if they would expect to realize profits by employing such methods.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Paperwork Requirements

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that the information collection related to HACCP plans, Sanitation SOPs, and prerequisite programs has been approved by OMB under OMB Control Number 0583–0103.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to government information and services, and for other purposes.

Executive Order 13175

The policies contained in this rule do not have Tribal Implications that preempt Tribal Law.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2010_Interim_&_Final_Rules_Index.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_&_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 310

Meat inspection.

■ Accordingly, the Food Safety and Inspection Service amends 9 CFR part 310 as follows:

PART 310—POST-MORTEM INSPECTION

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Amend § 310.13 by revising paragraph (a), redesignating paragraph (b) as paragraph (b)(1), and adding paragraph (b)(2) to read as follows:

§ 310.13 Inflating carcasses or parts thereof; transferring caul or other fat.

(a) Establishments that slaughter livestock and prepare livestock carcasses and parts may inflate carcasses or parts of carcasses with air if they develop, implement, and maintain controls to ensure that the air inflation procedure does not cause insanitary conditions or adulterate product. Establishments shall incorporate these controls into their HACCP plans or Sanitation SOPs or other prerequisite programs.

(b)(1) * * *

(2) Injecting compressed air into the skulls of cattle in conjunction with a captive bolt stunner to hold the animal still for dressing operations is prohibited.

* * * * *

Done at Washington, DC, on October 29, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–28650 Filed 11–12–10; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD65

Deposit Insurance Regulations; Unlimited Coverage for Noninterest-Bearing Transaction Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule amending its deposit insurance regulations to implement section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] providing for unlimited deposit insurance for "noninterest-bearing transaction accounts" for two years starting December 31, 2010.

DATES: *Effective Date:* The final rule is effective December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Supervisory Counsel, Legal Division (202) 898–7349 or *jdinuzzo@fdic.gov;* Mike Figge, Honors Attorney, Legal Division (202) 898–6750 or *mfigge@fdic.gov;* or James V. Deveney, Chief, Deposit Insurance Section, Division of Supervision and Consumer Protection (202) 898–6687 or *jdeveney@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On September 30, 2010, the FDIC published a proposed rule ("proposed rule") to implement section 343 of the Dodd-Frank Act ("Section 343").[2] Section 343 amended the deposit insurance provisions of the FDI Act (12 U.S.C. 1821(a)(1)) to provide temporary

[1] Public Law 111–203 (July 21, 2010).

[2] 75 FR 60341 (Sept. 30, 2010).

separate insurance coverage for noninterest-bearing transaction accounts. In summary, the proposed rule: Followed the Section 343 definition of *noninterest-bearing transaction account;* identified and discussed the differences between Section 343 and the FDIC's Transaction Account Guarantee Program ("TAGP"); explained the separate deposit insurance available for noninterest-bearing transaction accounts under Section 343; proposed disclosure and notice requirements as part of the implementation of Section 343; announced that, because of this Congressional action, the FDIC would not be extending the TAGP beyond its sunset date of December 31, 2010; and requested comments on all aspects of the proposed rule.

II. Comments on the Proposed Rule

The comment period on the proposed rule ended on October 15, 2010. The FDIC received ninety-three comments from trade associations, insured depository institutions ("IDIs") and law firms, among others. In particular, the FDIC received eighty-four comments from state-bar affiliated associations and five comments from banking and other associations. The remaining four comments were from individual IDIs.

Trade associations and bankers commented that the proposed rule reflects an accurate interpretation of Section 343. A number of banks and state bar associations commented that the exclusion of Interest on Lawyer Trust Accounts ("IOLTAs") from Section 343, and consequently the proposed rule, was the result of an inadvertent omission on the part of Congress. These comments referenced a pending bi-partisan Senate bill to include IOLTAs in the Section 343 definition of noninterest-bearing transaction account. The commenters oppose the proposed rule's requirement that IDIs notify IOLTA and negotiable order of withdrawal ("NOW") account holders of changes in the deposit insurance scheme before Congress has the opportunity to amend Section 343 to include IOLTAs. Their comments reflect a concern that the exclusion of IOLTA and NOW accounts from the definition of noninterest-bearing transaction account will cause large IOLTA and NOW account depositors to spread these deposits across multiple IDIs to ensure full deposit insurance coverage or to place their deposits with institutions deemed "too big to fail." Their comments also reflect a concern that failure to provide unlimited insurance to IOLTA and NOW accounts will significantly restrict community lending.

