be accessed through the BIS Web site at *www.bis.doc.gov.*

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PART 774—[AMENDED]

■ 19. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009 (74 Fed. Reg. 41,325 (August 14, 2009)).

■ 20. In Supplement No. 1 to part 774, Category 2, Export Control Classification Number 2B001, revise the "Controls" paragraph of the "License Requirements" section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or "composites", which, according to the manufacturer's technical specifications, can be equipped with electronic devices for "numerical control"; and specially designed components as follows (see List of Items Controlled).
License Requirements
Reason for Control: NS, NP, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
NP applies to 2B001.a, .b, .c, and .d, EXCEPT: (1) turning machines under 2B001.a with a capacity no greater than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or (3) milling machines under 2B001.b.with x-axis travel greater than two meters and overall "positioning accuracy" on the x-axis more (worse) than 0.030 mm..	NP Column 1.
AT applies to entire entry	AT Column 1.

* * * * *

■ 21. In Supplement No. 1 to part 774, Category 4, the Technical Note on "Adjusted Peak Performance" ("APP") that appears at the end of Category 4, revise the definition of "APP" that appears under the heading "Abbreviations Used in This Technical Note" to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 4—Computers

* * * * *

Technical Note on "Adjusted Peak Performance" ("APP")

* * * * *

Abbreviations Used in This Technical Note

* * * * *

APP is expressed in Weighted TeraFLOPS (WT) in units of 10^{12} adjusted floating point operations per second.

* * * * *

Dated: May 24, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–13243 Filed 6–3–10; 8:45 am]

BILLING CODE 3510–33–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: Final rule.

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 13, 2009, the Commission published a supplemental notice of proposed rulemaking seeking comment on disclosure rules for such institutions. After reviewing comments received in response, the Commission now publishes a final rule.

DATES: This final rule will become effective on July 6, 2010.

ADDRESSES: Copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at (*http://www.ftc.gov*).

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

SUPPLEMENTARY INFORMATION:

I. Introduction

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. Congress then 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)). Many commenters raised concerns with the proposal.[1] 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 about the FTC's proposed rule. The Commission published a supplemental notice on March 13, 2009 (74 FR 10843) seeking comments on a proposal consistent with the FSRRA amendments. The Commission has reviewed the comments received in response and now publishes a final rule.

II. Background

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

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

insured institutions up to and including $250,000 per depositor.[2] 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.[3]

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 170 state-chartered credit unions in approximately nine states do not have federal deposit insurance, and seek to protect their customers through private deposit insurance.[4]

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 by adding Section 43 (12 U.S.C. 1831t), which imposes several requirements on non-federally insured institutions[5] and private deposit insurers.[6] In general, Section 43(b), as amended by FSRRA, mandates that depository institutions lacking federal deposit insurance provide certain disclosures to consumers.[7] 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 receive their money back (hereinafter "required long disclosure").[8] 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 a Notice of Proposed Rulemaking (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.[11]

In October 2006, Congress substantially addressed the commenter concerns directly by amending Section 43 as part of FSRRA. These new amendments rendered significant portions of the Commission's proposed Rule obsolete. In particular, the new statutory provisions: (1) significantly altered 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) established specific exemptions to the advertising disclosure requirements; (3) modified the requirements for disclosures on periodic statements and account records and at depository locations; and (4) limited some of the FTC's authority under the law and provided state regulators with specific enforcement authority.[12]

In response to the FSRRA amendments, the Commission published a supplemental notice of proposed rulemaking which discussed the FSRRA amendments in detail, proposed conforming rule changes in light of the FSRRA amendments, and sought comments on these changes. The Commission has reviewed the comments received in response[13] and, as discussed in detail below, now issues its final rule.

III. Comment Analysis

The comments on the supplemental rule notice raised two substantive issues: 1) disclosure requirements for institutions participating in shared branching networks and service centers; and 2) the timing of signed acknowledgment requirements.

A. Shared Branching Networks and Service Centers

Background: Under FDICIA, non-federally insured institutions must post required disclosures wherever "deposits are normally received."[14] Such locations could include places that are not owned or controlled by the non-federally insured institution. For instance, the Commission indicated in its supplemental notice (74 FR at 10846) that disclosures should appear at credit union service centers (independent facilities that provide services for a group of institutions) to the extent such facilities contain stations where deposits of non-federally insured institutions "are normally received." The statute does not define the term "normally received."

