

language of these standards is confusing.

### C. Update Standards and Eliminate Inconsistencies or Duplication Between Standards

1. *Examples from prior SIP rulemakings.* The SIP–II rulemaking updated and harmonized a number of OSHA’s early substance-specific standards (e.g., Vinyl Chloride, Acrylonitrile, Coke Oven Emissions, Inorganic Arsenic, and DBCP) by revising the exposure-monitoring, medical-surveillance, and compliance-update provisions of these early standards consistent with recently promulgated OSHA substance-specific standards. In the SIP–III rulemaking, OSHA revised inconsistent provisions of the Respiratory Protection standard to clarify which appendices contain mandatory provisions.

2. *Example of existing standards currently under review for possible inclusion in the SIP–IV rulemaking.* OSHA is considering revising the construction Signals, Signs, and Barricades standards (29 CFR part 1926, subpart G), notably §§ 1926.201 and 1926.202, to reference the most current version of the Manual on Uniform Traffic Control Devices (MUTCD–2009) from the Department of Transportation’s Federal Highway Administration. The current standard references the 1988 and 2000 versions of the MUTCD, which are no longer used in many jurisdictions.

### D. Miscellaneous Revisions<sup>5</sup>

1. *Examples from prior SIP rulemakings.* SIP–III removed the word “hot” modifying “air hand dryers” in its Bloodborne Pathogens standard to allow the use of new high-velocity-air hand-drying machines. OSHA acknowledged in the SIP–III rulemaking that the new hand-drying technology was as effective as the requirements in the existing standard, but the existing standard limited hand drying to a decades-old technology that delivered only hot air.

2. *Examples of existing standards currently under review for possible inclusion in the SIP–IV rulemaking.* With regard to the Underground Construction, Caissons, Cofferdams and Compressed Air standards (29 CFR part 1926, subpart S), OSHA is considering updating the decompression tables in

Appendix A.<sup>6</sup> This action would permit employers to use decompression procedures that take advantage of new hyperbaric technologies used widely by private-sector and public-sector employers in the U.S. engaged in extreme hyperbaric exposures. Currently, to use updated decompression procedures, employers engaged in tunneling projects, for example, must apply for a variance from the decompression tables currently specified by Appendix A. However, the variance process is not an efficient means of addressing health and safety issues that may affect multiple employers.

Another possible miscellaneous revision would involve revising the definitions of “stable rock” in § 1926.650(b) and “layered system” in paragraph (b) of Appendix A of OSHA’s Excavation standard by clarifying the meaning of those terms so that employers will classify soil correctly at excavation sites. Incorrect classifications of soil types can endanger employees because, based on faulty soil classification, employers may use inappropriate safeguards to prevent cave-ins.

### E. Submitting Recommendations

When submitting a recommended revision to an existing OSHA standard in response to this RFI, OSHA requests that members of the public explain their rationale and provide, if possible, data and information to support their comments. Specifically, OSHA is requesting commenters to provide: (1) The reasons why they believe a candidate standard is confusing or outdated, or duplicates, or is inconsistent with, other OSHA standards or the standards issued by other agencies, and mention specifically what the other standard is, and (2) the action, including revised language when appropriate, that they believe will improve the standard.

### III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary’s Order 1–2012 (77 FR 3912).

Signed at Washington, DC, on November 29, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012–29514 Filed 12–5–12; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Part 1010

**RIN 1506–AB20**

#### Notice of Proposed Rulemaking: Definitions of Transmittal of Funds and Funds Transfer

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury; Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, and the Board of Governors of the Federal Reserve System (Board) are proposing amendments to the regulatory definitions of “funds transfer” and “transmittal of funds” under the regulations implementing the Bank Secrecy Act. The proposed changes are intended to maintain the current scope of the definitions and are necessary in light of changes to the Electronic Fund Transfer Act that will result in certain currently covered transactions being excluded from Bank Secrecy Act requirements.

**DATES:** Written comments on this NPRM must be submitted on or before January 25, 2013.

**ADDRESSES:** Comments should be directed to:

*FinCEN:* You may submit comments, identified by Regulatory Identification Number (RIN) 1506–AB20, by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Include RIN 1506–AB20 in the submission.

- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB20 in the body of the text. Please submit comments by one method only. Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

*Inspection of comments:* Public comments received electronically or

<sup>5</sup> These revisions include eliminating obsolete, unclear, or inconsistent standards; permitting the use of new technologies or new and effective employee-protection measures that provide equivalent or superior performance to existing OSHA standards; and correcting grammatical or typographical errors.

<sup>6</sup> Updated decompression procedures typically use oxygen-enriched breathing mixtures during decompression, as well as decompression schedules that differ substantially from the schedules specified by the existing Appendix A tables.

through the U. S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on [www.regulations.gov](http://www.regulations.gov). Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905-5034 (not a toll-free call).

**Board:** Please submit your comments, identified by Docket No. OP-1445 by one method only, using any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include the docket number in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:**

**FinCEN:** The FinCEN regulatory helpline at (800) 949-2732 and select Option 6.

**Board:** Koko Ives, Senior Supervisory Financial Analyst, (202) 973-6163, Division of Banking Supervision and Regulation, or Dena L. Milligan, Senior Attorney, (202) 452-3900, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Provisions**

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation, which

legislative framework is commonly referred to as the Bank Secrecy Act ("BSA"),<sup>1</sup> authorizes the Secretary of the Treasury ("Secretary") to require financial institutions to keep records and file reports that "have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."<sup>2</sup> The Secretary has delegated to the Director of FinCEN, the authority to implement, administer and enforce compliance with the BSA and associated regulations.<sup>3</sup>

The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102-550) ("Annunzio-Wylie"). Annunzio-Wylie authorizes the Secretary and Board of Governors of the Federal Reserve System (the "Board") to issue joint regulations requiring insured banks to maintain records of domestic funds transfers.<sup>4</sup> In addition, Annunzio-Wylie authorizes the Secretary and the Board to issue joint regulations requiring insured banks and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.<sup>5</sup> Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.<sup>6</sup>

The Electronic Fund Transfer Act ("EFTA")<sup>7</sup> was enacted in 1978 to establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic fund transfer activities. The EFTA is implemented by Regulation E, which sets up the framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.<sup>8</sup> Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection

Act (Dodd-Frank Act),<sup>9</sup> added a new section 919 to the EFTA, creating a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Because the new section 919 of the EFTA defines "remittance transfers" broadly, most electronic transfers of funds sent by consumers in the United States to recipients in other countries will be subject to the new protections.

**II. Background Information**

**A. Current Regulations Regarding Funds Transfers and Transmittals of Funds**

On January 3, 1995, FinCEN and the Board jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds ("recordkeeping rule").<sup>10</sup> At the same time, FinCEN issued the "travel rule," which requires banks and nonbank financial institutions to include certain information on funds transfers and transmittals of funds sent to other banks or nonbank financial institutions.<sup>11</sup>

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

In general, the recordkeeping rule requires financial institutions to retain information on transmittals of funds of \$3,000 or more and requires banks to retain information on funds transfers of \$3,000. Under the recordkeeping rule, a financial institution must retain the following information for transmittals of funds of \$3,000 or more:

- If acting as a transmitter's financial institution, either the original, microfilmed, copied, or electronic record of the information received, or the following information: (a) The name and address of the transmitter; (b) the amount of the transmittal order; (c) the

<sup>1</sup> The BSA is codified at 12 U.S.C. 1829b and 1951-1959, 18 U.S.C. 1956, 1957, and 1960, and 31 U.S.C. 5311-5314 and 5316-5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. See 31 CFR 1010.100(e).

<sup>2</sup> 31 U.S.C. 5311.

<sup>3</sup> Treasury Order 180-01 (Sept. 26, 2002).

<sup>4</sup> 12 U.S.C. 1829b(b)(2) (2006). Treasury has independent authority to issue regulations requiring nonbank financial institutions to maintain records of domestic transmittals of funds.

<sup>5</sup> 12 U.S.C. 1829b(b)(3) (2006).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 1693 *et seq.*

<sup>8</sup> 12 CFR part 1005.

<sup>9</sup> Public Law 111-203, 124 Stat. 1376, section 1073 (2010).

