Partial Final Decision: Issued September 15, 2005; published September 21, 2005 (70 FR 55458).

Partial Final Rule: Issued October 7, 2005; published October 12, 2005 (70 FR 59221).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), at Atlanta, Georgia, on February 23–26, 2004, pursuant to a notice of hearing issued January 16, 2004, and published in the **Federal Register** on January 20, 2004 (69 FR 3278).

Producer-Handler Provisions

This action terminates the rulemaking proceeding concerning proposed amendments to the producer-handler provisions of the Appalachian and Southeast orders. A proposal published in the hearing notice as Proposal 7 sought to apply the Appalachian and Southeast orders' pooling and pricing provisions to producer-handlers with fluid route disposition in excess of 3 million pounds per month. A second proposal, published in the hearing notice as Proposal 8, sought to allow producer-handlers to purchase up to 10 percent of the producer's monthly milk production during December through May and 30 percent during June through November from other sources.

The Appalachian and the Southeast milk orders provide identical definitions that describe and define a category of handlers known as producer-handlers. Both orders require producer-handlers to operate their businesses at their own enterprise and risk, meaning that the care and management of the dairy animals and other resources necessary for the production, processing, and distribution of fluid milk products are the sole responsibility of the handler.

The Appalachian and Southeast orders prohibit producer-handlers from purchasing any amount of supplemental milk from pool sources or from any other source. Producer-handlers bear the entire burden of balancing their own milk production. Any fluctuation in a producer-handler's daily and seasonal milk needs must be met through their own farm production and any excess milk supplies must be disposed of at their own expense.

Producer-handlers are exempt from the pooling and pricing provisions of the Appalachian and Southeast orders. Exemption from the pooling and pricing provisions of the orders means that the minimum class prices established under the orders that handlers must pay for milk are not applicable to producer-handlers, and producer-handlers receive no minimum price protection for their milk production not disposed of for fluid uses.

While producer-handlers are exempt from the pooling and pricing provisions of the Appalachian and Southeast orders, they are required to submit reports to the Market Administrator who monitors producer-handler operations to ensure that they are in compliance with the conditions for such exemption status.

The Secretary is in the process of receiving proposals to initiate a new rulemaking proceeding to consider the elimination of the producer-handler provision in all Federal milk marketing orders. Two such proposals have been received and the Secretary has invited the submission of additional proposals. Such proposals must be received by Dairy Programs by March 16, 2009. (*See* Dairy Programs Web site at *http://www.ams.usda.gov/dairy*.)

Given this development and the substance of the two proposals considered herein, the review of the producer-handler exemption under all Federal milk marketing orders would be a more comprehensive review. Therefore, the Secretary has determined that this rulemaking proceeding should be terminated.

Termination of Proceeding

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the Appalachian and Southeast orders regarding the regulation of producer-handlers should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

The authority citation for 7 CFR Parts 1005 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Dated: March 9, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–5414 Filed 3–12–09; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Part 320

RIN 3084-AA99

Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Supplemental notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) directs the Commission to prescribe the manner and content of certain mandatory disclosures for depository institutions that lack federal deposit insurance. On March 16, 2005, the Commission published a notice of proposed rulemaking (NPRM) seeking comment on disclosure rules for such institutions. Subsequently, Congress passed the Financial Services Regulatory Relief Act of 2006 (FSRRA), which amended FDICIA's requirements. To ensure that the FTC's requirements are consistent with the FSRRA amendments, the Commission is seeking comment on conforming changes to the proposed Rule.

DATES: Written comments must be received on or before June 5, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Supplemental Proposed Rule for FDICIA Disclosures, Matter No. R411014'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a

person and privileged or confidential . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

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

A comment filed in paper form should include the ''Supplemental Proposed Rule for FDICIA Disclosures, Matter No. R411014'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex A), 600 Pennsylvania Avenue, N.W., Washington, D.C. 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.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, as part of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Congress directed the Commission to prescribe certain disclosures for depository institutions lacking federal deposit insurance. Although FDICIA was enacted in 1991, Congress prohibited the FTC from spending resources on FDICIA's disclosure requirements until 2003. After Congress lifted that ban, the Commission published proposed disclosures consistent with FDICIA's statutory directives (70 FR 12823 (March 16, 2005)). In response, many commenters raised concerns with the proposal.[2] Thereafter, Congress passed the Financial Services Regulatory Relief Act of 2006 (FSRRA) (Pub. L. 109-351) amending FDICIA. The FSRRA amendments addressed almost all of the concerns raised by commenters with the FTC's proposed Rule.