Issue and Comments: In response to the supplemental notice, many commenters raised concerns about whether the disclosure requirements apply to shared branching networks. Shared branching allows participating institutions to accept deposits and provide additional services for members of other institutions in the network. Shared branching arrangements typically involve hundreds of

[2] On October 3, 2008, the enactment of the Emergency Economic Stabilization Act of 2008 (Pub. L. No. 110-343) raised the basic limit on federal deposit insurance coverage from $100,000 to $250,000 per depositor. The Helping Families Save Their Homes Act of 2009 (Pub. L. No. 111-22) extended the $250,000 coverage until December 31, 2013.

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

[4] A 2003 U.S. Government Accountability Office (GAO) report indicated that eight states had credit unions that purchased private deposit insurance in lieu of federal insurance. An additional nine states allowed private deposit insurance but did not have any privately insured credit unions. All other states required credit unions to have federal deposit insurance. "Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions," GAO-03-971 (Aug. 2003), 6-7. The Commission understands that there are a small number of state banks and savings associations that do not have federal deposit insurance.

[5] "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 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).

[6] 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).

[7] The definition of "depository institution" in Section 43(f)(2) 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 is not addressing 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 will consider whether to develop requirements for such entities.

[8] 12 U.S.C. 1831t(b).

[9] *Id.*

[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 Commission received 162 comments in response to the NPRM. *See* comments at (*http://www.ftc.gov/os/comments/FDICIA/index.shtm*).

[12] 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)).

[13] The Commission received 29 comments in response to the supplemental notice. *See* comments at (*http://www.ftc.gov/os/comments/fdiciasupplement/index.shtm*).

[14] 12 U.S.C. 1831t(b)(2).

institutions, both federally and non-federally insured.[15] Three such networks exist nationwide involving approximately 3,700 locations.[16] The vast majority of institutions in these networks have federal deposit insurance.[17]

Many commenters raised concern that the FTC will require federally insured institutions in shared branching networks to post FDICIA disclosures on behalf of each of the non-federally ensured entities in those networks. Both federally and non-federally insured institutions argued that such a requirement would be unreasonable. Federally insured institutions warned that disclosures at their facilities would confuse consumers and may even lead some to believe their institutions lack federal insurance.[18] Non-federally insured institutions argued that such a requirement may limit or prevent their participation in these networks because federally insured institutions may refuse to post such disclosures.[19]

American Share Insurance (ASI), a private insurer for depository institutions, agreed that such disclosures would confuse consumers and also argued that Congress did not intend to require disclosures at such locations.[20] ASI argued that deposit locations at institutions in a shared branching network are analogous to deposits at ATM's (which, in some cases, do allow deposits from other institutions). It then reasoned that, because Congress exempted ATM's from FDICIA's disclosure requirements, participants in shared branching networks should receive similar treatment.[21] ASI also stated that Congress intended FDICIA's requirements to match National Credit Union Administration (NCUA) regulations which require disclosures only at facilities owned or controlled by the regulated institution.[22]

Several other commenters also suggested that the Commission rely on recent disclosure requirements issued by the NCUA for such networks in lieu of imposing a separate disclosure requirement.[23] Recently, NCUA addressed the signage requirements for institutions participating in shared branching networks (74 FR 9347 (March 4, 2009)). For federally insured institutions and facilities operated by a non-credit union entity, the new rules require a general disclosure that not all institutions in the network are federally insured.[24] Commenters argued that the NCUA disclosure provides a clear explanation to consumers and that any FTC disclosure could cause confusion.