One commenter requested that the final rule clarify whether the notice requirements apply to all depositors who hold NOW accounts in IDIs participating in the TAGP, or only to depositors who may be affected by the change in deposit insurance coverage. According to this comment letter, most NOW account holders will not be affected by the change because they have less than the standard maximum deposit insurance amount of $250,000 ("SMDIA") and remain fully insured should an IDI default. Another commenter requested clarification that one notice per account, rather than one notice per account holder, will satisfy the notice requirement. Similarly, when depositors have multiple accounts that are affected, the commenter requested clarification that compliance with the notice requirement is achieved by sending one notice which lists all affected accounts along with the account holder's statement. Another comment letter requested clarification that the language included in the proposed rule under 12 CFR 330.16(c)(1) is language that may be used to comply with the notice requirement.

Several commenters expressed concerns over the unintended consequences of providing unlimited deposit insurance coverage for noninterest-bearing transaction accounts, contending that providing such coverage for these accounts promotes moral hazard. Four commenters suggested charging a separate assessment, in addition to the normal assessment rates, to address what they deem to be disproportionately high assessment rates on banks with a relatively low level of noninterest-bearing transaction accounts. One commenter requested clarification on how the FDIC intends to treat official checks for deposit insurance purposes under the proposed rule, in light of the provision in the FDIC's current deposit insurance regulations dealing with negotiable instruments,12 CFR 330.5(b)(4)(i).

Finally, one commenter requested clarification that the absence of a contract interest rate will determine whether an account qualifies for unlimited deposit-insurance coverage. Likewise, the commenter requested confirmation that interest-bearing accounts may be converted to noninterest-bearing accounts after December 31, 2010, and still obtain unlimited insurance.

III. The Final Rule

Definition of Noninterest-Bearing Transaction Account

As in the proposed rule, the final rule follows the definition of noninterest-bearing transaction account in Section 343. Section 343 defines a noninterest-bearing transaction account as "a deposit or account maintained at an insured depository institution with respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the IDI does not reserve the right to require advance notice of an intended withdrawal." One commenter on the proposed rule suggested that the FDIC define a depositor's balance in a noninterest-bearing transaction account as the "average balance collected within the insured account over the past 30 days" prior to the date of failure of the IDI. The FDIC believes this definition would be inconsistent with the definition of noninterest-bearing transaction account in Section 343 and would lead to depositor confusion and uncertainty as to the extent of deposit insurance coverage available on noninterest-bearing transaction accounts.

The Section 343 definition of noninterest-bearing transaction account is similar to the definition of that term in the TAGP, but it includes no interest-bearing accounts. The Section 343 definition of noninterest-bearing transaction account encompasses only traditional, noninterest-bearing demand deposit (or checking) accounts that allow for an unlimited number of deposits and withdrawals at any time, whether held by a business, an individual or other type of depositor. Unlike the definition of noninterest-bearing transaction account in the TAGP, the Section 343 definition of noninterest-bearing transaction account does not include NOW accounts (regardless of the interest rate paid on the account) or IOLTAs. Therefore, under the final rule, neither NOW accounts nor IOLTAs are within the definition of noninterest-bearing transaction account. Also, like the TAGP, the final rule does not include money market deposit accounts ("MMDAs") within the definition of noninterest-bearing transaction account.