<sup>10</sup> 31 CFR 1020.410(a) (recordkeeping requirements for banks); 31 CFR 1010.410(e) (recordkeeping requirements for nonbank financial institutions). The Board revised its Regulation S (12 CFR part 219) to incorporate by reference the recordkeeping rule codified in Title 31 of the CFR, as well as to impose a 5-year record-retention requirement with respect to the recordkeeping and reporting requirements.

<sup>11</sup> 31 CFR 1010.410(f).

execution date of the transmittal order; (d) any payment instructions received from the transmitter with the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) if the transmitter's financial institution is a nonbank financial institution, any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.<sup>12</sup>

- If acting as an intermediary financial institution, or a recipient financial institution, either the original, microfilmed, copied, or electronic record of the received transmittal order.<sup>13</sup>

Banks are required to maintain analogous information for funds transfers of \$3,000 or more, but the rule uses different terminology to describe the parties.<sup>14</sup> The recordkeeping rule requires that the data be retrievable and available upon request to FinCEN, to law enforcement, and to regulators to whom FinCEN has delegated BSA compliance examination authority. Records required to be retained by the recordkeeping rule must be made available to Treasury or the Board upon request.<sup>15</sup>

Under the travel rule, a financial institution acting as the transmitter's financial institution must obtain and include in the transmittal order the following information on transmittals of funds of \$3,000 or more: (a) Name and, if the payment is ordered from an account, the account number of the transmitter; (b) the address of the transmitter; (c) the amount of the transmittal order; (d) the execution date of the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) either the name and address or the numerical identifier of the transmitter's financial institution. A financial institution acting as an intermediary financial institution must include in its respective transmittal order the same data points listed above, if received from the sender.<sup>16</sup>

The recordkeeping rule and the travel rule apply to transmittals of funds and

funds transfers. A "transmittal of funds" is defined as a series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order (31 CFR 1010.100(ddd)). The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. The term transmittal of funds includes a funds transfer. A "funds transfer" is a series of transactions beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order (31 CFR 1010.100(w)). Under the current definitions, transmittals of funds and funds transfers governed by the EFTA as well as any other funds transfers that are effected through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from the definitions of "transmittal of funds" and "funds transfer" under the BSA.

When the recordkeeping and travel rules were adopted, the EFTA governed only electronic funds transfers as defined in section 903(a)(7) of that Act. The term "electronic fund transfer" includes any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account (including a payroll card account). The term includes, but is not limited to, (a) Point-of-sale transfers; (b) automated teller machine transfers; (c) direct deposits or withdrawals of funds; (d) transfers initiated by phone as part of a bill-payment plan, and (e) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. The term does not include certain transfers of funds, such as those originated by check, draft, or similar paper instrument; those issued as a means of guaranteeing the payment or authorizing the acceptance of a check, draft, or similar paper instrument; or those made in the context of a purchase or sale of certain securities or commodities.<sup>17</sup> Wire or other similar transfers conducted through Fedwire<sup>®</sup> or similar wire transfer systems primarily used for transfers between financial institutions or between businesses are also specifically

excluded from the definition of "electronic fund transfer."

#### B. Section 1073 of the Dodd-Frank Act and EFTA

Section 1073 of the Dodd-Frank Act, signed into law on July 21, 2010, adds a new Section 919 to the EFTA, creating new protections for consumers who send remittance transfers. Authority to implement the EFTA (except for the interchange fee provisions in EFTA section 920) transferred from the Board to the Consumer Financial Protection Bureau ("CFPB") effective July 21, 2011. On February 7, 2012, CFPB adopted a final rule to implement Section 919, with an effective date of February 7, 2013.<sup>18</sup> The provisions of the final rule will apply to any "remittance transfer," which is defined as the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer. However, certain small dollar and securities- or commodities-related transfers are excluded from the definition of remittance transfer.<sup>19</sup> A "sender" is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.<sup>20</sup> A "designated recipient" is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.<sup>21</sup> A "remittance transfer provider" or "provider" is any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.<sup>22</sup> Once effective, the provisions will extend the coverage of section 919 of the EFTA, as implemented by Regulation E, to transactions that were excluded from other portions of the EFTA and Regulation E, such as international wire transfers sent by consumers through banks, and cash-based transmittals of funds sent by a consumer through money transmitters.

<sup>12</sup> 31 CFR 1010.410(e)(1)(i).