Discussion: Under the statute, disclosures must appear at "each station or window where deposits are *normally* received" (emphasis added).[25] By its plain language, the law does not limit such locations to those owned or controlled by the institution. At the same time, the law does not require disclosures at *every* station or window that could conceivably receive a deposit. Instead, the law covers locations that "normally" receive deposits, which the Commission interprets to include locations that operate as the functional equivalent of stations or windows at the institution's own facilities. Whether a location "normally" receives deposits for a non-federally insured institution likely depends on factors such as the volume of deposits, the frequency of deposits, the signage at the receiving institution, and whether the receiving institution is in the same city as the non-federally insured institution.[26]

Service centers present a different issue than shared networks. Specifically, these entities are independent facilities operated on behalf of specific institutions that share costs and ownership.[27] Therefore, it seems likely that these facilities "normally" receive deposits for participating non-federally insured institutions. Accordingly, absent circumstances demonstrating that a particular shared center does not "normally" receive deposits (as discussed above) for a non-federally insured institution, the required disclosures should appear at the service center to ensure the institution complies with FDICIA.

B. Timing for Signed Acknowledgments

Issue: FDICIA requires institutions without federal deposit insurance to obtain signed statements from their depositors acknowledging that the institution does not have federal deposit insurance. The law, however, allows institutions under certain circumstances to provide notices to depositors in lieu of obtaining signed acknowledgments.[28] Specifically, for depositors who joined the institution before October 13, 2006 (*i.e.*, "current" depositors), an institution either must obtain a signed acknowledgement, or make two attempts to obtain such a signed acknowledgement through notices to depositors. Under the statute, institutions must transmit the first of these notices to current depositors not later than three months after October 13, 2006, and the second not less than thirty days, but not more than three months, after the first.

Comment: The Credit Union National Association (CUNA) [29] urged the FTC to change the threshold date from October 13, 2006 to the date the Commission's rule becomes effective. It reasoned that the 2006 date is now impossible to meet.

Discussion: Congress set the October 13, 2006 date and the Commission has no discretion to change it. Importantly, the FSRRA amendments were immediately enforceable upon enactment. Therefore, the date was binding on covered institutions at that time. Complaints about retroactive application of the law, therefore, are misplaced. If an institution has not already sent notices to persons who were depositors as of October 13, 2006 pursuant to the statute, the law requires it to obtain a signed acknowledgment from that depositor before accepting a

[15] For a general discussion of shared branching networks, *see* comments from American Share Insurance (# 540033-00003).

[16] *Id.*

[17] *Id.*

[18] *See, e.g.,* Honda Federal Credit Union (# 540033-00004); International Harvester Employee Credit Union (# 540033-00028).

[19] *See, e.g.,* AurGroup Financial Credit Union (# 540033-00011), Christian Community Credit Union (# 540033-00015); Cincinnati Central Credit Union (# 540033-00025); Firefighters Community Credit Union (# 540033-00009).

[20] ASI (# 540033-00003).

[21] *See* 12 U.S.C. 1831t(b)(2)(A).

[22] *Id.* The NCUA regulations for federally insured institutions require posting "at each station or window where insured account funds or deposits are normally received *in* its principal place of business and in all its branches . . . ." *See* 12 C.F.R. 740.4(c) (emphasis added). In comparison, FDICIA states that the disclosure should appear "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." *See* 12 U.S.C. 1831t(b)(2)(a).

[23] 74 FR 9347 (March 4, 2009) (NCUA regulations). *See, e.g.,* Atlantic Regional Federal Credit Union (# 540033-00030); Coast Hills Federal Credit Union (# 540033-00013); Mazuma Credit Union (# 540033-00027); and ASI (# 540033-00003).

[24] NCUA's disclosure reads: "This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." 12 C.F.R. 740.4(c)(1).

[25] 12 U.S.C. 1831t(b)(2)(a).

[26] The record does not identify, nor is the Commission aware of, any federally insured institutions in a shared branching network that constitute locations where the deposits of non-federally insured institutions are "normally" received.

[27] *See* ASI (# 540033-00003).

[28] 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* 12 U.S.C. 1831t(b)(2).

[29] CUNA (# 540033-00022).

deposit. The Commission cannot alter this mandate.

Finally, in issuing the FSRRA amendments, the Commission notes that Congress used the term "current depositor" to cover depositors obtained on or before October 13, 2006. As that date becomes more remote, the term "current depositor" may cause confusion because some may incorrectly assume the term applies to depositors obtained more recently than 2006. To address this concern, the Commission has changed the title of Section 320.5(c) to "Depositors Obtained On Or Before October 13, 2006" instead of "Current Depositors."