As noted in the comment summary, the FDIC received numerous comments from law firms, IDIs, attorney trade

groups and others requesting that the FDIC either postpone issuance of the final rule or exclude from the final rule the requirement that IDIs currently participating in the TAGP notify IOLTA customers that, beginning January 1, 2011, IOLTAs no longer will be eligible for full deposit insurance coverage. The FDIC believes it is critically important for depositors to have a clear understanding of the deposit insurance rules before placing or retaining deposits at an FDIC-insured institution. As a result of the passage of the Dodd-Frank Act, the temporary full protection currently afforded to IOLTAs at IDIs participating in the TAGP will terminate on January 1, 2011, and the FDIC must ensure that IOLTA customers know about this change. If, as the commenters suggest, Congress acts before December 31, 2010, to add IOLTAs to Section 343, thus providing temporary full coverage for these accounts, the FDIC will act quickly to notify IDIs of the statutory change and explain how to respond to this change in complying with the disclosure requirements in the final rule.

Importantly, under the FDIC's general deposit insurance rules, IOLTAs may qualify for "pass-through" deposit insurance coverage, so long as the regulatory requirements are met. 12 CFR 330.7. That means each client for whom a law firm holds funds in an IOLTA may be insured up to $250,000 for his or her funds. In addition, the accrued interest to which a legal services entity or program is entitled may be separately insured for $250,000. For example, if a law firm maintains an IOLTA with $250,000 attributable to Client A, $150,000 to Client B and $75,000 to Client C, and the accrued interest of $5,000 is payable to a legal services program, the account likely would be fully insured. If the clients or the legal services entity have other funds at the same IDI, those funds would be added to their respective ownership interest in the IOLTA for insurance coverage purposes. But, coverage is available, generally, on a per-client basis; thus, a generous amount of deposit insurance coverage is available for IOLTAs, absent the availability of unlimited coverage for IOLTAs under either the TAGP or Section 343.

Some commenters noted that, pursuant to Dodd-Frank Act revisions to the Federal Deposit Insurance Act, the FDIC would not have the authority to extend the TAGP beyond that program's sunset date of December 31, 2010. The FDIC agrees with this conclusion. Therefore, in response to comments that the FDIC extend the TAGP, so that IOLTAs would continue to be fully protected, the FDIC does not have the statutory authority to do so. Likewise, in response to comments that the FDIC expand the final rule to include IOLTAs, the Dodd-Frank Act would not permit such an expansion, given that the Section 343 definition of noninterest-bearing transaction excludes accounts that may pay interest.

One trade group suggested that the FDIC undertake a study of the benefits and costs of a permanent self-supporting, and optional insurance program for qualifying accounts above the standard insurance limit. The FDIC will consider this suggestion.

As under the TAGP, under the final rule, whether an account is noninterest-bearing is determined by the terms of the account agreement and not by the fact that the rate on an account may be zero percent at a particular point in time. For example, an IDI might offer an account with a rate of zero percent except when the balance exceeds a prescribed threshold. Such an account would not qualify as a noninterest-bearing transaction account even though the balance is less than the prescribed threshold and the interest rate is zero percent. Under the final rule, at all times, the account would be treated as an interest-bearing account because the account agreement provides for the payment of interest under certain circumstances. On the other hand, as under the TAGP, the waiving of fees would not be treated as the earning of interest. For example, IDIs sometimes waive fees or provide fee-reducing credits for customers with checking accounts. Under the final rule, such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

One commenter on the proposed rule asked that the FDIC clarify that "rewards programs" offered by IDIs on non-interest checking accounts also would not prevent an account from meeting the definition of noninterest-bearing transaction account under the final rule. Generally, the FDIC will look to current requirements and interpretations under Part 329 of its regulations (*Interest on Deposits,* 12 CFR part 329) and such interpretations under Regulation Q of the Board of Governors of the Federal Reserve System (12 CFR part 217) to determine whether rewards provided in connection with transaction accounts will be considered interest paid on the account and, thus, disqualify an account for treatment as a noninterest-bearing transaction account.

