the narrative portion of the notice to cosigner.

(i) The name and address of the Federal credit union;

(ii) An identification of the debt to be cosigned (*e.g.,* a loan identification number);

(iii) The amount of the loan;

(iv) The date of the loan;

(v) A signature line for a cosigner to acknowledge receipt of the notice; and

(vi) To the extent permitted by State law, a cosigner notice required by State law may be included in the notice in paragraph (b)(1) of this section.

(3) To the extent the notice to cosigner specified in paragraph (b)(1) of this section refers to an action against a cosigner that is not permitted by State law, the notice to cosigner may be modified.

§ 706.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a Federal credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

By the National Credit Union Administration Board, on January 29, 2010.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2010–2311 Filed 2–9–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AB04

Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to amend the relevant Bank Secrecy Act ("BSA") information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury ("Treasury"), may submit such requests. Modification of the information sharing rules is a part of Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

DATES: *Effective Date:* February 10, 2010.

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 2.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT ACT"), Public Law 107–56 ("the Act"). Title III of the Act amends the anti-money laundering provisions of the BSA, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the BSA has been delegated to the Director of FinCEN.

Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with promulgating regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

> [t]he Secretary shall * * * adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.[1] That rule ("the 314(a) rule") allows FinCEN to require financial institutions to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected based on credible evidence of engaging in terrorist activity or money laundering.[2] Before processing a request from a Federal law enforcement agency, FinCEN also requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use this authority ("the 314(a) program").

Since its inception, the 314(a) program has yielded significant investigative benefits to Federal law enforcement users in terrorist financing and major money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN is broadening access to the program as outlined in the following paragraphs.

C. Objectives of Changes

1. Allowing Certain Foreign Law Enforcement Agencies To Initiate 314(a) Queries

In order to satisfy the United States' treaty obligation with certain foreign governments, FinCEN is extending the use of the 314(a) program to include foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union ("EU") (hereinafter, the "U.S.–EU MLAT") was signed. In 2006, the U.S.–EU MLAT, along with twenty-five bilateral instruments, were submitted to the U.S. Senate for its advice and consent for

[1] Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60,579 (Sept. 26, 2002).

[2] 31 CFR 103.100.

ratification. The U.S.–EU MLAT and all twenty-seven bilateral instruments were ratified by the President on September 23, 2008, upon the advice and consent of the U.S. Senate.[3]

Article 4 of the U.S.–EU MLAT (entitled "Identification of Bank Information") obligates a requested Signatory State to search on a centralized basis for bank accounts within its territory that may be important to a criminal investigation in the requesting Signatory State. Article 4 also contemplates that Signatory States may search for information in the possession of a non-bank financial institution. Under Article 4, a Signatory State receiving a request may limit the scope of its obligation to provide assistance to terrorist activity and money laundering offenses, and many did so in their respective bilateral instruments with the United States.[4] In negotiating the terms of Article 4, the United States expressly envisioned that EU member States would be able to access the 314(a) program. Expanding that process to include certain foreign law enforcement requesters will greatly benefit the United States by granting law enforcement agencies in the United States reciprocal rights to obtain information about matching accounts in EU member States.

Foreign law enforcement agencies will be able to use the 314(a) program in a way analogous to how Federal law enforcement agencies currently access the program. Thus, a foreign law enforcement agency, prior to initiating a 314(a) query, will have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. A Federal law enforcement official serving as an attaché to the requesting jurisdiction will be notified of and will review the foreign request prior to its submission to FinCEN. The application of these internal procedures will help ensure that the 314(a) program is utilized only in significant situations, thereby minimizing the cost to reporting financial institutions. Comments addressed to the expansion of the 314(a) program to include foreign law enforcement agencies will be discussed below.

2. Allowing State and Local Law Enforcement Agencies To Initiate 314(a) Queries

Money laundering and terrorist-related financial crimes are not limited by jurisdiction or geography. Detection and deterrence of these crimes require information sharing across all levels of investigative authorities, to include State and local law enforcement, to ensure the broadest U.S. Government defense.

Access to the 314(a) program by State and local law enforcement agencies will provide them a platform from which they can more effectively and efficiently fill information gaps, including those connected with multi-jurisdictional financial transactions, in the same manner as Federal law enforcement agencies. This expansion of the 314(a) program, in certain limited circumstances, to include State and local law enforcement authorities, will benefit overall efforts to ensure that all law enforcement resources are made available to combat money laundering and terrorist financing.

As is the case currently with requesting Federal law enforcement agencies, State and local law enforcement, prior to initiating a 314(a) query, will have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. The application of these internal procedures will help ensure that the 314(a) program will be utilized only in the most compelling situations, thereby minimizing the cost incurred by reporting financial institutions. Comments addressed to the expansion of the 314(a) program to allow State and local law enforcement participation will be discussed below.

3. Clarifying That FinCEN, on Its Own Behalf and on Behalf of Appropriate Components of the Department of the Treasury, May Initiate 314(a) Queries

FinCEN's statutory mandate includes working to identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies, and to support ongoing criminal financial investigations and prosecutions.[5] FinCEN also routinely assists the law enforcement community through proactive analyses to discover trends, patterns, and common activity in the financial information contained in BSA reports. FinCEN's use of the 314(a) program will enhance the scope and utility of its case support efforts, including insights provided from BSA data, thereby delivering critical information about significant criminal activity on a timelier basis.

FinCEN assists law enforcement by providing advanced or specialized analysis of BSA data on significant investigations involving offenses of money laundering or terrorist financing. These investigations often involve multiple locations or are otherwise linked to other investigations. A single 314(a) request issued by FinCEN can more efficiently coordinate and simultaneously support several investigations, thereby eliminating the need for separate requests from each investigating agency or jurisdiction.

There also are instances in which FinCEN's analytical products will benefit from access to the 314(a) program by providing a more complete picture of financial transactions and mechanisms, as well as interrelationships among investigative subjects and financial transactions or entities. In addition, other appropriate components of Treasury that provide analytical support in areas such as Treasury's counter-terrorist financing and anti-money laundering efforts will be better equipped to fulfill their missions with access to the 314(a) program. It is anticipated that the findings from the use of the 314(a) program will reveal additional insights and overall patterns of suspicious financial activities. Comments addressed to the expansion of the 314(a) program to allow FinCEN to self-initiate requests will be discussed below.

