), to read as follows:

**§ 792.63 Collection of information from individuals: information forms.**

(a) The system manager for each system of records is responsible for reviewing all forms developed and used to collect information from or about individuals for incorporation into the system of records.

(b) \* \* \*

(1) To ensure that no information concerning religion, political beliefs or

activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of any authorized law enforcement activity;

\* \* \* \* \*

(4) To ensure that the form or accompanying statement clearly indicates to the individual the effects on him or her, if any, of refusing to provide some or all of the requested information; and

\* \* \* \* \*

24. In § 792.66, revise paragraphs (a) and (b)(2), add four new sentences to the end of paragraph (b)(3), and add four new sentences to the end of paragraph (b)(4) to read as follows:

**§ 792.66 Exemptions.**

(a) NCUA maintains several systems of records that are exempted from some provisions of the Privacy Act. The system number and name, description of records contained in the system, exempted provisions and reasons for exemption are as follows:

(b) \* \* \*

(2) System NCUA-8, entitled, "Investigative Reports Involving Any Crime or Suspicious Activity Against a Credit Union, NCUA," consists of investigatory or enforcement records about individuals suspected of involvement in violations of laws or regulations, whether criminal or administrative. These records are maintained in an overall context of general investigative information concerning crimes against credit unions. To the extent that individually identifiable information is maintained for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), from sections (c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (f), and (g). The records in this system are also exempted pursuant to section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (f), and (g). Where possible, information that would identify a confidential source will be extracted or summarized in a manner that protects the source and the summary or extract will be provided to the requesting individual.

(3) \* \* \* NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA will advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, if review of the record reveals that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under federal law, the individuals will be advised of the existence of the information and will be provided the information, except to the extent disclosure would identify a confidential source. Where possible, information which would identify a confidential source will be extracted or summarized in a manner which protects the source and the summary or extract will be provided to the requesting individual.

(4) \* \* \* NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA will advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, if review of the record reveals that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under federal law, the individuals will be advised of the existence of the information and will be provided the information, except to the extent disclosure would identify a confidential source. Where possible, information that would identify a confidential source will be extracted or summarized in a manner which protects the source and the summary or extract will be provided to the requesting individual.

\* \* \* \* \*

25. In § 792.69, revise paragraph (a) to read as follows:

**§ 792.69 Training and employee standards of conduct with regard to privacy.**

(a) The Director of the Office of Human Resources, with advice from the Senior Privacy Act Officer, is

responsible for training NCUA employees in the obligations imposed by the Privacy Act and this subpart.

\* \* \* \* \*

[FR Doc. E8-8948 Filed 4-24-08; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1300

[Docket No. DEA-285P]

RIN 1117-AB17

#### Classification of Three Steroids as Schedule III Anabolic Steroids Under the Controlled Substances Act

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes to classify the following three steroids as "anabolic steroids" under the Controlled Substances Act (CSA): boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione. The Drug Enforcement Administration (DEA) believes that this action is necessary in order to prevent the abuse and trafficking of these steroids. If the regulations are amended, these steroids will be listed as schedule III controlled substances subject to the regulatory control provisions of the CSA.

**DATES:** Written comments must be postmarked, and electronic comments must be sent on or before June 24, 2008.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. DEA-285" on all written and electronic correspondence. Written comments via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 8701 Morrisette Drive, Springfield, VA 22152. Comments may be sent directly to DEA electronically by sending an electronic message to [dea.diversion.policy@usdoj.gov](mailto:dea.diversion.policy@usdoj.gov).

Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the

<http://www.regulations.gov> Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats. DEA will not accept any file format other than those specifically listed here.

**Posting of Public Comments:** Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. If you wish to inspect the agency's public docket file in person, by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307-7183.

**SUPPLEMENTARY INFORMATION:**

#### I. Background Information

On November 29, 1990, the President signed into law the Anabolic Steroids Control Act of 1990 (Title XIX of Pub. L. 101-647), which became effective February 27, 1991. This law established and regulated anabolic steroids as a class of drugs under schedule III of the Controlled Substances Act (CSA). As a result, a new anabolic steroid is not scheduled according to the procedures set out in 21 U.S.C. 811, but can be administratively classified as an anabolic steroid through the rulemaking process by adding the steroid to the regulatory definition of an anabolic steroid in 21 CFR 1300.01(b)(4).

On October 22, 2004, the President signed into law the Anabolic Steroid Control Act of 2004 (Pub. L. 108-358), which became effective on January 20, 2005. Section 2(a) of the Anabolic Steroid Control Act of 2004 amended 21 U.S.C. 802(41)(A) by replacing the existing definition of "anabolic steroid." The Anabolic Steroid Control Act of 2004 classifies a drug or hormonal substance as an anabolic steroid if the following four criteria are met: (A) The substance is chemically related to testosterone; (B) the substance is pharmacologically related to testosterone; (C) the substance is not an estrogen, progestin, or a corticosteroid; and (D) the substance is not dehydroepiandrosterone (DHEA). Any substance that meets the criteria is considered an anabolic steroid and must be listed as a schedule III controlled substance. DEA believes that boldione, desoxymethyltestosterone, and 19-nor-4,9(10)-androstadienedione meet this definition of anabolic steroid and is proposing that they be added to the list of anabolic steroids in 21 CFR 1300.01(b)(4).

Anabolic steroids are a class of drugs with a basic steroid ring structure that produces anabolic and androgenic effects. The prototypical anabolic steroid is testosterone. Anabolic effects include promoting the growth of muscle. The androgenic effects consist of promoting the development of male secondary sexual characteristics such as facial hair, deepening of the voice, and thickening of the skin.

In the United States, only a small number of anabolic steroids are approved for either human or veterinary use. Approved medical uses for anabolic steroids include treatment of androgen deficiency in hypogonadal males, adjunctive therapy to offset protein catabolism associated with prolonged administration of corticosteroids, treatment of delayed puberty in boys, treatment of metastatic breast cancer in