While the FSRRA amendments contained some modifications to the requirements, they did not alter significantly the basic statutory obligations for affected institutions. It is important to note that FDICIA's disclosure requirements apply regardless of the status of FTC's regulations in this area. Accordingly, institutions lacking federal deposit insurance must comply with the law's disclosure requirements now.

To conform with the FSRRA amendments, the Commission now publishes revised proposed Rule provisions. Section II of this Notice describes these proposed provisions in detail. Before addressing the FTC's proposed Rule provisions, the following discussion provides background about federal deposit insurance, institutions that lack such insurance, statutory disclosure requirements for such institutions, the FTC's role in this area, and the changes to the law effected by the FSRRA amendments.

Under existing law, all federally-chartered and most state-chartered depository institutions must have federal deposit insurance. Federal deposit insurance funds currently guarantee all deposits at federally insured institutions up to and including $250,000 per depositor.[3] Federally insured banks and credit unions must display signs disclosing this guarantee at each station or window where insured deposits are normally received in the depository institution's principal place of business and in all its branches.[4]

Although the vast majority of depository institutions have federal deposit insurance, there are some exceptions. For example, the Puerto Rican government provides deposit insurance for non-federal credit unions located in Puerto Rico. In addition, approximately 200 state-chartered credit unions in approximately eight states do not have federal deposit insurance, and seek to protect their customers through private deposit insurance.[5]

In response to incidents affecting the safety of deposits at certain financial institutions lacking federal deposit insurance, Congress amended the Federal Deposit Insurance Act (FDIA) in 1991 adding Section 43 (12 U.S.C. 1831t), which imposes several requirements on non-federally insured institutions[6] and private deposit

[1] FTC 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* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] *See* (*http://www.ftc.gov/os/comments/FDICIA/index.shtm*).

[3] On October 3, 2008, the enactment of the Emergency Economic Stabilization Act of 2008 temporarily raised the basic limit on federal deposit insurance coverage from $100,000 to $250,000 per depositor. The legislation provides that the basic deposit insurance limit will return to $100,000 after December 31, 2009.

[4] *See* 12 CFR Part 328 and 12 CFR Part 740.

[5] According to the U.S. Government Accountability Office (GAO), eight states have credit unions that purchase private deposit insurance in lieu of federal insurance. Other states either require federal insurance or allow private insurance but do not have any privately insured credit unions. GAO also identified two institutions that have no federal or private insurance. ''Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions,'' GAO-03-971 (Aug. 2003), 6-7. In addition, the Commission understands that there are a small number of state banks and savings associations that do not have federal deposit insurance.

[6] ''Depository institutions'' lacking federal insurance include credit unions, banks, and savings associations that are not either: a) insured depository institutions as defined under the FDIA; or b) insured credit unions as defined in Section 101 of the Federal Credit Union Act (FCUA) (12 U.S.C. 1752). The FDIA defines ''insured depository

insurers.[7] In general, Section 43(b), as amended by FSRRA, mandates that depository institutions lacking federal deposit insurance provide certain disclosures to consumers.[8] Specifically, in all periodic statements, signature cards, passbooks, and share certificates, the institution must disclose that it does not have federal deposit insurance and that, if the institution fails, the federal government does not guarantee that depositors will get their money back (hereinafter ''required long disclosure''). Moreover, in most advertising and at deposit windows, principal places of business, and branches, the institution must disclose that it is not federally insured (hereinafter ''required short disclosure'').[9]

For many years after FDICIA's passage, Congress prohibited the Commission from using FTC resources to enforce the law's requirements. In 2003, Congress lifted this prohibition for certain provisions of FDICIA, including the disclosure provisions of Section 43.[10] Subsequently, the Commission published an NPRM seeking comments on its proposed implementation of Section 43 (70 FR 12823 (March 16, 2005)). In response, the Commission received numerous comments raising serious concerns with the proposal, and, therefore, indirectly with Section 43. In October 2006, Congress substantially addressed these concerns by amending Section 43 as part of FSRRA. These new amendments rendered significant portions of the Commission's proposed Rule obsolete.