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the Notice of Proposed Rulemaking published in the **Federal Register** on November 16, 2009 ("Notice").[6] With the intent of broadening access to the 314(a) program, the Notice proposed to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to initiate 314(a) queries. In addition, the Notice proposed to clarify that FinCEN, on its own behalf and on behalf of appropriate components of Treasury, may initiate 314(a) queries.

III. Comments on the Notice—Overview and General Issues

The comment period for the Notice ended on December 16, 2009. We

[3] An additional two bilateral instruments, with Romania and Bulgaria, were concluded and submitted to the Senate in 2007, following those countries' accession to the EU.

[4] In addition, Article 4 makes clear that the United States and the EU are under an obligation to ensure that the application of Article 4 does not impose extraordinary burdens on States that receive search requests.

[5] *See* 31 U.S.C. 310.

[6] *See* 74 FR 58926 (Nov. 16, 2009).

received a total of 13 comment letters from 14 entities and individuals.[7] Of these, 7 were submitted by trade groups or associations, 4 were submitted by individuals, 2 were submitted by Federal law enforcement agencies, and 1 was submitted by an individual financial institution.[8]

Comments on the Notice focused on the following matters: (1) Requirements for foreign, State, and local law enforcement 314(a) requests; (2) Confidentiality and privacy concerns regarding information provided to foreign, State, and local law enforcement; (3) Requirements for FinCEN self-initiated 314(a) requests; (4) FinCEN's authority to expand the 314(a) rule; (5) The 314(a) statutory goal of sharing information with financial institutions; and (6) Estimate of burden.

A. Requirements for Foreign, State, and Local Law Enforcement 314(a) Requests

Some commenters requested that FinCEN clarify what the requirements are for foreign, State, and local law enforcement to submit 314(a) requests. In addition, those commenters asked FinCEN to clarify how the requests will be monitored to ensure that regulatory and procedural requirements are met. For example, some commenters requested clarification as to how FinCEN will determine whether a money laundering investigation is "significant" and that more traditional means of investigation have been exhausted. FinCEN will require these law enforcement agencies to certify that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist financing, or money laundering. As discussed above, FinCEN will require these law enforcement agencies to certify that, in the case of money laundering, the matter is significant, and the requesting agency has been unable to locate the information sought through traditional methods of investigation before attempting to make a 314(a) request. In addition, foreign, State, and local law enforcement agencies making 314(a) requests are required to include the following information in their certification request: A citation of the relevant statutory provisions; a description of the suspected criminal conduct; for money laundering cases, a description as to why the case is significant, and a list of the traditional methods of investigation and analysis which have been conducted prior to making the request. Factors that contribute towards evaluating the significance of a money laundering case include, for example: The seriousness and magnitude of suspected criminal conduct; the dollar amount involved; whether the analysis is being conducted as part of a multi-agency task force; the importance of analysis to agency program goals; criminal organization involvement; and multi-regional and/or cross border implications.

All requests made by foreign, State, and local law enforcement agencies will be submitted to FinCEN for review and approval. With regard to a request made by a foreign law enforcement agency, the request will be submitted to a Federal law enforcement attaché. The attaché will review the request to ensure that the request is from a legitimate entity. The attaché will then forward the request to FinCEN for review. Following FinCEN's approval, the request will be made available to financial institutions via the 314(a) Secure Information Sharing System. The financial institutions may contact FinCEN's 314 Program Office with any questions regarding a foreign law enforcement request. With regard to a State or local law enforcement request, the financial institution may contact FinCEN, or the State or local law enforcement agency with any questions regarding its request. FinCEN's determination to subject foreign, State, and local law enforcement requests to the same procedural review and vetting process imposed upon Federal law enforcement requests goes directly to the recommendations offered by many commenters.

One commenter asked whether foreign, State, or local law enforcement will be identified as the requester on 314(a) requests sent by FinCEN to financial institutions. Currently, in a request made by a Federal law enforcement agency, the request made available by FinCEN to financial institutions only includes the name and contact number of the agency representative making the request. The Federal law enforcement agency making the request is not identified on 314(a) requests sent by FinCEN to financial institutions. For a request made by a State or local law enforcement agency, the request made available by FinCEN to financial institutions also will include the name and contact number of the agency representative making the request. For a request made by a foreign law enforcement agency, the request made available by FinCEN to financial institutions will include the contact number for FinCEN's 314 Program Office. This decision was made to alleviate the need for financial institutions to call overseas.

One commenter asked for clarification as to whether foreign, State, and local law enforcement requests could be made independent of a Federal investigation. There is no obligation that requests from these agencies be linked to a Federal investigation. However, with regard to State and local law enforcement requests, the law enforcement agency must include in the certification the identity of any Federal law enforcement agency with whom they have consulted. In addition, for terrorism cases FinCEN will review the request with the FBI liaison to FinCEN prior to further processing the request.

A few commenters suggested that FinCEN should limit access to those countries that cooperate with the United States via a treaty or other bilateral agreement. As we discuss above, only foreign law enforcement agencies with criminal investigative authority that are from a jurisdiction that is a party to a treaty that provides for, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtainable under section 103.100 will be allowed to access the 314(a) program. Some commenters suggested that FinCEN should clarify which State and local law enforcement agencies will be allowed to access the 314(a) program. All State and local law enforcement agencies with criminal investigative authority will be allowed to access the 314(a) program.

One association suggested that before any expansion in the proposal is considered, the current internal controls over the 314(a) program should be incorporated into the rule. FinCEN is not inclined to incorporate its internal operating procedures into the regulation, as this would not allow us sufficient latitude to revise our internal operating procedures as needed.

A few commenters asked for clarification as to what steps foreign, State, and local law enforcement will be required to take to obtain information from a financial institution if a match to their request is identified. The steps required to be taken by one of these law enforcement agencies to obtain information from a financial institution once a match has been confirmed is not addressed within the 314(a) rule. These law enforcement agencies will have to follow the standard procedures that they currently follow in order to obtain financial information from financial

[7] All comments to the Notice are available for public viewing at *www.regulations.gov.*

[8] One comment letter was submitted on behalf of two entities.

institutions, for example through issuance of a subpoena, a letter rogatory, or national security letter.

