

Respondent states that Complainant has agreed not to contest this Complaint in order to allow Complainant to secure the release of FMC Bond No. 18084F, in partial payment of the total damages incurred by Complainant. Complainant requests that the Commission issue an order for reparations in favor of Complainant and against Respondent, in the amount of \$342,070.80, and that the Commission grant such other, proper, and further relief, in accordance with its delegated powers, as it may deem just, proper, and equitable in the circumstances.

This proceeding has been assigned to the Office of the Administrative Law Judges. Pursuant to the Commission's Rules of Practice and Procedure, 46 CFR 502.181 (Subpart K—Shortened Procedure) Complainant has requested that its complaint be handled on an expedited basis. Under this procedure, with the consent of the parties and with the approval of the presiding officer, this proceeding may be conducted under shortened procedure without oral hearing, except that a hearing may be ordered by the presiding officer at the request of either party to the proceeding or at the presiding officer's discretion. Within 25 days of the date of service of the complaint, Respondent shall, if they consent to the shortened procedure, file with the Commission and serve on the Complainant, its answering memorandum of facts and arguments relied upon. Within 15 days after the date of service of Respondent's answering memorandum, Complainant may file with the Commission and serve on the Respondent, their reply. This will close the record for decision unless the presiding officer orders the submission of additional evidentiary material. If Respondent does not consent to this shortened procedure, the matter will be governed by 46 CFR 502.61 (Subpart E—Proceedings, Pleadings, Motions, Replies). Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 7, 2010, and the final decision of the Commission shall be issued by November 4, 2010.

**Karen V. Gregory,**  
Secretary.

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** The FTC seeks public comments on proposed information requests to depository institutions lacking federal deposit insurance. The FTC plans to use this information to help ensure that such institutions are complying with the disclosure requirements of the Federal Deposit Insurance Corporation Improvement Act (FDICIA). The FTC will consider comments before it submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

**DATES:** Comments must be received on or before September 14, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "FDICIA Compliance Monitoring: Paperwork Comment; FTC File No. P094205" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they 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 secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ." as provided in Section 6(f) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 46(f), and FTC 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), 16 CFR 4.9(c).<sup>1</sup>

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-fdiciacompliance>) (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-fdiciacompliance>). 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 "FDICIA Compliance Monitoring: Paperwork Comment; FTC File No. P094205" 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 J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

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.shtml>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before

<sup>1</sup> 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).

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, Attorney, 202-326-2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

**SUPPLEMENTARY INFORMATION:** In 1991, Congress enacted section 43 of FDICIA (12 U.S.C. 1831t) in response to incidents affecting the safety of deposits in certain financial institutions.<sup>2</sup> The law imposes several requirements on non-federally insured institutions. Among other things, the law (12 U.S.C. 1831t(b)) mandates that depository institutions lacking federal deposit insurance disclose to consumers, in periodic statements and advertising, that the institution 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. Pursuant to 12 U.S.C. 1831t(f), the Commission has authority to enforce the disclosure requirements under the FTC Act (15 U.S.C. 41 *et seq.*).

Until 2003, the Commission's appropriations authority prohibited the use of FTC resources to enforce those requirements.<sup>3</sup> In 2005, the Commission sought public comment on proposed rules implementing the statutory disclosure requirements.<sup>4</sup> In 2006, before the Commission issued a final rule, Congress passed substantial amendments to the existing requirements as part of the Financial Services Regulatory Relief Act of 2006 (FSRRA) (Pub. L. 109-351). The Commission, therefore, is currently seeking comment on proposed regulations that are consistent with the FSRRA amendments.<sup>5</sup> Nevertheless, institutions lacking federal deposit insurance must comply with these statutory disclosure provisions regardless of the status of the FTC's regulations in this area.

Under existing law, all federally chartered and most state chartered depository institutions have federal deposit insurance. Federal deposit insurance provides a government

guarantee of up to \$250,000 per depositor in most cases. Pursuant to Federal Deposit Insurance Corporation and National Credit Union Administration requirements, federally insured banks and credit unions must display signs that depositors are federally insured.<sup>6</sup> Although most depository institutions have federal deposit insurance, there are some exceptions. For instance, there are more than a hundred and fifty state-chartered credit unions in nine states that do not have federal deposit insurance.<sup>7</sup> The credit unions in these states generally obtain private deposit insurance in lieu of federal insurance to protect members' accounts.