The same commenter requested that the FDIC confirm that interest-bearing accounts may be converted to noninterest-bearing checking accounts after December 31, 2010, and still obtain the benefits of unlimited FDIC coverage. Such account would be eligible for treatment as a noninterest-bearing transaction account as long as, under the modified deposit agreement, the depositor may not earn interest on the account.

This same principle for determining whether a deposit account qualifies as a noninterest-bearing transaction account will apply when IDIs no longer are prohibited from paying interest on demand deposit accounts. Pursuant to section 627 of the Dodd-Frank Act, as of July 21, 2011 (one year after the enactment date of the Dodd-Frank Act), IDIs no longer will be restricted from paying interest on demand deposit accounts. At that time, demand deposit accounts offered by IDIs that allow for the payment of interest will not satisfy the definition of a noninterest-bearing transaction account. As discussed below, under the final rule, IDIs are required to inform depositors of any changes in the terms of an account that will affect their deposit insurance coverage under this new provision of the deposit insurance rules.

As under the TAGP, the final rule's definition of noninterest-bearing transaction account encompasses "official checks" issued by IDIs. Official checks, such as cashier's checks and money orders issued by IDIs, are "deposits" as defined under the FDI Act (12 U.S.C. 1813(l)) and part 330 of the FDIC's regulations. The payee of the official check (the party to whom the check is payable) is the insured party. Also, as a clarifying point made in one of the comments received on the proposed rule, if an official check is negotiated to a third party, the FDIC would recognize that person as the insured party, subject to certain requirements. 12 CFR 330.5(b)(4). Because official checks meet the definition of a noninterest-bearing transaction account, the payee (or the party to whom the payee has endorsed the check) would be insured for the full amount of the check upon the failure of the IDI that issued the official check.

Under the FDIC's rules and procedures for determining account balances at a failed IDI (12 CFR 360.8), funds swept (or transferred) from a deposit account to either another type of deposit account or a non-deposit account are treated as being in the account to which the funds were transferred prior to the time of failure. So, for example, if pursuant to an

agreement between an IDI and its customer, funds are swept daily from a noninterest-bearing transaction account to an account or product (such as a repurchase agreement) that is not a noninterest-bearing transaction account, the funds in the resulting account or product would not be eligible for full insurance coverage. This is how sweep account products are treated under the TAGP and under the final rule.

As under the TAGP, however, the final rule includes an exception from the treatment of swept funds in situations where funds are swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, notably a MMDA. Often referred to as "reserve sweeps," these products entail an arrangement in which a single deposit account is divided into two sub-accounts, a transaction account and an MMDA. The amount and frequency of sweeps are determined by an algorithm designed to minimize required reserves. In some situations customers may be unaware that this sweep mechanism is in place. Under the final rule, the FDIC will consider such accounts noninterest-bearing transaction accounts. In response to a comment on the proposed rule that treating such accounts as noninterest-bearing transaction accounts is contrary to Section 343, the FDIC notes that these are single accounts divided into sub-accounts, on neither of which the IDI pays interest. Considering "reserve sweep accounts" to be noninterest-bearing transaction accounts also is consistent with the treatment of such accounts under the FDIC's regulations on the treatment of sweep accounts upon the failure of an IDI. 12 CFR 360.8. Apart from this exception for "reserve sweeps," MMDAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

Insurance Coverage

As noted in the proposed rule, pursuant to Section 343, all funds held in noninterest-bearing transaction accounts will be fully insured, without limit. As also specifically provided for in Section 343, this unlimited coverage is separate from, and in addition to, the coverage provided to depositors with respect to other accounts held at an IDI. This means that funds held in noninterest-bearing transaction accounts will not be counted in determining the amount of deposit insurance on deposits held in other accounts, and in other rights and capacities, at the same IDI. Thus, for example, if a depositor has a $225,000 certificate of deposit and a no-interest checking account with a balance of $300,000, both held in a single ownership capacity, he or she would be fully insured for $525,000 (plus interest accrued on the CD), assuming the depositor has no other single-ownership funds at the same institution. First, coverage of $225,000 (plus accrued interest) would be provided for the certificate of deposit as a single ownership account (12 CFR 330.6) up to the SMDIA of $250,000. Second, full coverage of the $300,000 checking account would be provided separately, despite the checking account also being held as a single ownership account, because the account qualifies for unlimited separate coverage as a noninterest-bearing transaction account.