<sup>13</sup> 31 CFR 1010.410(e)(1)(ii) and (iii).

<sup>14</sup> 31 CFR 1020.410(a).

<sup>15</sup> 12 U.S.C. 1829b(b)(3)(C); 12 CFR 219.24.

<sup>16</sup> 31 CFR 1010.410(f)(1)-(2).

<sup>17</sup> 15 U.S.C. 1693a(7); 12 CFR 1005.3(b).

<sup>18</sup> 77 FR 6193 (Feb. 7, 2012).

<sup>19</sup> 12 CFR 1005.30(e).

<sup>20</sup> 12 CFR 1005.30(g).

<sup>21</sup> 12 CFR 1005.30(c).

<sup>22</sup> 12 CFR 1005.30(f).

*C. Effect of Changes to EFTA and Regulation E on the Scope of the Definitions of “Transmittal of Funds” and “Funds Transfer” Under the Regulations Implementing the BSA*

Existing BSA regulations exclude certain types of transactions and payment systems that are used mostly for domestic retail transactions and payments from the definitions of funds transfer and transmittal of funds. This exclusion was implemented, not by listing the individual transaction types, but by referencing the law that protected the consumers engaged in such transactions (EFTA), and the specific payment systems through which such transactions are conducted (ATM, point-of-sale, and automated clearinghouse). This method of identifying excluded transactions created a link between two statutes (and their implementing regulations) with very different goals. The BSA requires financial institutions to keep records and file reports on transmittals of funds and funds transfers (which could be either domestic or international, consumer- or business-related, retail or wholesale, cash-based or account-based) that the Secretary and the Board determine have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism.<sup>23</sup> The EFTA protects individual consumers engaging in certain movements of funds initiated through electronic means (electronic terminal, telephone, computer, online banking, magnetic tape, etc.) for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account. In spite of the different statutory purposes, for many years this relationship provided a satisfactory match, as the types of transactions covered by the EFTA conformed to the profile of the types of transactions that were appropriate to exclude from the recordkeeping and travel requirements under the BSA.

However, the recent amendments to the EFTA and the recently finalized revisions to Regulation E, which are effective February 7, 2013, will result in an expanded scope of the transactions

<sup>23</sup> Insured depository institutions must keep records relating to funds transfers that the Secretary and the Board jointly determine have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. 12 U.S.C. 1829(b). Financial institutions other than insured depository institutions, must keep records that the Secretary determines has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or conducting intelligence or counterintelligence activities to protect against international terrorism. 12 U.S.C. 1953(a).

subject to the EFTA’s remittance provisions. Some of these transactions have, to date, been covered by the regulations implementing the BSA. When the changes to Regulation E become effective, these transactions—which include international funds transfers sent by consumers through banks, and cash-based or account-based transmittals of funds sent by consumers through money transmitters—will fall outside the BSA rules’ definitions of “funds transfer” and “transmittal of funds” (31 CFR 1010.100(w) and 1010.100(ddd)). To avoid this result, the Board and FinCEN are proposing to amend the definitions of funds transfer and transmittal of funds under the regulations implementing the BSA to limit the exclusion of EFTA-covered transactions from the recordkeeping and travel rules.

### III. Section-by-Section Analysis

This NPRM proposes to revise the regulations implementing the BSA by narrowing the exclusion from definitions of “funds transfer” and “transmittal of funds.” The term “funds transfer” is defined in 31 CFR 1010.100(w). The term “transmittal of funds” is defined in 31 CFR 1010.100(ddd). Both definitions state that “funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, also are excluded from this definition.”

To preserve the current scope of transactions subject to the recordkeeping and travel rules, FinCEN and the Board propose to amend these definitions by revising the phrase “funds transfers governed by the Electronic Fund Transfer Act of 1978” to read “electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act.” These revisions would limit the exclusion in these definitions to electronic fund transfers as defined in the EFTA. Any remittance transfers that are covered by section 919 of the EFTA, but do not meet the definition of electronic fund transfer, would continue to be covered by the travel and recordkeeping rules.

The Board and FinCEN believe that the proposed amendments preserve the current scope of transactions subject to the funds recordkeeping and travel rules. Nonetheless, the Board and FinCEN request comment on whether the proposed amendments change the scope of the current EFTA exclusion from the funds recordkeeping and travel

rules, and thus the scope of transactions subject to those rules.