### Proposed Information Collection Activities

The FTC has the authority to compel production of data and information from depository institutions lacking federal deposit insurance under Section 6(b) of the FTC Act, 15 U.S.C. 46(b). The Commission intends to send information requests to depository institutions that lack federal deposit insurance. The responses will help the Commission determine whether covered entities are complying with the disclosures required by 12 U.S.C. 1831t(b). Because the number of entities affected by the Commission's requests will exceed nine, the Commission plans to seek OMB clearance under the PRA, 44 U.S.C. Ch. 35.

Under the PRA, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB grant the clearance for the proposed information collection.

The FTC invites comments on: (1) whether the proposed collections of information are necessary for the proper performance of the functions of the FTC,

including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 14, 2009.

#### A. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to up to two hundred (200) depository institutions lacking federal deposit insurance in the United States ("industry members"). State-chartered credit unions lacking federal deposit insurance will likely be the recipients.<sup>8</sup>

The information requests<sup>9</sup> will seek, among other things:

- A brief explanation of the steps the institution takes to comply with the requirements of 12 U.S.C. 1831t(b).
- Samples of each non-identical periodic statement of account, signature card, passbook, certificate of deposit, and share certificate that must contain the notice required by 12 U.S.C. 1831t(b)(1). None of the samples should include any individual consumer

<sup>8</sup> The FTC does not plan to send requests to institutions covered by the Puerto Rican government deposit insurance system.

<sup>9</sup> Section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. 57b-2(c), a submitter who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.*, official requests by Congress, requests from other agencies for law enforcement purposes, and administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. See 15 U.S.C. 57b-2; 16 CFR 4.9-4.11.

<sup>2</sup> See Pub. L. No. 102-242, 105 Stat. 2236.

<sup>3</sup> 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, 108th Cong., 1st Sess., at 88 (2003).

<sup>4</sup> See 70 FR 12823 (Mar. 16, 2005).

<sup>5</sup> See 74 FR 18043 (Mar. 13, 2009).

<sup>6</sup> See 12 CFR Parts 328 and 740.

<sup>7</sup> According to the U.S. Government Accountability Office, in 2003, eight states had credit unions that purchase private deposit insurance instead of federal insurance. Since that time, at least one additional state has allowed credit unions to use private deposit insurance. Other states either require federal insurance or allow private insurance but do not have any privately insured credit unions. "Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions," GAO-03-971 (Aug. 2003), at 7. Puerto Rican credit unions operate under a Puerto Rican government-backed deposit insurance system.

names, signatures, addresses, account numbers, or any other personally identifying information.

- Information (e.g. photographs) that demonstrates that the institution posts the disclosure required by 12 U.S.C. 1831t(b)(2) at each station or window where it normally receives deposits, the institution's principal place of business, and all the institution's branches where it accepts deposits or opens accounts (excluding automated teller machines and point of sale terminals).

- Copies of all non-identical advertising<sup>10</sup> issued or continued in use within the previous three months.

- Samples of the cards, forms, or other written materials the institution uses to comply with the signed acknowledgment requirements for new depositors pursuant to 12 U.S.C. 1831t(b)(3). The samples should not include any individual consumer names, signatures, addresses, account numbers, or any other personally identifying information.<sup>11</sup>

The Commission will use the collected information in its efforts to ensure that the institutions are complying with the disclosures required by the 12 U.S.C. 1831t(b).<sup>12</sup>

#### B. Estimated Hours Burden

Based upon its knowledge of the industry, the staff estimates, on average, that the time required to gather, organize, format, and produce such responses will average 8 hours per information request. Thus, allowing up to 200 recipients of the information requests, total burden would be approximately 1,600 hours.

#### C. Estimated Cost Burden

It is difficult to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Managerial, legal, and clerical personnel may be involved in the information

collection process. The FTC staff has assumed, conservatively, that managerial personnel and legal counsel will handle all of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of managerial time of \$58.12/hour (4 hours per entity) and an average hourly wage of legal staff time of \$40.87/hour (4 hours per entity).<sup>13</sup> Thus, cumulatively, estimated labor costs for the information requests will be \$79,192 ((\$58.12 x 800 hours + \$40.87 x 800 hours)). The actual cost may be lower to the extent clerical personnel handle some of the tasks.