IV. Summary of Final Rule

Generally, the final rule incorporates the language of the statute, in many cases repeating the law's language verbatim. Like the statute, the final rule addresses 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. The final rule is identical in substance to that published in the supplemental notice.[30] The following summarizes the final rule's basic provisions.

A. Scope of the Final Rule

Section 320.1 of the rule indicates that the FTC's new requirements apply to depository institutions (*e.g.*, banks, savings association, and credit unions) that do not have federal deposit insurance. Consistent with Section 43(f)(3)(B) of the FDIA, a depository institution lacks federal deposit insurance if it is neither an insured depository institution as defined in the FDIA (12 U.S.C. 1813(c)(2)), nor an insured credit union as defined in Section 101 of the FCUA, 12 U.S.C. 1752. Most banks and savings associations must have federal deposit insurance under state or federal law.[31] Accordingly, the rule applies apply to only a small number of state-chartered banks and savings associations.[32]

B. Disclosures in Periodic Statements

Consistent with the statute (12 U.S.C. § 1831t(b)(1)), Section 320.3 requires covered depository institutions to conspicuously disclose in all periodic statements and account records that the institution is not federally insured, and that, if the institution fails, the federal government does not guarantee that depositors will recoup their money. Section 320.3 offers model language that depository institutions may use to satisfy this requirement. The Commission will evaluate whether disclosures are conspicuous according to well-established FTC law.[33]

C. Disclosures in Advertising

Under Section 320.4, covered depository institutions must disclose in advertising consistent with 12 U.S.C. § 1831t(b)(2) that the institution is not federally insured.[34] As dictated by the statute (12 U.S.C. § 1831t(b)(2)(B)), the rule also contains specific exemptions to this advertising disclosure requirement. In particular, the required short disclosure (that the institution is not federally insured) need not appear in a sign, document, or other item that has the institution's name but no information about the institution's products or services or information otherwise promoting the institution. Consistent with the law, the rule 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."

D. Disclosures at Deposit Locations

Section 320.4 requires covered 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 branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page . . . ." This section tracks the language in 12 U.S.C. 1831t(b)(2)(A).

E. Disclosure Acknowledgment

Sections 320.5 and 320.6 require covered institutions to obtain signed acknowledgments of the fact that the institution is not federally insured from new depositors. The rule language tracks the 12 U.S.C. 1831t(b)(3) requirements. For certain customers (*e.g.*, those obtained through a merger), the rule, consistent with the statute, provides an alternative notice requirement which allows institutions to send notifications attempting to obtain signed acknowledgments no later than 45 days after the merger or conversion to customers in lieu of obtaining signatures.

F. Exception for Certain Depository Institutions

Section 43(d) of the FDIA ("Exceptions for institutions not receiving retail deposits") provides the Commission with discretion to except certain institutions from the disclosure requirements. Specifically, the FDIA allows the Commission to exempt depository institutions that do not receive initial deposits of less than "an amount equal to the standard maximum insurance amount" from individuals who are citizens or residents of the United States.[35] That amount is currently $250,000. The Commission's 2005 proposed rule and the 2009 supplemental notice contained such an exception.[36] The Commission reasoned that customers of institutions that handle only large initial deposits are sufficiently sophisticated that they do not need disclosures. Some commenters supported the proposed exemption while others raised concerns.[37] For example, the Office of the Comptroller of the Currency (OCC) urged the Commission to expand the proposed exception to include uninsured national trust banks and federal and state branches of foreign banks altogether because these institutions do not accept retail deposits.[38] NAFCU, on the other

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[30] The final rule contains non-substantive editorial changes in Sections 320.2, 320.3, 320.4(a) & (b), and 320.5(a), (b), & (c).

[31] *See, e.g.*, 12 U.S.C. 222 (national banks); Cal. Fin. Code 5606(a) (California savings associations); and 12 U.S.C. 3104(c)(1) (state and federal branches of foreign banks receiving deposits of less than $100,000).

[32] Consistent with the statute, the rule applies to non-federally insured credit unions in any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico (*see* 12 U.S.C. 1781). The Commission understands that many credit unions in Puerto Rico do not have federal deposit insurance but, instead, operate under a Puerto Rican government-backed deposit insurance system. Section 43 imposes disclosure requirements specifically on institutions that do not have *federal* deposit insurance and does not exempt institutions operating under non-federal insurance systems. Accordingly, Puerto Rico credit unions are subject to the rule's requirements.