Accordingly, the Commission now proposes modifications to its proposed Rule and seeks comments on these changes. The FSRRA amendments did not alter the basic content of the required disclosures. Section 43 continues to require depository institutions lacking federal deposit insurance affirmatively to disclose that fact to their depositors or members. (12 U.S.C. 1831t(b)). The FSRRA amendments did, however, amend the law to: (1) significantly alter Section 43(b)(3) (12 U.S.C. 1831t(b)(3)), which requires institutions to obtain signed acknowledgments from depositors related to the lack of federal deposit insurance; (2) establish specific exemptions to the advertising disclosure requirements; (3) modify the requirements for disclosures on periodic statements and account records and at depository locations; and (4) limit some of the FTC's authority under the law and provide state regulators with specific enforcement authority. These four changes are discussed in detail as follows.

First, the FSRRA amendments significantly change the signed acknowledgement requirements of the law, an issue of concern to many commenters. Specifically, the amendments allow institutions under certain circumstances to provide notice to depositors in lieu of obtaining signed acknowledgments.[11] For example, the law previously required institutions to obtain signed acknowledgments from all customers who became depositors after 1994. Under the amended law, institutions must obtain signed acknowledgments from anyone who becomes a depositor after the effective date of FSRRA (October 13, 2006), except for those who become depositors through the conversion of a federally insured institution to a non-federally insured institution or through the merger of a federally insured institution with a non-federally insured institution. For depositors obtained through a conversion or merger after October 13, 2006, the institution may obtain the depositor's signed acknowledgement, or make an attempt to obtain such an acknowledgment, by sending the consumer a card with the required long disclosure, a signature line, and instructions for returning the card to the institution. For current depositors (*i.e.*, those who became depositors before October 13, 2006 and have not submitted an acknowledgement), the institution either must obtain a signed acknowledgement, or make two attempts to obtain such a signed acknowledgement, by transmitting the above described card to the depositor.

Second, the FSRRA amendments contain specific exemptions to the law's disclosure requirements for advertising. In particular, the required short disclosure (that the institution is not federally insured) need not appear in any ''sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.'' The law also exempts from the disclosure requirement ''[s]mall utilitarian items [*e.g.*, common pens and key chains] that do not mention deposit products or insurance if inclusion of the notice would be impractical.'' (12 U.S.C. 1831t(b)(2)(B)).

Third, the FSRRA amendments alter the disclosure requirements for periodic statements, account records, and depository locations. Before the amendments, Section 43(b)(1) required the long disclosure on ''all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit.'' The amended provision eliminates the reference to ''similar instrument evidencing a deposit'' and replaces it with ''share certificate.'' In addition, before the FSRRA amendments, the statute required such notices ''at each place where deposits are normally received.'' The FSRRA amendments changed the law to require affected institutions to clearly and conspicuously disclose that the institution is not federally insured ''at each station or window place where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page . . . .'' (12 U.S.C. 1831t(b)(2)(A)).

Finally, the FSRRA amendments eliminate the ''shut-down'' provision of the law[12] and limit the FTC's authority

institution'' as any bank or savings association the deposits of which are insured by the FDIC pursuant to this chapter (12 U.S.C. 1813(c)). The FCUA defines ''insured credit union'' to mean ''any credit union the member accounts of which are insured by the National Credit Union Administration.'' (12 U.S.C. 1752).

[7] Congress passed these amendments as part of FDICIA. *See* Pub. L. No. 102-242, 105 Stat. 2236 (1991) (Section 151 of FDICIA, Subtitle F of Title 1, S. 543). Section 43 was initially designated as Section 40 of the FDIA. *See also* S. Rep. No. 167, 102 Cong., 1st Sess., at 61 (1992).

[8] The definition of ''depository institution'' in Section 43(f)(2) also includes any entity that, as determined by the FTC, engages in the business of receiving deposits and could reasonably be mistaken for a depository institution by the entity's current or prospective customers (*i.e.*, ''look-alike'' institutions). The Commission has not identified any ''look-alike'' institutions to date and does not plan to address the issue in this proceeding. If, in the future, the Commission or commenters identify ''look-alike'' institutions of concern that are not subject to existing legal requirements, the FTC may consider whether to develop requirements for such entities.