Two commenters noted that Federal law enforcement is required to track their use of the 314(a) data to provide feedback, demonstrate program value, and maintain accountability. FinCEN routinely provides feedback and data to the regulated public as to the effectiveness of the 314(a) program (*e.g.,* SAR Activity Review articles [9]) and will continue to do so in the future. The commenters suggested that the data reporting requirements be made explicit in the implementing regulations and the same data reporting requirements should apply to foreign, State, and local law enforcement. As noted above, FinCEN is not inclined to incorporate its internal operating procedures into the regulation. However, the same data reporting requirements will apply to foreign, State, and local law enforcement.

One commenter asked how FinCEN would address overlapping interests of different law enforcement agencies pursuing the same subject. With regard to foreign requests, while processing the request, any existing cases the 314(a) subject(s) hits against will be brought to the immediate attention of FinCEN's 314 Team Leader to determine what further action will take place. FinCEN will automatically network (*i.e.,* notify) all international terrorism-related requests with the FBI only, and will automatically network all international money laundering requests with both Federal and non-Federal law enforcement agencies, as applicable. With regard to State and local law enforcement requests, the law enforcement agency must include in the certification the identity of any Federal law enforcement agency with whom they have consulted. For State and local law enforcement requests related to terrorism cases, FinCEN will review the request with the FBI liaison to FinCEN prior to further processing the request. In addition, it is FinCEN's policy to network different requesters that have submitted requests for information to FinCEN on the same subject. Networking gives requesters the opportunity to coordinate their efforts with U.S. law enforcement and other international entities on matters of mutual interest. Networking will apply to requests made by foreign, State, and local law enforcement.

A few commenters suggested that FinCEN provide training to foreign, State, and local law enforcement regarding the proper procedures for utilizing the 314(a) program. While a formal process has not been instituted at this point, FinCEN's intention is to provide outreach to the new law enforcement users.

Another commenter suggested that instead of allowing all State and local law enforcement agencies to access the 314(a) program, a 2-year pilot program allowing access to two or three large State and local law enforcement agencies be implemented instead. The commenter noted that FinCEN could monitor the results of the pilot program and report the results to Congress and the public. While FinCEN will monitor the effectiveness of the program's expansion, arbitrarily limiting access to certain large local jurisdictions would deny potential access to smaller communities confronting serious criminal threats.

One commenter suggested that local law enforcement agencies be required to enter into a memorandum of understanding with FinCEN in order to access the 314(a) program. FinCEN has an active cooperative relationship with law enforcement at every level in the country, and expanding the 314(a) program to allow local law enforcement access is part of the ongoing support FinCEN provides to law enforcement. This support includes, for example, providing access to BSA data, fostering information exchange with international counterparts, and offering financial subject matter knowledge in key realms.

B. Confidentiality and Privacy Concerns Regarding Information Provided to Foreign, State, and Local Law Enforcement

A few commenters expressed concern about the confidentiality of information that financial institutions would provide to FinCEN as a result of the rule, particularly when such information is shared by FinCEN with requesting foreign, State and local law enforcement agencies. At least one commenter drew an analogy between section 314(a) "hit" information and information in suspicious activity reports ("SARs") to argue that section 314(a) information should be accorded the same protections and assurances of confidentiality when such information is shared with foreign law enforcement agencies.

FinCEN believes these concerns are unfounded. Section 314(a) information is extremely limited. Unlike SAR information, section 314(a) information will continue to consist of only a confirmation that a matching account or transaction exists. Also unlike the documentation supporting the filing of a SAR, the underlying account and transaction information relating to a 314(a) hit that contains sensitive customer financial information is not deemed to be part of the 314(a) response, and can only be obtained by the requesting agency through appropriate legal process, such as a subpoena. FinCEN is not part of that legal process to obtain the underlying information; its involvement ends at informing requesting agencies that a match exists. In addition, unlike with SARs, the personally-identifiable information (*e.g.,* subject names, aliases, dates of birth, and social security numbers) that a financial institution uses to conduct a section 314(a) search is provided not by the institution, but by the requesting agency.

Another commenter questioned whether sharing section 314(a) information with foreign law enforcement agencies may run afoul of the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. 3401 *et seq.,* or any other Federal or state privacy law. Because any hit information provided to FinCEN would be reported pursuant to a Federal rule, the reporting of such information to FinCEN would fall within an exception to the RFPA.[10] FinCEN is not aware of any other Federal or state law that would prohibit a financial institution from reporting section 314(a) information to FinCEN in response to a foreign law enforcement agency's request or that would prevent FinCEN from sharing such information with the foreign requester.

C. Requirements for FinCEN Self-Initiated 314(a) Requests

Some commenters requested that FinCEN clarify the reason FinCEN needs access to expand the 314(a) program to allow it to make self-initiated requests, how FinCEN will use the information, the procedures that will apply to initiating the requests, the parties who will screen such requests, and any limitations that will apply to FinCEN's self-initiated requests. FinCEN self-initiated requests will be for the purpose of conducting analysis to deter and detect terrorist financing activity or money laundering. These requests will be made in order to increase the value of analytical support to law enforcement. FinCEN or the appropriate Treasury component making the request shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or

[9] *See, e.g.,* "BSA Records, 314(a) Request Assists Investigation of International Money Laundering Using Stored Value Cards," SAR Activity Review—Trends, Tips & Issues, Issue 12, October 2007, *http://www.fincen.gov/law_enforcement/ss/html/008.html.*

[10] 12 U.S.C. 3413(d).

organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. FinCEN or the other appropriate Treasury component making the request shall also certify that, in the case of money laundering, the matter is significant, and the requesting agency has been unable to locate the information sought through traditional methods of analysis before attempting to make a 314(a) request. In addition, FinCEN or the appropriate Treasury component making the 314(a) request is required to include information such as the following in their certification request: For money laundering cases, a description as to why the case is significant, and a list of the traditional methods of analysis which have been conducted prior to making the request. If FinCEN uses the 314(a) process in support of proactive target development, FinCEN will first brief law enforcement to ensure that the analysis is of interest to law enforcement and to ensure de-confliction with any ongoing investigation. In addition, FinCEN self-initiated 314(a) requests will be independently reviewed and approved by multiple offices within FinCEN.