FTC staff estimates that the capital or other non-labor costs associated with the information requests are minimal. We expect that industry members maintain most, if not all, of the requested material in the normal course of business because they must disclose the information to customers under existing law.

By direction of the Commission.

Donald S. Clark

Secretary

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Independent Scientific Peer Review Panel Report: Evaluation of the Validation Status of Alternative Ocular Safety Testing Methods and Approaches: Notice of Availability and Request for Public Comments

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

**ACTION:** Request for comments.

**SUMMARY:** NICEATM, in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), convened an independent international scientific peer review panel (hereafter, Panel) on May 19-21, 2009, to evaluate test methods and approaches with the potential to reduce and refine the use of

animals for ocular safety testing. These evaluations included the following:

- A proposal for the routine use of topical anesthetics, systemic analgesics, and humane endpoints to avoid and minimize pain and distress during in vivo ocular irritation testing.

- The in vivo low volume eye test (LVET).

- The use of the bovine corneal opacity and permeability (BCOP), the Cytosensor Microphysiometer® (CM), the isolated chicken eye (ICE), the isolated rabbit eye (IRE), and the hen's egg test—chorioallantoic membrane (HET-CAM) test methods for identifying moderate and mild ocular irritants and substances not labeled as ocular irritants.

- Nonanimal testing strategies that use the BCOP, CM, and/or EpiOcular™ (EO) test methods to assess the eye irritation potential of antimicrobial cleaning products to determine their appropriate U.S. Environmental Protection Agency ocular hazard classification.

The Panel report from this meeting is now available. The report contains (1) The Panel's evaluation of the validation status of the test methods and testing strategies and (2) the Panel's comments on the draft ICCVAM test method recommendations. NICEATM invites public comment on the Panel report. The report is available on the NICEATM-ICCVAM Web site at [http://iccvam.niehs.nih.gov/docs/ocutox\\_docs/OcularPRPrept2009.pdf](http://iccvam.niehs.nih.gov/docs/ocutox_docs/OcularPRPrept2009.pdf) or by contacting NICEATM at the address given below.

**DATES:** Written comments on the Panel report should be received by August 28, 2009.

**ADDRESSES:** NICEATM prefers that comments be submitted electronically by e-mail to [niceatm@niehs.nih.gov](mailto:niceatm@niehs.nih.gov). Comments can also be submitted via the NICEATM-ICCVAM Web site at [http://iccvam.niehs.nih.gov/contact/FR\\_pubcomment.htm](http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm). Written comments can be sent by mail or fax to Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2-16, Research Triangle Park, NC 27709; (fax) 919-541-0947. Courier address: NIEHS, NICEATM, 530 Davis Drive, Room 2035, Durham, NC 27713.

**FOR FURTHER INFORMATION CONTACT:** Dr. William S. Stokes, (telephone) 919-541-2384, (fax) 919-541-0947 and (e-mail) [niceatm@niehs.nih.gov](mailto:niceatm@niehs.nih.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

NICEATM announced the convening of an independent scientific peer review

<sup>10</sup> As used in these requests, the term "advertising" means any communication that the institution uses to solicit business including, but not limited to, printed materials, the institution's main internet page, radio advertisements, video advertisements disseminated via television, the Internet or any other means of online communication, and solicitations conducted via telephone.

<sup>11</sup> The requested documents should exclude any information for which prior customer authorization is required under the Right to Financial Privacy Act, 12 U.S.C. 3401, *et seq.*

<sup>12</sup> Although the Commission is currently in the process of developing regulations for these requirements, *see* 74 FR 18043 (Mar. 13, 2009), institutions lacking federal deposit insurance must comply with these statutory provisions regardless of the status of FTC's regulations in this area.

<sup>13</sup> Hourly wages are averages based on mean hourly wages shown in [http://www.bls.gov/oes/2008/may/naics4\\_551100.htm#b11-0000](http://www.bls.gov/oes/2008/may/naics4_551100.htm#b11-0000) (May 2008 "National Industry-Specific Occupational Employment and Wage Estimates") for sales and marketing managers and legal occupations (lawyers, paralegals, and other legal support), respectively.