One issue raised during the comment period is how the FDIC will apply the new Dodd-Frank coverage provision to determine the amount of insurance coverage available for revocable trust accounts. Coverage for revocable trust accounts, in general, is based on the number of "eligible" beneficiaries named in the account. 12 CFR 330.10. The specific question is how the FDIC will "count up" the number of eligible beneficiaries in determining revocable trust account coverage for an account owner who has multiple revocable trust accounts, including one or more such accounts that would qualify as noninterest-bearing transaction accounts under the Dodd-Frank provision. For example, if a depositor has an *interest-bearing* account with a balance of $400,000 payable to a niece and a qualifying noninterest-bearing transaction account with a balance of $200,000 payable to a friend, how much coverage would be available for the accounts? To make this deposit insurance calculation, the FDIC would first determine the total number of different beneficiaries the account owner has named in all revocable trust accounts (both interest-bearing and noninterest-bearing) at the same IDI. In this example, there are two (the niece and the friend). We would then multiply that number times the SMDIA of $250,000 to determine the maximum coverage available on the account owner's revocable trust accounts. In this example, the amount is $500,000. We then would apply that amount to the total balance of the account owner's interest-bearing revocable trust accounts. Here, because that amount is $400,000, it would be fully covered. The balance of the noninterest-bearing transaction account (in this case, $200,000) would be separately and fully covered under the final rule.

No Opting Out

Under the TAGP, IDIs could choose not to participate in the program. Because Section 343 of the Dodd-Frank Act provides Congressionally mandated deposit insurance coverage, IDIs are not required to take any action (*i.e.,* opt in or opt out) to obtain separate coverage for noninterest-bearing transaction accounts. From December 31, 2010, through December 31, 2012, noninterest-bearing transaction accounts at *all* IDIs will receive this temporary deposit insurance coverage. One commenter complained that the proposed rule did not allow IDIs to opt out of the temporary unlimited coverage for noninterest-bearing transaction accounts under Dodd-Frank. We note that, unlike under the TAGP, Section 343 does not allow IDIs to opt out of this statutory provision.

No Separate Assessment

The FDIC imposes a separate assessment, or premium, on IDIs that participate in the TAGP.[3] The FDIC will not charge a separate assessment for the insurance of noninterest-bearing transaction accounts pursuant to Section 343. The FDIC will take into account the cost for this additional insurance coverage in determining the amount of the deposit insurance assessment the FDIC charges IDIs under its risk-based assessment system.[4] Four comments from trade groups and IDIs suggested that the FDIC charge more for the additional coverage on noninterest-bearing transaction accounts similar to the way additional coverage is charged for under the TAGP. The proposed rule was not intended to address assessment issues, but the FDIC will take this comment into consideration when considering future changes to the assessment rate system. The FDIC notes, however, that the deposits covered by the TAGP were not defined as insured deposits. In contrast, Congress has specifically determined that noninterest-bearing transaction accounts *are* fully insured deposits.

Disclosure and Notice Requirements

The final rule includes disclosure and notice requirements as part of the implementation of Section 343. As indicated in the proposed rule, the purpose of these requirements is to ensure that depositors are aware of and understand what types of accounts will be covered by this temporary deposit insurance coverage for noninterest-bearing transaction accounts. As in the proposed rule, the final rule includes

[3] 12 CFR 370.7.

[4] 12 CFR part 327.

three such requirements. As explained in detail below: (1) IDIs must post a prescribed notice in their main office, each branch and, if applicable, on their Web site; (2) IDIs currently participating in the TAGP must notify NOW account depositors (that are currently protected under the TAGP because of interest rate restrictions on those accounts) and IOLTA depositors that, beginning January 1, 2011, those accounts no longer will be eligible for unlimited protection; and (3) IDIs must notify customers individually of any action they take to affect the deposit insurance coverage of funds held in noninterest-bearing transaction accounts.