In addition, some commenters requested that FinCEN clarify the components of Treasury that will have access to the 314(a) program and under what circumstances. The components of Treasury that will have access to the 314(a) program will be those components that provide analytical support, such as those providing support to Treasury's counter-terrorist financing and anti-money laundering efforts. The components of Treasury which submit 314(a) requests will be required to comply with the same procedures and certification requirements as FinCEN self-initiated requests.

Two commenters noted that permitting FinCEN and other components of Treasury to self-initiate 314(a) requests may be detrimental to law enforcement and may cause many unnecessary searches by banks. The same commenters noted that it appears that FinCEN is lowering the threshold as to when FinCEN can initiate 314(a) requests. The commenters explained that law enforcement must exhaust all traditional methods of investigation before they can initiate a 314(a) request. Because FinCEN is not a law enforcement agency, FinCEN cannot exhaust all traditional methods of investigation, and therefore FinCEN will be held to a much lower threshold than law enforcement. In addition, the commenters are concerned that law enforcement may be precluded from making a 314(a) request on a subject, at a crucial point of an investigation, if FinCEN has previously conducted a self-initiated request on the same subject, because this would create a duplicative search, something that has been discouraged by FinCEN. The commenters also are concerned that a FinCEN or Treasury 314(a) request may be submitted on a subject who is already under investigation by law enforcement, because the broad audience that receives these requests could cause operational concerns for the investigation. In addition, the commenters noted that it is not clear what FinCEN will do with the information once it learns of a previously unknown bank account through the 314(a) process if FinCEN does not have subpoena or summons authority to pursue the lead any further. Finally these commenters noted that FinCEN's requests will be competing with law enforcement for access to the limited number of 314(a) requests that can be made, due to the need not to overburden financial institutions.

FinCEN will be implementing review procedures to ensure that any request it intends to make will not conflict with ongoing law enforcement efforts. As noted above, in the certification FinCEN or other components of Treasury will submit for a 314(a) request, they must certify that to ensure de-confliction with any possible on-going investigation within the Federal law enforcement community, they have consulted with FinCEN's Federal law enforcement liaisons. In addition, FinCEN must also certify that they have been unable to locate the information sought through traditional methods of analysis, and they must list the type of analysis they have conducted. It is anticipated that any direct use by FinCEN of the 314(a) program will not cause any significant increase in the amount of case requests going to the industry. The primary scenarios in which we would envision FinCEN making a 314(a) request are as follows: (1) A request could be made for FinCEN to serve as a conduit in issuing a consolidated 314(a) request on behalf of a multi-agency task force investigation. In this instance, it might actually reduce/preclude an otherwise larger number of separate requests emanating from individual agencies. FinCEN would request that these agencies conduct the subpoena/investigative followup on any positive hits received from the industry. (2) FinCEN may occasionally develop significant, multi-state proactive targets/leads which might be appropriate for a 314(a) request. These are typically long-term selective efforts and therefore not likely to constitute any significant increase in the number of 314(a) requests. In addition, FinCEN would first brief the law enforcement community on the target package before deciding to issue a 314(a) request to ensure it is of substantial interest to law enforcement agencies and also to ensure an opportunity for de-confliction. If positive hits occur, FinCEN would collaborate with law enforcement on any subpoena/investigative follow-up. Furthermore, for any FinCEN self-initiated 314(a) requests, the same parameters will exist for justifying the significance of the 'case request' which, in turn, will also likely limit the number of such requests.

D. FinCEN's Authority To Expand the 314(a) Rule

A few commenters questioned FinCEN's authority to expand the section 314(a) program to include requesters other than Federal law enforcement agencies. Section 314(a) authorizes Treasury to adopt regulations to encourage further cooperation among "financial institutions, their regulatory authorities, and law enforcement authorities." Nowhere in section 314(a) is the term "law enforcement" limited to just Federal law enforcement agencies. That FinCEN initially included only Federal law enforcement agencies when it first established the section 314(a) program in 2002 was never meant to suggest a limitation on FinCEN's authority. On the contrary, the section 314(a) program began with Federal law enforcement because of uncertainty about how the program would work in practice and uncertainty about the resulting burden to financial institutions. FinCEN has had almost eight years of experience in administering the section 314(a) program, and for the reasons outlined elsewhere in this rulemaking, believes that its expansion to include other requesters will reap benefits that far outweigh the additional obligations on financial institutions. This is particularly true in the case of foreign requesters because law enforcement agencies in the United States, as a result of FinCEN accommodating foreign requesters, now will have the opportunity to obtain information about matching accounts and transactions in those EU jurisdictions that have signed the U.S.-EU MLAT. FinCEN therefore believes that its expansion of the section 314(a) program is entirely consistent with the stated goals of section 314(a) of

encouraging cooperation between financial institutions and law enforcement agencies.

FinCEN received another comment questioning its "expansion" of the term "money laundering," as that term is used in the rule. Currently, that term is defined to mean activity criminalized by 18 U.S.C. 1956 or 1957. The one change to the definition of the term "money laundering" would be to clarify that the term includes activity that would be criminalized by 18 U.S.C. 1956 or 1957 if such activity occurred in the United States. The change is necessary because of the addition of foreign law enforcement agencies as an authorized requester. Aside from making the provisions of the rule relevant to foreign requesters, the change is not intended and should not be viewed as expanding the scope of activity for which the section 314(a) program may be used.

One commenter also expressed concern about the pace at which FinCEN is seeking to amend the section 314(a) process, given its belief that section 314(a) information may be obtained through existing processes. As was explained in the Notice and elsewhere in this rulemaking, FinCEN is seeking to finalize a rule as quickly as possible so that the U.S. Government can comply with its obligations under the U.S.-E.U. MLAT and related bilateral instruments. Those treaties enter into force on February 1, 2010. Contrary to that commenter's belief, there is no current mechanism available to State, local and foreign law enforcement agencies that would allow those agencies to ascertain quickly whether financial institutions throughout the United States have established an account or conducted a transaction for a particular person or entity.