### IV. Notice and Comment Under the Administrative Procedure Act

FinCEN and the Board invite comment on any and all aspects of the proposal to amend the definitions of “funds transfer” and “transmittal of funds,” in order to maintain their current scope, in view of the modifications to the EFTA’s coverage.

### V. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this proposed rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 13563 and 12866.

### VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Since there is no change to the requirements imposed under existing regulations, FinCEN has determined that it is not required to prepare a written statement under section 202.

### VII. Regulatory Flexibility Act

#### *FinCEN*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation’s impact on small entities. Such an

analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). The proposed changes are not intended to alter any institution's existing obligations. The sole purpose of these amendments is to maintain the current scope of transactions subject to the BSA funds recordkeeping and travel rules, in light of changes to the EFTA. Accordingly, FinCEN hereby certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act. Notwithstanding this certification, FinCEN invites comments on the impact of this rule on small entities.

#### Board

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed regulation covers insured banks and certain nonbank financial institutions that are engaged in funds transfers and transmittals of funds. The Board believes it is unlikely that the proposed regulation will have a significant economic impact on a substantial number of small entities. Nonetheless, the Board has prepared an initial regulatory flexibility analysis pursuant to the RFA. The Board welcomes comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed regulation.* The Dodd-Frank Act's amendments to the EFTA expanded the types of transactions that are covered by the EFTA and therefore excluded from the definition of funds transfer and transmittal of funds in 31 CFR 1010.100(w) and 31 CFR 1010.100(ddd), respectively. This proposed regulation is necessary to retain the current scope of transactions subject to recordkeeping rule.

2. *Small entities affected by the proposed regulation.* The requirements of this proposed regulation, like the existing requirements, apply to all financial institutions subject to the Bank Secrecy Act, regardless of size. Based on Call Report data as of June 30, 2012, approximately 3,820 insured depository institutions had total domestic assets of

\$175 million or less.<sup>24</sup> In addition, the requirements of this proposed regulation to affect financial institutions that are not "insured depository institutions" under the Federal Depository Insurance Act. For example, as of June 30, 2012, approximately 6,120 credit unions had total domestic assets of \$175 million or less.

3. *Compliance requirements.* The proposed regulation, like the current regulation, requires insured depository institutions and nonbank financial institutions to collect and retain information on funds transfers and transmittals of funds. The proposed regulation does not change the scope of the information currently required to be collected or retained and does not change the funds transfers and transmittals of funds for which the information currently must be collected and maintained.

4. *Other Federal rules.* The Board believes that no Federal rules duplicate, overlap, or conflict with the proposed regulation.

5. *Significant alternatives to the proposed regulation.* The Board welcomes comment on any significant alternatives that would minimize the impact of the proposal on small entities.

#### VIII. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget ("OMB") under section 3507 of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3507(d)). (OMB Control No. 1506-0058 (recordkeeping requirements for financial institutions under § 1010.410(e) and (f)) and 1506-0059 (recordkeeping requirements for banks under § 1020.410(a)). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This proposal intends to keep the same scope of transactions subject to the requirements of the recordkeeping and travel rules as currently are subject to these requirements. With no change to the types or scope of transactions covered under the regulations, there is no impact on the burden estimates already approved under the requirements of the PRA.

#### List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Banks and banking, Currency,

Investigations, Law enforcement, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 1010 is proposed to be amended as follows:

#### PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107-56, 115 Stat. 307.

2. Section 1010.100 is amended by:

a. Revising the last sentence of paragraph (w), and

b. Revising the last sentence of paragraph (ddd) to read as follows:

#### § 1010.100 General definitions.

\* \* \* \* \*

(w) *Funds Transfer.* \* \* \* Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

\* \* \* \* \*

(ddd) *Transmittal of funds.* \* \* \* Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

\* \* \* \* \*

In concurrence:

By order of the Board of Governors of the Federal Reserve System, November 27, 2012.

**Robert deV. Frierson,**  
*Secretary of the Board.*

Dated: November 26, 2012.

**Jennifer Shasky Calvery,**  
*Director, Financial Crimes Enforcement Network.*

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<sup>24</sup> U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at [http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf).