

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA17

Amendment to the Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Banks and Other Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Proposed rule.

SUMMARY: In January 1995, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (the Board) jointly adopted a final rule (the joint rule) requiring financial institutions to collect and retain certain information pertaining to transmittals of funds. At the same time, FinCEN adopted a final rule (the travel rule) that required financial institutions to include in transmittal orders certain information collected under the joint rule. Both the travel rule and the joint rule were to become effective on January 1, 1996. In response to industry concerns about the application of the joint rule and the travel rule to transmittals of funds involving foreign financial institutions, Treasury and the Board today are proposing amendments to the joint rule that conform the definitions of the parties to transmittals of funds to definitions found in Article 4A of the Uniform Commercial Code (see document published elsewhere in today's **Federal Register**). This document proposes amendments to the travel rule that are necessary to reflect the amended definitions in the joint rule. These proposed amendments to the travel rule also make the exceptions applicable for the joint rule applicable for the travel rule. To provide financial institutions sufficient time to complete their compliance programs for both rules, the effective dates of the joint rule and the travel rule are delayed until April 1, 1996 (see documents published elsewhere in today's **Federal Register**).

DATES: Comments are due by September 25, 1995.

ADDRESSES: Comments should be in writing and addressed to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182, *Attention:* Transmittal of Funds NPRM. Comments may be inspected between 10:00 a.m. and 4:00 p.m. at the Treasury Library, located in room 5030, 1500 Pennsylvania Avenue, N.W.,

Washington, D.C. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library, 202/622-0990.

FOR FURTHER INFORMATION CONTACT: Roger Weiner, Assistant Director, Office of Compliance and Enforcement, 202/622-0400; Nina A. Nichols, Attorney-Advisor, Office of Legal Counsel, 703/905-3598.

SUPPLEMENTARY INFORMATION:**Background**

The statute generally referred to as the Bank Secrecy Act (Titles I and II of Pub. L. 91-508, codified at 12 U.S.C. 1829b and 1951-1959, and 31 U.S.C. 5311-5330), authorizes the Secretary of the Treasury (the Secretary), *inter alia*, to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and to implement counter-money laundering programs and compliance procedures. The Secretary's authority to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 1515 of the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Title XV of Pub. L. 102-550 (Annunzio-Wylie)), codified at 12 U.S.C. 1829b(b), amended the Bank Secrecy Act (1) to require the Secretary and the Board jointly to promulgate, after consultation with state banking supervisors, recordkeeping requirements for international funds transfers by depository institutions and nonbank financial institutions; and (2) to authorize the Secretary and the Board jointly to promulgate regulations for domestic funds transfers by depository institutions. Section 1517(a) of Annunzio-Wylie, codified at 31 U.S.C. 5318(g) and (h), authorizes the Secretary, *inter alia*, to require financial institutions to carry out anti-money laundering programs. See 31 U.S.C. 5318(h)(1).

In January 1995, Treasury and the Board jointly adopted a rule (the joint rule) that imposed recordkeeping requirements with respect to transmittals of funds by banks and other financial institutions (60 FR 220, January 3, 1995). Treasury also adopted a rule (the travel rule) requiring financial institutions (including banks) to include in transmittal orders certain information collected under the joint rule (60 FR 234, January 3, 1995). The joint rule contained definitions of the terms used in both rules. These rules were to become effective on January 1, 1996.

Subsequent to publication of the joint rule and the travel rule, it became apparent that there was confusion within the banking industry about the application of the rules to transmittals of funds involving foreign financial institutions. Several banks and bank counsel advised Treasury and the Board that compliance with the rules was complicated by the fact that the joint rule definitions of parties to funds transfers differed from the definitions in Article 4A of the Uniform Commercial Code (UCC 4A). Because a financial institution's obligations under the joint and travel rules depend upon its role in a particular transmittal of funds, the differences between the Bank Secrecy Act regulations definitions and UCC 4A definitions have material operational consequences.

Definitions of Parties to International Transfers

The joint rule, when read together with other definitions found in the Bank Secrecy Act regulations at 31 CFR 103.11, limits the definition of the term "bank" to offices located within the U.S.; thus, a foreign bank could not be an originator's bank, intermediary bank or beneficiary's bank. In a transfer from a foreign bank to a U.S. bank (an inbound transfer), the foreign bank would be the originator and the U.S. bank would be the originator's bank. UCC 4A, however, does not restrict the definition of a bank in this way; therefore, applying UCC 4A definitions to an inbound transfer, the foreign bank would be an originator's (or intermediary) bank and the U.S. bank would be an intermediary (or beneficiary's) bank.

The joint rule added definitions of financial institutions that correspond to the UCC 4A definitions used for banks—e.g., transmitter's financial institution, intermediary financial institution, recipient's financial institution. These definitions resulted in further confusion because the Bank Secrecy Act regulations also limit the definition of "financial institution" to offices located in the U.S.