[33] *See, e.g., Thompson Medical Co.*, 104 F.T.C. 648, 797-98 (1984); *The Kroger Co.*, 98 F.T.C. 639, 760 (1981).

[34] For the purposes of the rule, advertising includes, but is not limited to, advertising in print, electronic, Internet, or broadcast media.

[35] 12 U.S.C. 1821(a)(1).

[36] *See* 70 FR 12823, 12825 (Mar. 16, 2005) and 74 FR 10843, 10846 (Mar. 13, 2009). 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. In 2006, Congress amended the exception language by changing the threshold from "$100,000" to "an amount equal to the standard maximum deposit insurance amount." Public Law 109-173 (Feb. 26, 2006).

[37] The National Association of Federal Credit Unions (NAFCU) (# 515567-00121) and the Greater Cincinnati Credit Union (# 515567-00081) opposed the proposed exception. The Navy Federal Credit Union (# 515567-00083) supported the proposed exception.

[38] OCC (#515567-00201).

hand, opposed the provision arguing that some customers with initial deposits over the standard maximum insurance amount at federal credit unions do not understand how their funds are insured.[39] In its supplemental notice, the Commission continued to propose the exception and sought further comment on the issue. The Commission received none.

The final rule contains the exception. The Commission continues to believe that customers who make large deposits ($250,000 or more) at institutions that refuse initial deposits under $250,000 do not need the FDICIA disclosures because they are sufficiently sophisticated and likely understand the institution's deposit insurance status. The rule also defines "standard maximum insurance amount" to mean the maximum amount of deposit insurance as determined under Section 11(a)(1) of the FDIA (12 U.S.C. 1821(a)(1)).

This exception addresses one of the two issues raised by the OCC. Specifically, the OCC expressed concern about the application of FDICIA disclosure requirements to uninsured national trust banks even though they do not accept deposits. Because these institutions accept no deposits, they by definition do not accept initial deposits of under $250,000, and are therefore, exempt from the rule's requirements. The OCC also expressed concern that the rule would cover federal and state branches of foreign banks. While Congress has already granted these institutions an exemption from federal deposit insurance requirements (12 U.S.C. 3104(c)), FDICIA contains no such exception from its disclosure requirements. Therefore, if such institutions accept initial deposits of less than $250,000, they have to comply with the rule's disclosure requirements.

Finally, the Commission notes that NAFCU raised concerns about persons making large initial deposits at credit unions and not receiving the disclosures. The record did not identify any credit unions serving individuals (*i.e.*, natural persons) that only receive initial deposits of more than $250,000.[40] Any credit unions receiving initial deposits under $250,000 must make the disclosures even if some depositors happen to open accounts with $250,000 or more. Accordingly, the Commission does not expect that the exception will apply to any credit unions.

V. Paperwork Reduction Act

The 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.[41]

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603-605. The Commission published an IRFA pursuant to the RFA in its March 16, 2005 proposed rule notice (70 FR 12823).

The Commission does not anticipate that the final rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many of the affected depository institutions may qualify as small businesses under the relevant threshold (*i.e.*, assets that do not exceed $150 million) and that the economic impact of the rule on a particular small entity could be significant. Overall, however, the rule likely will not have a significant economic impact on a substantial number of small entities. The Commission staff estimates that these requirements apply to fewer than 400 credit unions, banks, and savings associations. These depository institutions have been required to make the applicable disclosures for more than ten years under Section 43 of the FDIA. In addition, the Commission expects that most covered entities make disclosures about their deposit insurance as a matter of course. The Commission does not expect that the disclosures specified in the rule will have a significant impact on these entities. Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Although the Commission certifies under the RFA that the rule in this notice will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, to publish a FRFA to explain the impact of the rule on small entities as follows:

A. Statement of the need for, and objectives of, the amendments

The Federal Trade Commission is charged with enforcing the requirements of 12 U.S.C. 1831t(b) and prescribing the manner and content of disclosures required by the law.