E. 314(a) statutory goal of sharing information with financial institutions

A few commenters noted that the proposed rule sets forth additional reporting requirements for the industry, but does not address how this furthers the statutory goal of sharing information with financial institutions. One of these commenters noted that FinCEN should develop mechanisms, in addition to its bi-annual SAR Activity Review publication, that will help share information with financial institutions. The overarching policy directive of the Act generally, and section 314 in particular, is that more information sharing will better enable the Federal Government and financial institutions to guard against money laundering and terrorist financing. This rule supports the policy directive of the Act. FinCEN recognizes the importance of providing financial institutions information to assist them in identifying and reporting suspected terrorist activity and money laundering. For this reason, FinCEN regularly provides sample case feedback studies to the industry which illustrate how the use of 314(a) has often made a 'breakthrough' difference in terrorist financing and significant money laundering cases. The studies also convey insight on related trends and patterns. FinCEN also has posted several Federal law enforcement informational alerts on the 314(a) Secure Information Sharing System, which has provided for enhanced sharing of information between the financial industry and law enforcement in a secure environment. In addition, the final rule does not preclude law enforcement, when submitting a list of suspects to FinCEN, from providing additional information relating to suspicious trends and patterns, and FinCEN specifically will encourage law enforcement to share such information with the financial community.

F. Estimate of burden

Refer to section V–Administrative Matters, item D—Paperwork Reduction Act for details regarding comments on the estimate of burden.

IV. Section-by-Section Analysis

A. Section 103.90(a)

FinCEN proposed to amend 31 CFR 103.90(a) by changing the definition of the term "money laundering" to include activity that would be criminalized by 18 U.S.C. 1956 or 1957 if such activity occurred in the United States.[11] The change will allow the term to be applied to information requests by foreign law enforcement agencies. State and local law enforcement requesters will be subject to the same definition of money laundering that currently applies to Federal law enforcement agencies—*i.e.,* activity that is criminalized by 18 U.S.C. 1956 or 1957. Thus, in the case of a significant money laundering matter, a State or local law enforcement agency seeking information under the section 314(a) program will have to certify that it is investigating activity that would be criminalized under 18 U.S.C. 1956 or 1957. Such activity could include, for example, conducting a financial transaction with proceeds of murder, kidnapping, or dealing in a controlled substance (as defined in section 102 of the Controlled Substances Act), which is punishable as a felony under State law.[12] FinCEN is adopting this amendment as proposed.

B. Section 103.100(a)(4)

FinCEN proposed to add 31 CFR 103.100(a)(4), which will define a "law enforcement agency" to include a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that the foreign law enforcement agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States with reciprocal access to information comparable to that obtainable under section 103.100. The addition of foreign law enforcement agencies will enable the United States to be compliant with its obligations under the U.S.-EU MLAT, thereby providing law enforcement agencies in the United States with the benefit of reciprocal access to information in EU member States.[13]

The addition of State and local law enforcement agencies, as discussed above, will provide a platform for such agencies to deal more effectively with multi-jurisdictional financial transactions in the same manner as Federal law enforcement agencies. Access to the 314(a) program will provide State and local law enforcement agencies with another resource to aid in discovering the whereabouts of stolen proceeds. FinCEN is adopting these amendments as proposed.

C. Section 103.100(b)(1)

FinCEN proposed, for the reasons discussed above, to amend section 103.100(b)(1) to make conforming changes to reflect the addition of State and local law enforcement agencies, and foreign law enforcement agencies, as potential requesters of information.[14]

[11] Two commenters noted that they are opposed to redefining what constitutes money laundering for 314(a) information sharing purposes by incorporating guidance that was issued in 2009 under the companion statutory provision, section 314(b), that allows U.S. financial institutions to share information. The commenters noted that broadening the scope improperly sends a signal that serious money-laundering and terrorist financing crimes have no greater priority than standard financial fraud or other criminal cases. FinCEN has not expanded the definition of the term "money laundering" beyond the change noted above.

[12] *See* 18 U.S.C. 1956(c)(7) (defining the term "specified unlawful activity" to include, *inter alia,* an offense listed in 18 U.S.C. 1961(1)).

[13] The U.S.-EU MLAT, and 27 bilateral instruments with EU Member States implementing its terms, require each EU member State to be able to search for the kind of information covered by 31 CFR 103.100 and to report to the requesting State the results of such a search promptly.

[14] Two Federal law enforcement agencies noted that the NPRM's appeal to add the EU countries as well as state and local law enforcement to the

Continued

FinCEN adopts this amendment as proposed.

D. Section 103.100(b)(2)

FinCEN proposed to add a new 31 CFR 103.100(b)(2) which will clarify that FinCEN may request directly, on its own behalf and on behalf of appropriate components of Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, specified individuals, entities, or organizations. Comments directed to this amendment were discussed above and FinCEN has reviewed and weighed the concerns expressed by some commenters. FinCEN, however, continues to hold that expanding the 314(a) program to allow itself, and acting on behalf of other appropriate Treasury components, to initiate search requests for the purpose of conducting analyses to deter and detect terrorist financing activity or money laundering will enhance Treasury's ability to fulfill its collective mission. FinCEN, therefore, adopts the amendments as proposed.

V. Administrative Matters

A. Executive Order 12866

It has been determined that this rule is a significant regulatory action for purposes of Executive Order 12866 because it raises a novel policy issue. However, a regulatory impact analysis was not required.

B. 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 that 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. FinCEN has determined that it is not required to prepare a written statement under section 202.

C. Regulatory Flexibility Act

When an agency issues a final rule, the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*), requires the agency to prepare either a final regulatory flexibility analysis, which will "describe the impact of the rule on small entities," or to certify that the final rule is not expected to have a significant economic impact on a substantial number of small entities. For the reasons stated below, FinCEN certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Estimate of the number of small entities to which the rule will apply:

The proposed rule applies to all financial institutions of which FinCEN estimates there are 55,000. However, FinCEN has limited its inquiries to banks,[15] broker-dealers in securities, future commission merchants, trust companies, and life insurance companies ("Covered Institutions"). Because entities of all sizes are vulnerable to abuse by money launderers and financers of terrorism, the final rule will apply to all Covered Institutions regardless of size. As discussed below, FinCEN acknowledges that the final rule will affect a substantial number of small entities.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175 million in assets.[16] Of the estimated 8,000 banks, 80% have less than $175 million in assets and are considered small entities.[17] Of the estimated 7,000 credit unions, 90% have less than $175 million in assets.[18] A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.[19] Of the estimated 5,000 broker-dealers, 15% are small entities.[20] FinCEN estimates that the majority of the remaining 250 affected Covered Institutions are small entities. Therefore, FinCEN acknowledges that the rule will affect a substantial number of small entities.

Description of the projected reporting and recordkeeping requirements of the rule:

Currently, Covered Institutions are already subject to the reporting requirements of section 314 of the USA PATRIOT Act and FinCEN's implementing regulation.[21] However, FinCEN estimates that the final amendment may potentially increase the cost of reporting. Under the 314(a) program, Covered Institutions are provided a list of individuals and entities that are subjects of significant money laundering or terrorist financing investigations. The list is primarily provided bi-weekly. Covered Institutions are required to review their records to determine whether the institutions currently maintain, or have maintained, an account for a named subject during the preceding 12 months, or have conducted any transactions involving any named subjects during the previous six months.[22] Covered Institutions are required to report any positive matches to FinCEN.[23] Currently, only Federal law enforcement agencies participate in the 314(a) program. The final rule will allow State and local law enforcement, as well as certain foreign law enforcement agencies, and FinCEN, as well as other Treasury components, to add subjects to this list. This expansion will most likely result in additional requests for information from Covered Institutions.

As discussed in the Paperwork Reduction Act analysis below, FinCEN estimates 120 search requests[24] per year associated with the recordkeeping requirement in this rule and 9 subjects (including aliases) per request, resulting in an estimated 1,080 subjects per year. The estimated burden associated with searching and identifying each subject is 4 minutes per subject.[25] FinCEN

314(a) program is understandable, because these elements are all law enforcement entities.

[15] 31 CFR 103.11(c).

[16] U.S. Small Business Administration, "Table of Small Business Size Standards Matched to North American Industry Classification System Codes" at 28 (Aug. 22, 2008).

[17] *See* FDIC, Bank Find (Number of Banks), *http://www2.fdic.gov/idasp/main_bankfind.asp* (last visited Mar. 24, 2009).

[18] See also NCUA, Credit Union Data (Number of Credit Unions), *http://webapps.ncua.gov/customquery/* (last visited Mar. 24, 2009).

[19] 17 CFR 240.0–10.

[20] *See* 73 FR 13692, 13704 (Mar. 13, 2008) (The Securities and Exchange Commission ("SEC") reports from commission records that there are 6016 broker-dealers, 894 of which are small businesses. FinCEN only sends 314(a) requests to an estimated 5,000 broker-dealers; however we rely on the SEC numbers to estimate that 15% are small businesses).

[21] 31 CFR 103.100.

[22] 31 CFR 103.100(b)(2).

[23] 31 CFR 103.100(b)(2)(ii).

[24] Estimated requests per annum subject to the Paperwork Reduction Act include 10 from FinCEN, 50 from State/local law enforcement, and 60 from foreign law enforcement agencies, for a total of 120 requests.

[25] FinCEN based its estimate on experience and contact with the regulated industries. However, due to one of the comments received on the proposed rule, FinCEN re-assessed this original estimate. For example, FinCEN considered the time necessary for a depository institution to process basic customer transactions. These types of transactions are similar to searching and identifying the subject of a 314(a) request because, in order to process a transaction for a customer, a depository institution teller must confirm that a customer maintains an account with the depository institution. In many cases, this requires the customer to provide some sort of identifying information to the depository institution teller, such as a driver's license, which contains specific identifying information, including name, address, and date of birth. When a 314(a) request is submitted to a Covered Institution, the request includes the following identification information for a subject: name, address, date of birth, and social security number. Therefore, an employee of

therefore estimates that each recordkeeper will, on average, spend approximately 4,320 minutes, or roughly 72 hours per year to comply with the recordkeeping requirement in this rule. According to the Bureau of Labor Statistics, a compliance officer's mean hourly wage is $24.47. This would equate to a cost of $1,761.84 per year for a financial institution to comply with this recordkeeping requirement.[26] Because this is a minimal increase to the annual payroll of small businesses within the regulated industries, FinCEN does not expect the impact of the rule to be significant. FinCEN was unable to quantify an exact number of this effect due to a lack of available information specific to the regulated industries.

In the proposed rule, FinCEN requested comment on whether 4 minutes to search and identify each subject that is part of a 314(a) request was an accurate estimate. A few commenters stated that this estimate may be low, however only one association offered an alternative estimate. The association suggested that the estimate of time to search and identify each subject be increased to more than 30 minutes per subject. In describing this estimate, the association explained that it included the time required to verify a positive match and to determine whether a Covered Institution should file a SAR. FinCEN disagrees with the reasoning behind the association's increased estimate. Including the time necessary to conduct additional due diligence to confirm a positive match in the estimate of researching each subject overstates the time required to search and identify a positive match. Based upon the experience of FinCEN's 314(a) program office, the average Covered Institution will experience a positive hit on a subject only a handful of times per year. In addition, incorporating the time necessary to conduct due diligence on a positive match to a subject to determine whether filing a SAR is necessary also overstates the time required to search and identify a positive match. Conducting research to determine whether to file a SAR on a customer who is a positive match to a 314(a) request is not required by this rule. A financial institution's determination as to whether to research a customer and file a SAR is based upon its own policies and procedures to identify suspicious activity. Additionally, this time is already reflected in FinCEN's burden estimates for filing a SAR. The association's estimate relies on time spent outside the scope of the regulation, and the association did not provide a breakdown of the time required to search and identify a match to a 314(a) request in their suggested estimate of over 30 minutes. For these reasons, along with the fact that FinCEN received no other comments providing an alternative estimate to 4 minutes per subject, FinCEN will continue to rely on this estimate.

Certification

As acknowledged above, the final rule will impact a substantial number of small entities. However, as also discussed above, FinCEN estimates that the impact from these requirements will not be significant. Accordingly, FinCEN certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0049. The collection of information in this final rule is in 31 CFR 103.100. The information will be used by Federal[27] and State and local law enforcement agencies, as well as certain foreign law enforcement agencies, and FinCEN and other appropriate components of Treasury, in the conduct of investigating money laundering and terrorist financing activity. The collection of information is mandatory.

International Requests: FinCEN estimates that there will be no more than 60 requests for research submitted to the 314(a) program by foreign law enforcement agencies annually.[28]

State and Local Requests: While there are more than 18,000 State and local law enforcement agencies, FinCEN estimates that the number of cases that will meet the stringent 314(a) submission criteria will be relatively few. The majority of significant money laundering and terrorist financing related cases are worked jointly with Federal investigators and are thus already eligible for 314(a) request submission. FinCEN estimates that there will be no more than 50 State and local cases per annum of 314(a) requests that meet submission criteria.

FinCEN and appropriate components of Treasury Requests: FinCEN estimates that the 314(a) program will be used by FinCEN and other appropriate Treasury components in fewer than 10 cases per annum. Taking into consideration the estimated number of potential use cases that will fit recommended internal 314(a) criteria, FinCEN does not believe that this expansion will be a significant strain on existing program resources.

Description of Recordkeepers: Covered financial institutions as defined in 31 CFR 103.100.

Estimated Number of Recordkeepers: On an annual basis, there are approximately 20,134 covered financial institutions, consisting of 15,106 commercial banks, savings associations, and credit unions, 4,793 securities broker-dealers, 139 future commission merchants, 79 trust companies, and 17 life insurance companies.

Estimated Average Annual Burden Hours per Recordkeeper: FinCEN estimates 120 search requests[29] per year associated with the recordkeeping requirement in this rule and 9 subjects (including aliases) per request, resulting in an estimated 1,080 subjects per year. The estimated average burden associated with searching each subject is 4 minutes per subject. FinCEN therefore estimates that each recordkeeper will, on average, spend approximately 4,320 minutes, or roughly 72 hours per year to comply with the recordkeeping requirement in this rule.

Estimated Total Annual Recordkeeping Burden: 1,449,648 annual burden hours (20,134

a Covered Institution researching the subject of a 314(a) request, has the same type of information available to them, as a depository institution teller processing a customer transaction. In addition, they both, most likely, will be accessing similar systems to confirm whether the individual maintains an account with the depository institution. These types of depository institution transactions can be processed in a matter of a few minutes regardless of institution size.

[26] *See* Bureau of Labor Statistics, "Occupational Employment and Wages, May 2006," *http://www.bls.gov/oes/2006/may/oes131041.htm.*

[27] The Paperwork Reduction Act does not apply to the requirement in section 103.100(b)(2) concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency. *See* 5 CFR 1320.4(a)(2).

[28] These calculations were based on previous requests for information. A review of incoming requests from European Union countries revealed an average of about 350 cases per year from 2006–2008. Of these, approximately 75% (an average of 269) were money laundering and/or terrorism related, however, the majority were not identified as complex cases. Conversations with FinCEN personnel responsible for European Union countries indicated not more than 10% of the money laundering and/or terrorism related cases will be significant enough to meet 314(a) use criteria, however, it is anticipated that there may be additional requests that will be submitted outside of the normal Financial Intelligence Unit channels.

[29] Estimated requests per annum subject to the Paperwork Reduction Act include 10 from FinCEN, 50 from State/local law enforcement, and 60 from foreign law enforcement agencies, for a total of 120 requests.

recordkeepers × 72 average annual burden hours per recordkeeper).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

In the Notice, FinCEN specifically invited comments on: (a) Whether the recordkeeping requirement is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, and whether the information shall have practical utility; (b) the accuracy of our estimate of the burden of the recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information. With regard to item (a), two commenters noted that this recordkeeping requirement does further the mission and goals of FinCEN. With regard to item (c), two commenters suggested that it would be helpful if financial institutions had a standardized form to complete when sharing information with law enforcement. The same process by which a financial institution confirms a positive match to a 314(a) request, made by a Federal law enforcement agency, via the 314(a) Secure Information Sharing System, will apply to requests made by all other requesting agencies. In addition, the same commenters suggested that law enforcement utilize a standardized form to request information from financial institutions when a match to a 314(a) request is identified. The underlying account and transaction information related to a positive 314(a) match is not deemed to be part of the 314(a) response, and can only be obtained by the requesting agency through appropriate legal processes, such as a subpoena. FinCEN is not part of that legal process to obtain the underlying information; its involvement ends at informing requesting agencies that a match exists. Therefore, each requesting agency is responsible for determining the method by which they will request additional transaction information related to a 314(a) match. With regard to items (d) and (e), two commenters noted that the recordkeeping requirement should not place any additional burden or start-up costs on financial institutions, because the 314(a) program is already in place and financial institutions should have procedures in place to process these requests.

With regard to our request for comment on the accuracy of our estimate of the burden of the recordkeeping requirement, we received a variety of different comments. A few commenters suggested that expanding access to the 314(a) program would increase the volume of inquiries to an unmanageable level for financial institutions, which would be disproportionate to the benefits obtained by law enforcement. Other commenters suggested that increasing the volume of 314(a) requests would substantially increase financial institutions' employee-hours required to complete searches, increase the cost to financial institutions, and may lead to the inability of financial institutions conducting manual searches to provide timely responses. Other commenters noted that the proposal would exponentially increase the burden on financial institutions, FinCEN, and the 314(a) program. However, these commenters did not provide any alternative estimates of the increase in the volume of inquiries to support their concerns. On the other hand, as noted above, two other commenters noted that the recordkeeping requirement should not place any additional burden or start-up costs on financial institutions, because the 314(a) program is already in place, and financial institutions should have procedures in place to process these requests. Two commenters suggested that FinCEN engage in additional industry outreach beyond the comment period to better gauge the impact on the industry.

Some commenters felt that the estimates that only 60 foreign law enforcement requests, 50 State and local law enforcement requests, and 10 FinCEN requests would occur annually were low estimates. FinCEN's estimates are extrapolated from an analysis of the volume and type of information requests it has received in past years from foreign as well as State and local law enforcement agencies. Additionally, FinCEN's internal review process is stringent and also will serve as a buffer to an unreasonable increase in the volume of 314(a) requests. Other commenters suggested that FinCEN should track the increase in requests in order to verify the estimates in the proposal. FinCEN already monitors the volume of requests and will continue to do so after this final rule goes effective. Another commenter asked how FinCEN would control the number of requests from foreign, State, and local law enforcement if they exceed the estimates in the proposal. As discussed above, FinCEN has internal procedures that will help ensure that the 314(a) program will be utilized only in compelling situations, thereby minimizing the burden on financial institutions.

A few commenters noted that they felt FinCEN's estimate of 4 minutes to research each subject was low, but only one commenter offered an alternative figure for us to consider, as noted above. The commenters explained that some small financial institutions conduct searches manually. In addition, although most larger financial institutions are likely to conduct automated searches, there is still a manual element to their research. Further, financial institutions have to access a variety of internal systems to research subjects, such as commercial and consumer loan systems. Also, financial institutions of all sizes manually review matches to ensure accuracy. As described above, one of these commenters suggested that to reflect the time needed to research a subject more accurately, the estimate be increased to more than 30 minutes per subject. The commenter did not offer sufficient evidence to support the suggestion. The same commenter noted that the estimate misses the most burdensome element, which is responding to law enforcement requests when there has been a data match to a 314(a) request. The commenter noted that while an accurate estimate of this aspect of the research is difficult to identify, it should be factored into the estimate of burden. As noted above, section 314(a) information will continue to consist of only a confirmation that a matching account or transaction exists. The underlying account and transaction information relating to a 314(a) match is not deemed to be part of the 314(a) response, and can only be obtained by the requesting agency through appropriate legal process, such as a subpoena. FinCEN is not part of that legal process to obtain the underlying information; its involvement ends at informing requesting agencies that a match exists. Any interaction between a requesting law enforcement agency and a financial institution subsequent to a 314(a) match occurs outside the context of this rule and this analysis and should not be factored into our burden estimates.

One commenter suggested that requests from foreign, State, and local law enforcement be submitted to financial institutions on the same schedule as requests from Federal law enforcement currently are, in order to keep the number of searches to a

minimum. FinCEN intends to submit requests from all agencies on the same schedule. Another commenter suggested that 314(a) requests made by foreign, State, and local law enforcement be limited to terrorist financing investigations, initially, in order to minimize the number of requests. While FinCEN will monitor the effectiveness of the program's expansion, limiting access to terrorist financing investigations would deny these law enforcement agencies the ability to confront serious money laundering investigations which they are pursuing.

E. Effective Date

Publication of a substantive rule not less than 30 days before its effective date is required by the Administrative Procedure Act except as otherwise provided by the agency for good cause.[30] In order to satisfy the United States' treaty obligation with certain foreign governments to provide access to the 314(a) program within the deadline to comply with the U.S.–EU MLAT, FinCEN finds that there is good cause for making this amendment effective on February 10, 2010. In finding good cause, FinCEN considered the possible effect of providing less than 30 days notice to affected persons. FinCEN determined that immediate implementation would not unfairly burden these persons because, as explained above, persons affected by the rule have already implemented the procedures necessary to comply with the 314(a) rule since its original implementation on September 26, 2002.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Authority and Issuance

For the reasons set forth above, FinCEN is amending 31 CFR Part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

[30] 5 U.S.C. 553(d).

■ 2. Section 103.90(a) is revised to read as follows:

§ 103.90 Definitions.

* * * * *

(a) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

* * * * *

■ 3. Section 103.100 is amended by—
■ a. Adding new paragraph (a)(4);
■ b. Revising paragraph (b)(1);
■ c. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5);
■ d. Adding new paragraph (b)(2);
■ e. Revising newly redesignated paragraph (b)(3)(i) introductory text;
■ f. Revising newly redesignated paragraph (b)(3)(iv)(B)(*1*);
■ g. Revising newly redesignated paragraph (b)(3)(iv)(B)(*2*);
■ h. Revising newly redesignated paragraph (b)(3)(iv)(C);
■ i. Revising newly redesignated paragraph (b)(4); and
■ j. Revising newly redesignated paragraph (b)(5).

The revisions and additions read as follows:

§ 103.100 Information sharing between government agencies and financial institutions.

(a) * * *

(4) *Law enforcement agency* means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtainable under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering—(1) In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: state that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

(3) *Obligations of a financial institution receiving an information request—(i) Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which

has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

* * * * *

(iv) * * *

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(3)(iv)(B)(*1*) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

* * * * *

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

Dated: February 4, 2010.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2010–2928 Filed 2–9–10; 8:45 am]

BILLING CODE 4810–02–P

POSTAL SERVICE

39 CFR Part 965

Rules of Practice in Proceedings Relative to Mail Disputes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document revises the rules of practice of the Postal Service's Office of the Judicial Officer to allow qualified persons licensed to practice law to be designated by the Judicial Officer as presiding officers in proceedings relating to mail disputes.

DATES: *Effective Date:* March 1, 2010.

ADDRESSES: Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Gary E. Shapiro, (703) 812–1910.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

39 CFR Part 965 contains the rules governing proceedings involving Mail Disputes. Only one change is made. Paragraph (a) of section 965.4 of the rules has defined the "presiding officer" as an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The revised rule expands the definition of presiding officer to include any other qualified person licensed to practice law designated by the Judicial Officer to preside over a proceeding conducted pursuant to this part.

B. Summary of Change

Expanding the definition of presiding officer in Part 965 is intended to permit qualified staff counsel employed in the Office of the Judicial Officer to be designated as the initial presiding official authorized to conduct proceedings and issue Initial Decisions in the resolution of mail disputes. Administrative Law Judges and Administrative Judges qualified in accordance with law will continue to be designated as presiding officers in such matters. The appellate procedure is unchanged.

C. Effective Dates and Applicability

These revised rules will govern proceedings under Part 965 docketed on or after March 1, 2010.

List of Subjects in 39 CFR Part 965

Administrative practice and procedure, Mail disputes, Postal Service.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR Part 965 as set forth below:

■ 1. The authority citation for part 965 continues to read as follows:

Authority: 39 U.S.C. 204, 401.

■ 2. In § 965.4, paragraph (a) is revised to read as follows:

§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge, an Administrative Judge qualified in accordance with law, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a proceeding conducted pursuant to this part. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his or her own initiative or for good cause found, preside at the reception of evidence.

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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–2844 Filed 2–9–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0014; FRL–9113–5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Baton Rouge 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA has determined that the Baton Rouge (BR) 1-hour ozone nonattainment area has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This