1. Posted Notice

The final rule requires each IDI to post, prominently, a copy of the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site. In response to comments received on the proposed rule, this notice has been revised from the notice in the proposed rule to make it more concise and reader-friendly:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It does *not* include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, money-market deposit accounts, and Interest on Lawyers Trust Accounts ("IOLTAs").

For more information about temporary FDIC insurance coverage of transaction accounts, *visit www.fdic.gov.*

2. Notice to Depositors Protected Under the TAGP But Not Under the Dodd-Frank Provision

As discussed above, through December 31, 2010, low-interest NOW accounts and all IOLTAs are protected in full at IDIs participating in the TAGP. These accounts, however, are not eligible for unlimited deposit insurance coverage under the Dodd-Frank provision. Thus, starting January 1, 2011, all NOW accounts and IOLTAs will be insured under the general deposit insurance rules and will no longer be eligible for unlimited protection. Because of the potential depositor confusion about this change in the FDIC's treatment of NOWs and IOLTAs, the final rule requires IDIs currently participating in the TAGP to provide individual notices to depositors with NOW accounts currently protected in full under the TAGP and IOLTAs that those accounts will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts. IDIs are required to provide such notice to applicable depositors by mail no later than December 31, 2010. To comply with this requirement, IDIs may use electronic mail for depositors who ordinarily receive account information in this manner. The notice may be in the form of a copy of the notice required to be posted in IDI main offices, branches and on Web sites.

One commenter asked that the FDIC address certain specifics about complying with this notice requirement. In response to that comment: (1) As to joint accounts protected under the TAGP as of December 31, 2010, IDIs need only mail the notice to the address designated on the account; (2) if depositors have more than one affected account, one notice is sufficient if it identifies all the applicable accounts; and (3) the notice mailed to affected depositors may be in the form of the "posting" notice in § 330.16(c) (1) of the final rule.

Several commenters requested that this notice requirement either be eliminated, limited to NOW account owners with balances over the SMDIA or postponed until a date after the effective date of December 31, 2010. The FDIC has not adopted these suggestions because the Dodd-Frank coverage provision becomes effective on December 31, 2010; thus, starting January 1, 2011, low-interest NOW accounts and IOLTAs at IDIs participating in the TAGP no longer will be eligible for unlimited protection. As noted, the FDIC believes it is critical that depositors understand the current deposit insurance rules in placing or retaining funds at FDIC-insured institutions.

3. Notice To Sweep Account and Other Depositors Whose Coverage on Noninterest-Bearing Transaction Accounts Is Affected by an IDI Action

Under the TAGP regulations, if an IDI offers an account product in which funds are automatically transferred, or "swept," from a noninterest-bearing transaction account to another account (such as a savings account) or bank product that does not qualify as a noninterest-bearing transaction account, it must inform those customers that, upon such transfer, the funds will no longer be fully protected under the TAGP. As in the proposed rule, the final rule contains a similar, though somewhat more expansive, requirement, mandating that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts. This notice requirement is intended primarily to apply when IDIs begin paying interest on demand deposit accounts, as will be permitted beginning July 21, 2011, under section 627 of the Dodd-Frank Act (discussed above). Thus, under the final rule's notice requirements, if an IDI modifies the terms of its demand deposit account agreement so that the account may pay interest, the IDI must notify affected customers that the account no longer will be eligible for full deposit insurance coverage as a noninterest-bearing transaction account. Though such notifications are mandatory, the final rule does not impose specific requirements regarding the form of the notice. Rather, the FDIC expects IDIs to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in informing depositors of changes to their account agreements.

One commenter on the proposed rule recommended that the FDIC issue additional guidance on the implementation of Section 343. The FDIC will consider publishing such guidance if it seems helpful to do so.