B. Issues raised by comments in response to the Initial Regulatory Flexibility Analysis

Public comments raised various issues about the impacts of the initial proposed rule. However, as detailed in the supplemental notice, the FSRRA amendments addressed these concerns. Section III of this notice discusses in detail the issues raised in response to the supplemental notice.

C. Estimate of the number of small entities to which the amendments will apply

As described above, the rule applies to depository institutions lacking federal deposit insurance, including state-chartered credit unions, banks, and savings associations, many of which may be small entities. According to the GAO, in 2003 there were 212 credit unions in the 50 states that chose to use private deposit insurance instead of federal insurance. The Commission estimates that this number is smaller now. The Commission estimates that, in addition to this number, there are approximately 150 credit unions in Puerto Rico that do not have federal deposit insurance. In addition, the Commission estimates that there are fewer than 20 banks and savings associations that would be covered by the rule. The Commission assumes that few of these depository institutions have assets exceeding $150 million.

D. Projected reporting, recordkeeping, and other compliance requirements

The law requires affected institutions to comply regardless of the existence of an FTC rule. Nevertheless, the Commission recognizes that the law, and thus the FTC rule, involves some costs for affected depository institutions. Most of these costs are in the form of printing costs for account statements, signature cards, and other printed material requiring the disclosures. It is unlikely that

[39] NAFCU (# 515567-00121).

[40] In addition, the record did not identify any credit unions that only receive initial deposits of more than $100,000. Although there are approximately two dozen "corporate" credit unions which serve only other credit unions and may have such initial deposit policies, these institutions already have federal deposit insurance and thus would not fall under the FDICIA disclosure requirements. *See*, *e.g.*, (*http://www.ncua.gov/DataServices/FindCU.aspx*) (National Credit Union Administration database).

[41] 5 CFR 1320.3(c)(2).

compliance involves any significant costs associated with legal, other professional, or training costs to determine the nature of the disclosure because the rule provides the information required to be disclosed to the public. The Commission does not expect that the disclosure requirements impose significant incremental costs for websites or other advertising. Adding the required disclosure to various materials imposes on the depository institutions some printing costs and perhaps minimal initial design or layout costs. A precise estimate of such costs is difficult to determine without data regarding the required volume of such materials.

E. Alternatives

The amendments closely track the prescriptive requirements of the statute, and thus leave little room for significant alternatives to decrease the burden on regulated entities. In addition, the statutory requirements reflected in this final rule already apply to the affected entities. Accordingly, alternatives such as extending the effective date of the rule would have no effect on burden.

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 adds Part 320 to 16 CFR chapter I, subchapter C as set forth below:

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

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) *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.

(b) *Lacking federal deposit insurance* means the depository institution is neither an insured depository institution as defined in 12 U.S.C. 1813(c)(2), nor an insured credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

(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 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, in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate. For example, a notice would comply with the requirement if it conspicuously stated: "[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 a simple and easy to understand format, type size, and manner.

§ 320.4 Disclosures in advertising and on the premises.

(a) *Required disclosures.* Each depository institution lacking federal deposit insurance must include a clear and conspicuous 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 paragraph (c) of this section.

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

(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 on or before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, a depository institution lacking federal deposit insurance may receive a 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, a depository institution lacking federal deposit insurance may receive a 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) *Depositors obtained on or before October 13, 2006.* Any depository institution lacking federal deposit insurance may receive any deposit after October 13, 2006, for the account of a depositor who was a depositor on or before 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 the depositor:

(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 have made the transmission described in paragraph (c)(2) of this section via mail not later than three months after October 13, 2006. The institution must have made 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) of this section, 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 a simple and easy to understand format, type size, and manner.

§ 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. 2010–13085 Filed 6–3–10: 10:48 am]

[Billing Code: 6750–0–1–S]

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0064]

16 CFR Part 1215

Third Party Testing for Certain Children's Products; Infant Bath Seats: Requirements for Accreditation of Third Party Conformity

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to specific CPSC regulations relating to infant bath seats. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(3)(B)(vi)).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR part 1215 are effective upon publication of this notice in the **Federal Register**.

Comments in response to this notice of requirements should be submitted by July 6, 2010. Comments on this notice should be captioned "Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with Part 1215 of Title 16, Code of Federal Regulations."

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0064 by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following ways:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as