[9] 12 U.S.C. 1831t(b).

[10] Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the Fiscal Year Ending September 30, 2004, and for Other Purposes, H.R. Conf. Rep. No. 108-401, Cong., 1st Sess., at 88 (2003).

[11] The acknowledgments and notices must indicate that the institution is not federally insured and that the federal government does not guarantee that depositors will recover their money if the institution fails (*see* Section 43(b)(3)).

[12] The ''shut-down'' provision, formerly Section 43(e), prohibited depository institutions lacking federal deposit insurance from using the mails or other instrumentalities of interstate commerce to facilitate depository activities unless the appropriate state supervisor had determined that the institution met eligibility requirements for such insurance.

to the promulgation of regulations and the enforcement of the law's disclosure requirements (12 U.S.C. 1831t(b), (c), & (e)). The amendments also provide state regulators with broad authority to enforce all provisions of Section 43, as amended (*see* 13 U.S.C. 1831(f)(2)).

II. Proposed Amendments and Comment Analysis

The disclosure requirements in Section 43, as amended by FSRRA, currently apply to covered institutions. As directed by Section 43,[13] however, the Commission plans to issue regulations that track those statutory disclosure requirements. As part of that effort and to conform the proposed Rule to the FSRRA amendments, we seek comment on changes to the proposed Rule published on March 16, 2005 (70 FR 12823).[14] Specifically, the changes address disclosure requirements for periodic statements and account records, advertising, and locations that receive deposits; signed acknowledgment requirements; and an exception to these requirements for certain depository institutions. Three sections of the revised proposed Rule simply adopt FSRRA's new provisions relating to signed acknowledgments (Section 320.5); the specific advertising disclosure exemptions (Section 320.4); and the disclosure requirements applicable to periodic statements and account records and depository locations (Sections 320.3 and 320.4).[15] There are, however, a few rule revisions that require further explanation, specifically, which depository locations are covered by the Rule, the proposed exceptions for institutions not receiving retail deposits, and the format and size requirements for disclosures.

A. Depository Locations - ATMs, Service Centers, and Shared Facilities

Issue and Comments: The Commission's 2005 proposed Rule would have required disclosures regarding the lack of federal deposit insurance at each location ''where the depository institution's account funds or deposits are normally received including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution.'' Many credit unions commented that the disclosures should not be required at shared facilities and service centers. They explained that, among other things, postings required by the National Credit Union Administration (NCUA) alert consumers that some participating institutions are federally insured and that others are not (presumably because the absence of NCUA postings for a particular institution will imply that the institution lacks federal insurance).[16] Additionally, American Share Insurance (ASI) (#146)) suggested that the FTC may not have jurisdiction over the shared facilities because some of these facilities are housed in federally insured institutions and are not owned or operated by the privately insured institutions subject to FDICIA's disclosure requirements. On the other hand, some comments[17] urged the Commission to require signage at shared branch locations disclosing the names of all non-federally insured institutions operating on the premises. Finally, the American Bankers Association (#2) urged the FTC to adopt the definition of service facility in NCUA's regulations, presumably to provide consistency in the application of the disclosure requirements.[18]

Discussion: Pursuant to the FSRRA amendments, the revised proposed Rule (Section 320.4) would require covered depository institutions to place the short disclosure ''at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page . . . .'' This proposed provision simply restates the language of Section 43, as amended. Accordingly, the revised proposed Rule would require disclosures at credit union centers and service centers to the extent they contain stations or windows ''where deposits are normally received.'' The statutory language does not give the FTC the flexibility to exempt such locations from the requirement to disclose that the institution is not federally insured. We do not expect that such a disclosure at shared facilities would cause confusion or contradict existing disclosures required by the NCUA. To the contrary, it would appear the FDICIA disclosure, coupled with the NCUA disclosures, would help to clarify which participating institutions are federally insured and which are not. In addition, the fact that the shared facility itself may not be owned by the uninsured or privately insured institution or may not be subject to FTC jurisdiction does not control the ability of the institution itself to ensure that the disclosures are made. For example, depository institutions could arrange for the posting of the required disclosure through their contract with the shared facility.

B. Exceptions For Institutions Not Receiving Retail Deposits

Issue: Section 43(d) of the FDIA (''Exceptions for institutions not receiving retail deposits'') provided the Commission with discretion to except certain institutions from the disclosure requirements, specifically, depository institutions that do not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the U.S. (other ''than money received in connection with any draft or similar instrument issued to transmit money''). The Commission's 2005 proposed Rule contained such an exception.[19] In proposing the provision, the Commission reasoned that customers of institutions that handle only initial deposits of $100,000 or more are sufficiently sophisticated that they do not need the same disclosures as other customers.

Comments: In response to the Commission's 2005 proposed Rule, the National Association of Federal Credit Unions (NAFCU) (#121) and the Greater Cincinnati Credit Union (#81) opposed the proposed exception. According to NAFCU, some customers with initial deposits over the standard maximum insurance amount at federal credit unions do not understand how their funds are insured. Also, NAFCU expressed concern that consumers making an initial deposit of more than $100,000 at institutions covered by the exception may mistakenly assume that the first $100,000 is federally insured. Conversely, the Navy Federal Credit Union (#83) supported the proposed exception.

Finally, the Comptroller of the Currency (OCC) (#201) urged the Commission to except from the disclosure requirements uninsured

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[13] 12 U.S.C. 1831t(c) & (d).

[14] The Commission does not propose to revise Sections 320.1 (Scope); 320.2 (Definitions); 320.6 (Exception for Certain Depository Institutions); and 320.7 (Enforcement) of the 2005 proposed Rule.

[15] These particular FSRRA amendments, summarized in Section I of this Notice, and the revised proposed Rule provisions that relate to them, are straightforward and do not warrant additional discussion here.

[16] *See, e.g.*, California and Nevada Credit Union League (#128); Greater Cincinnati Credit Union (#81); and Elkhart County Bureau Credit Union (#123). *See* (*http://www.ftc.gov/os/comments/FDICIA/index.shtm*).

[17] North Shore Gas Credit Union (#105) and America's Community Bankers (#130).

[18] NCUA defines ''service facility'' as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed. *See, e.g.*, 71 FR 36667 (June 28, 2006).

[19] *See* 70 FR 12823, 12825 (March 16, 2005). The statute indicates that the FTC should not consider ''money received in connection with any draft or similar instrument issued to transmit money'' to be a deposit for the purposes of this exemption.

federally-chartered branches of foreign banks in the U.S. and uninsured national trust banks. The OCC explained that the proposed disclosure requirements substantially overlap with existing FDIC and OCC disclosure regulations for Federal branches of foreign banks and that Congress ''evidenced no focused or express concern'' about such institutions.[20]

Discussion: In 2006, Congress amended the exception language in the statute by changing the threshold from ''$100,000'' to ''an amount equal to the standard maximum deposit insurance amount.''[21] The Commission's new proposal tracks the 2006 amendment and identifies the threshold as the ''standard maximum insurance amount.'' The proposed Rule also defines that term to mean the maximum amount of deposit insurance as determined under Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)). As discussed earlier, the threshold is currently set at $250,000.

Because the few comments received were not in agreement on the exception issue, the Commission seeks further comment on whether such an exception is appropriate. Among other things, we are interested in information about whether persons who make deposits of more than the standard maximum deposit insurance amount understand the insurance coverage associated with their deposit.

With regard to OCC's concerns about Federal branches of foreign banks, we have identified no specific basis in the statute to except institutions that otherwise meet the definition of a depository institution ''lacking Federal deposit insurance'' as established by Congress in Section 43(e)(3) (12 U.S.C. 1831t(e)(3)) other than the non-retail deposit exception proposed at § 320.6.[22]

C. Format and Type Size Requirements

Issue and Discussion: Consistent with the FSRRA amendments, Section 320.4(b) of the proposed Rule directs institutions to present the required disclosures ''in such format and in such type size and manner as to be simple and easy to understand.'' The Commission has considered proposing prescriptive requirements to implement this provision such as specific rules for disclosure location and font size. Given the likely variation in the types and sizes of advertisements, however, the development of useful, comprehensive, prescriptive requirements appears unworkable. In addition, prescriptive requirements would deny institutions the flexibility to make disclosures in the most effective and efficient way.[23] Finally, prescriptive requirements could result in depository institutions incurring greater costs than necessary to make effective disclosures. Therefore, the Commission is not proposing prescriptive requirements related to the size and format of the required disclosures.

III. Invitation to Comment

The Commission seeks comments on all aspects of the supplemental notice of proposed rulemaking. All comments should be filed as prescribed in the ''**ADDRESSES**'' section above, and must be received on or before June 5, 2009. In addition to the questions and requests for comment found throughout this Notice, we also ask that commenters address the following questions:

(1) What costs or burdens, or other impacts, do the proposed requirements create, and on whom? What evidence supports the asserted costs, burdens, or other impacts? Please submit any such evidence.

(2) What modifications, if any, consistent with current law, should the Commission make to the proposed requirements to increase their benefits to consumers?

(a) What evidence supports your proposed modifications? Please submit any such evidence.

(b) How would these modifications affect the costs and benefits of the proposed requirements for consumers?

(c) How would these modifications affect the costs and benefits of the proposed requirements for businesses, and in particular, small businesses?

(3) What modifications, if any, should be made to the proposed requirements to decrease their burdens on businesses?

(a) What evidence supports your proposed modifications? Please submit any such evidence.

(b) How would these modifications affect the costs and benefits of the proposed requirements for consumers?

(c) How would these modifications affect the costs and benefits of the proposed requirements for businesses, and in particular, small businesses?

IV. Paperwork Reduction Act

The proposed disclosures and written acknowledgment statements do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because they are a ''public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public'' as indicated in Office of Management and Budget regulations.[24]

V. Regulatory Flexibility Act

For information regarding the Commission's Initial Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, commenters should refer to the Commission's March 16, 2005 NPRM (70 FR 12823).

VI. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(4).

VII. Proposed Rule Language

List of Subjects in 16 CFR Part 320

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, and Federal deposit insurance.

■ For the reasons stated in the preamble, the Federal Trade Commission proposes to add Part 320 to 16 CFR chapter I, subchapter C as set forth below:

PART 320—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE

[20] OCC also indicated that national trust banks do not meet the definition of depository institution in the proposed Rule because they do not ''receive or hold'' deposits and that such institutions would fall under the FTC's proposed exceptions for certain depository institutions that do not receive initial deposits of less than $100,000.

[21] Public Law 109-173 (Feb. 26, 2006). The statute now reads: ''The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) of this section for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.'' 12 U.S.C. 1831t.

[22] Based on information provided by OCC in its comment, uninsured national trust banks would not have to follow the disclosure requirements because they fall under the FTC's proposed exception (*i.e.*, they ''do not receive initial deposits of less than the standard maximum deposit insurance amount'').

[23] For general guidance on clear and conspicuous disclosures, *see, e.g.*, ''Dot Com Disclosures: Information about Online Advertising,'' Federal Trade Commission, (*http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/*).

[24] 5 CFR 1320.3(c)(2).

Authority: 12 U.S.C. 1831t; 15 U.S.C. 41 *et seq.*

§ 320.1 Scope.

This part applies to all depository institutions lacking federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of federal deposit insurance.

§ 320.2 Definitions.

(a) *Lacking federal deposit insurance* means the depository institution is not an insured depository institution as defined in 12 U.S.C. 1813(c)(2), or is not an insured credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

(b) *Depository institution* means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to federal credit unions.

(c) *Standard maximum deposit insurance amount* means the maximum amount of deposit insurance as determined under Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(a)(1)).

§ 320.3 Disclosures in periodic statements and account records.

Depository institutions lacking federal deposit insurance must include in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate a notice disclosing clearly and conspicuously that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money. For example, a notice would comply with the requirement if it conspicuously stated the following: ''[Institution's name] is not federally insured. If it fails, the Federal Government does not guarantee that you will get your money back.'' The disclosures required by this section must be clear and conspicuous and presented in such format and in such type size and manner as to be simple and easy to understand.

§ 320.4 Disclosures in advertising and on the premises.

(a) *Required Disclosures.* Depository institutions lacking federal deposit insurance must include clearly and conspicuously a notice disclosing that the institution is not federally insured:

(1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page; and

(2) In all advertisements except as provided in subsection (c).

(b) *Format and Type Size.* The disclosures required by this section must be clear and conspicuous and presented in such format and in such type size and manner as to be simple and easy to understand.

(c) *Exceptions.* The following need not include a notice that the institution is not federally insured:

(1) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution; and

(2) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

§ 320.5 Disclosure acknowledgment.

(a) *New Depositors Obtained Other Than Through a Conversion or Merger.* With respect to any depositor who was not a depositor at the depository institution before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, any depository institution lacking federal deposit insurance may receive any deposit for the account of such depositor only if the institution has obtained the depositor's signed written acknowledgement that:

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(b) *New Depositors Obtained Through a Conversion or Merger.* With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after October 13, 2006, any depository institution lacking federal deposit insurance may receive any deposit for the account of such depositor only if:

(1) The institution has obtained the depositor's signed written acknowledgement described in paragraph (a) of this section; or

(2) The institution makes an attempt, sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment. In making such an attempt, the institution must transmit to each depositor who has not signed and returned a written acknowledgement described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (a)(2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(c) *Current Depositors.* Any depository institution lacking federal deposit insurance may receive any deposit after October 13, 2006 for the account of any depositor who was a depositor on that date only if:

(1) The depositor has signed a written acknowledgement described in paragraph (a) of this section; or

(2) The institution has transmitted to each depositor who was a depositor before October 13, 2006, and has not signed a written acknowledgement described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (a)(2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting that the depositor sign the card, and return the signed card to the institution.

Note to paragraph (c): The institution must make the transmission described in paragraph (c)(2) of this section via mail not later than three months after October 13, 2006 and must make a second identical transmission via mail not less than 30 days, and not more than three months, after the first transmission to the depositor in accordance with paragraph (c)(2), if the institution has not, by the date of such mailing, received from the depositor a card referred to in paragraph (c)(1) of this section which has been signed by the depositor.

(d) *Format and Type Size.* The disclosures required by this section must be clear and conspicuous and

presented in such format and in such type size and manner as to be simple and easy to understand.

§ 320.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 320.7 Enforcement.

Compliance with the requirements of this part shall be enforced under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary,

[FR Doc. E9–5305 Filed 3–12–09: 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[USCBP–2008–0105]

RIN 1505–AC07

Cost or Value of Foreign Repairs, Alterations, or Processing

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) Regulations to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported from the United States and returned under subheading 9802.00.40, 9802.00.50, or 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS), the value of U.S.-origin parts used in the foreign repairs, alterations, or processing. The proposed changes would provide an incentive to use U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under the above-referenced HTSUS provisions.

DATES: Comments must be received on or before May 12, 2009.

ADDRESSES: You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2008–0105.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Regulations and Rulings, Office of International Trade, 202–325–0038.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. *See* **ADDRESSES** above for information on how to submit comments.

Background

Subheadings 9802.00.40 and 9802.00.50, HTSUS, provide a partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by repairs or alterations. Subheading 9802.00.40 encompasses articles repaired or altered abroad pursuant to a warranty, while subheading 9802.00.50 encompasses articles repaired or altered abroad other than pursuant to a warranty. Articles entitled to classification under these tariff provisions are assessed duty based upon the value of the repairs or alterations.

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for articles of metal manufactured in the United States that are exported for further processing and then returned to the United States for further processing. Articles entitled to classification under this tariff provision are assessed duty based upon the value of the processing performed outside the United States.

U.S. Note 3(a), subchapter II, Chapter 98, HTSUS, states, in pertinent part, that for purposes of subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS, the ''value of repairs, alterations, processing or other change in condition outside the United States'' is the cost to the importer of such change, or if no charge is made, the value of such change. Section 10.8 of the CBP regulations (19 CFR 10.8), which implements subheadings 9802.00.40 and 9802.00.50, provides in paragraph (d) that the ''cost or value of repairs or alterations'' is limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations, but will not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

Similarly, § 10.9 of the CBP regulations (19 CFR 10.9(d)), which implements subheading 9802.00.60, provides in paragraph (d) that the ''cost or value of processing'' is limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing, but will not include the exported U.S. metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.