IV. Regulatory Analysis and Procedure

A. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. Section 4802(b)) requires, subject to certain exceptions, that regulations imposing additional reporting, disclosure or other requirements take effect on the first day of the calendar quarter after publication of the final rule. One of the statutory exceptions to this requirement is when the regulation is required to take effect on a date other than on the first day of the calendar quarter after publication of the final rule. The effective date of Section 343 is December 31, 2010. Thus, the effective date of the final rule is December 31, 2010.

B. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* 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 Office of Management and Budget ("OMB") control number. This final rule contains disclosure requirements, some of which implicate PRA as more fully explained below. In the proposed rule, the Board announced that the TAGP will not continue beyond December 31, 2010, thereby eliminating the need for an associated, currently approved information collection. Consequently, the FDIC will discontinue its information titled "Transaction Account Guarantee Extension," OMB No. 3064–0170.

The new disclosure requirements are contained in § 330.16(c)(1), (2) and (3). More specifically, § 330.16(c)(1) requires that each IDI post a "Notice of Changes in Temporary FDIC Insurance Coverage for Transaction Accounts" in the lobby of its main office and domestic branches and, if it offers Internet deposit services, on its Web site; § 330.16(c)(2) requires IDIs currently participating in the TAGP to provide individual notices to depositors alerting them to the fact that low-interest NOWs and IOLTAs are not eligible for unlimited coverage under the new temporary insurance category for noninterest-bearing transaction accounts; and § 330.16(c)(3) requires that IDIs notify customers of any action that affects the deposit insurance coverage of their funds held in noninterest-bearing transaction accounts.

The disclosure requirement in § 330.16(c)(1) would normally be subject to PRA. However, because the FDIC has provided the specific text for the notice and allows for no variance in the language, the disclosure is excluded from coverage under PRA because "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included" within the definition of "collection of information." 5 CFR 1320.3(c)(2). Therefore, the FDIC is not submitting the § 330.16(c)(1) disclosure to OMB for review.

The disclosure requirement in § 330.16(c)(2) provides that IDIs currently participating in the TAGP provide individual notices to affected depositors alerting them to the fact that low-interest NOWs and IOLTAs will not be insured under the new temporary insurance category for noninterest-bearing transaction accounts. The estimated burden for this new disclosure requirement has been added to the burden for an existing information collection, OMB No. 3064–0168, currently entitled SWEEP Accounts: Disclosure of Deposit Status. In conjunction with the revision of OMB No. 3064–0168, the FDIC has requested permission to modify the title of the collection as more fully explained below.

The disclosure requirement in § 330.16(c)(3) expands upon a similar, pre-existing requirement for sweep accounts offered by IDIs participating in the TAGP. The existing disclosure requirement is approved under OMB No. 3064–0168. The expanded disclosure requirement is mandatory for all IDIs, although institutions retain flexibility regarding the form of the notice. Therefore, in conjunction with publication of this final rule, the FDIC, on September 30, 2010, submitted to OMB a request to revise OMB No. 3064–0168 to reflect the estimated burden associated with the expanded disclosure requirement and to modify the title of the collection to "Disclosure of Deposit Status" to more accurately reflect the broader application of the requirement. This final rule results in no changes to the previously submitted burden estimates.

The estimated burden for the new disclosure under §§ 330.16(c)(2) and (3) is as follows:

Title: "Disclosure of Deposit Status.".

Affected Public: Insured depository institutions.

OMB Number: 3064–0168.

Estimated Number of Respondents:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—7,830.

Disclosure to NOW account and IOLTA depositors of change in insurance category—6,249.

Frequency of Response:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—on occasion (average of once per year per bank).

Disclosure to NOW account and IOLTA depositors of change in insurance category—once.

Average Time per Response:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—8 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—8 hours.

Estimated Annual Burden:

Disclosure of action affecting deposit insurance coverage of funds in noninterest-bearing transaction accounts—62,640 hours.

Disclosure to NOW account and IOLTA depositors of change in insurance category—49,992 hours.

Total Annual Burden—112,632 hours.

C. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this final rulemaking or certify that the final rule does not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be "small entities." The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2010, there were 4,294 IDIs that were considered small entities. A total of 1,121 of these institutions do not participate in the TAGP and receive additional insurance coverage under the final rule. Currently 3,173 small IDIs participate in the TAGP. Within this group of small institutions, 618, or 19.5 percent, did not have TAGP eligible deposits as of the June 2010 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, "June 2010 Call Reports"); thus, they were not required to pay the fee currently assessed for participation in the TAGP. As to the remaining 2,555 small entities that had TAGP eligible deposits as of the June 2010 Call Reports, they will no longer be assessed a fee after the termination of the TAGP, and they will not be charged a separate assessment for the new deposit insurance coverage.

The FDIC has determined that under the final rule, the economic impact on small entities will not be significant for the following reasons. Because there is no separate FDIC assessment for the insurance of noninterest-bearing transaction accounts under section 343 of the Dodd-Frank Act, small entities currently assessed fees for participation in the TAGP will realize an average annual cost savings of $2,373 per institution. All other small entities, whether they are currently in the TAGP or not, will gain additional insurance coverage with no direct cost. The FDIC asserts that the economic benefit of additional insurance coverage and coverage extension until 2013 outweighs any future costs associated with the temporary insurance of noninterest-bearing transaction accounts.

With respect to amending the disclosures related to Section 343, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they

currently pay a fee) is de minimis in nature and is outweighed by the economic benefit of additional insurance coverage.

Accordingly, the final rule does not have a significant economic impact on a substantial number of small entities.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 ("SBREFA") (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner, and has made revisions to the proposed rule in response to commenter concerns seeking clarification of the application of the deposit insurance rules.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. In § 330.1, paragraph (r) is added to read as follows:

§ 330.1. Definitions.

* * * * *

(r) *Noninterest-bearing transaction account* means a deposit or account maintained at an insured depository institution—

(1) With respect to which interest is neither accrued nor paid;

(2) On which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(3) On which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.

* * * * *

■ 3. New § 330.16 is added to read as follows:

§ 330.16 Noninterest-bearing transaction accounts.

(a) *Separate insurance coverage.* From December 31, 2010, through December 31, 2012, a depositor's funds in a "noninterest-bearing transaction account" (as defined in § 330.1(r)) are fully insured, irrespective of the SMDIA. Such insurance coverage shall be separate from the coverage provided for other accounts maintained at the same insured depository institution.

(b) *Certain swept funds.* Notwithstanding its normal rules and procedures regarding sweep accounts under 12 CFR 360.8, the FDIC will treat funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

(c) *Disclosure and notice requirements.* (1) Each depository institution that offers noninterest-bearing transaction accounts must post prominently the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least $250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It does not include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, money-market deposit accounts, and Interest on Lawyers Trust Accounts ("IOLTAs").

For more information about temporary FDIC insurance coverage of transaction accounts, visit *www.fdic.gov*.

(2) Institutions participating in the FDIC's Transaction Account Guarantee Program on December 31, 2010, must provide a notice by mail to depositors with negotiable order of withdrawal accounts that are protected in full as of that date under the Transaction Account Guarantee Program and to depositors with Interest on Lawyer Trust Accounts that, as of January 1, 2011, such accounts no longer will be eligible for unlimited protection. This notice must be provided to such depositors no later than December 31, 2010.

(3) If an institution uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage under this section, the institution must notify affected customers and clearly advise them, in writing, that such actions will affect their deposit insurance coverage.

Dated at Washington DC, this 9th day of November 2010.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–28627 Filed 11–12–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 4 and 10

[CBP Dec. 10–33]

Technical Corrections to Customs and Border Protection Regulations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct, and consistent. Through this review process, CBP discovered a number of discrepancies. This document amends various sections of title 19 of the Code of Federal