One other source of confusion is the overlap among the terms used to refer to banks and financial institutions. In general, the travel rule obligations apply equally to banks and to nonbank financial institutions, because the terms used for financial institutions include the terms used to refer to banks. The travel rule imposes obligations only on transmitters' financial institutions and intermediary financial institutions;

these terms include originators' banks and intermediary banks.¹

Industry Concerns About Application of the Travel Rule

The following hypothetical transmittal of funds (illustrated on the accompanying chart) illustrates the differences between the effect of the travel rule as published and its effect following the proposed amendments to the definitions in the joint rule. In this transfer, German Company instructs its bank, German Bank 1, to send a dollar payment to Japanese Bank 2 for credit to Japanese Company. German Bank 1 forwards the payment instructions to its correspondent, German Bank 2. German Bank 2 sends the payment instructions via SWIFT to its New York correspondent, New York Bank 1. New York Bank 1 executes a transmittal order via CHIPS to New York Bank 2. New York Bank 2 forwards the transmittal order via Fedwire to California Bank. California Bank sends the transmittal order via SWIFT to its correspondent, Japanese Bank 1. Japanese Bank 1 forwards the transmittal order to Japanese Bank 2, which credits the account of Japanese Company.

Obligations Under the Travel Rule as Adopted

The middle column of the chart reflects the roles of the parties to this transmittal under the rules as adopted in January 1995. The travel rule imposes the following obligations:

1. New York Bank 1, as the transmitter's financial institution, must include in the transmittal order to New York Bank 2 the name, address and account number of German Bank 2 (the transmitter) (103.33(g)(1)(i)-(ii)). New York Bank 1 would typically include German Bank 2's SWIFT Bank Identification Code (BIC) or its CHIPS Universal Identifier (UID) rather than its name, address and account number; however, Treasury believes that a widely-used industry code, such as a BIC, UID or routing number, would comply with the requirements, so long as the financial institution's name, address and account number can be readily derived from its industry code.
- In addition, New York Bank 1 would have to include, if received, information about Japanese Bank 1 (the recipient) and California Bank (the recipient's financial institution) (103.33(g)(1)(v)-(vi)).

2. New York Bank 2, as an intermediary financial institution, must include in its transmittal order to California Bank the name, address and account number of German Bank 2 (the transmitter), if New York Bank 2 receives this information.

This requirement raises significant operational concerns, because as a matter of ordinary business practice, German Bank 2 would be identified as the "instructing bank" in the order received by New York Bank 2, and would not be identified in the order executed by New York Bank 2. While the bank identified in the originator's bank field generally is retained in subsequent transmittal orders, the identification in the instructing bank field may change, and the information may not be passed on to the next receiving financial institution.

New York Bank 2 must also include information on New York Bank 1 as the transmitter's financial institution (103.33(g)(1)(vii)). Again, New York Bank 1 would be identified as the instructing bank in the transmittal order executed by New York Bank 2, but the information might be dropped from subsequent transmittal orders.

New York Bank 2 would also have to include, if received, the identity of California Bank (the recipient's financial institution) and Japanese Bank 1 (the recipient) (103.33(g)(2)(v)-(vi)).

3. California Bank, as the recipient's financial institution, is not subject to travel rule requirements.

Effect of Proposed Amendments

In response to banking industry concerns, Treasury and the Board have proposed amendments to the joint rule that will conform the definitions of banks that are parties to funds transfers to the definitions found in UCC 4A and that will change the definitions of the terms applicable to financial institutions so that their meanings are parallel to the definitions in UCC 4A. (See document published elsewhere in today's **Federal Register**.)

The third column of the accompanying chart reflects the effect of the proposed amendments for compliance with the travel rule. When the definitions applicable to financial institutions are conformed to the definitions in UCC 4A, all of the U.S. banks in the hypothetical transfer are treated as intermediary financial institutions. As an intermediary financial institution, rather than a transmitter's financial institution, New York Bank 1 is not required under the travel rule to pass on the specified information unless it actually receives it from German Bank 2.

More importantly, the redefinition of the parties to the transmittal means that the information that must be passed on pertains to German Company (the transmitter), German Bank 1 (the transmitter's financial institution), Japanese Bank 2 (the recipient's financial institution) and Japanese Company (the recipient). These definitions are more in accord with the economic reality of the transaction and with current industry practice, and the information required is more likely to be included in the transmittal orders.

With respect to the transmittal from California Bank, Treasury does not believe that the requirements placed on the U.S. bank in an outbound transfer significantly increase the cost of complying with the travel rule. Although California Bank, as an intermediary financial institution, would have to include information in its transmittal order to Japanese Bank 1, this information would typically be included as a matter of standard practice. Furthermore, California Bank would not have the verification obligations that it has as a beneficiary's bank. When considered in combination with the proposed amendments to the joint rule, Treasury believes that there is an overall reduction in burden.

Parties to transfer	Definitions of financial institutions limited to U.S. offices (travel rule adopted in January 1995)	Definitions are parallel to UCC 4A definitions of banks (proposed amended travel rule)
German Company.	Transmitter.
German Bank 1.	Transmitter's FI.
German Bank 2.	Transmitter .	Intermediary FI.
New York Bank 1.	Transmitter's FI.	Intermediary FI.
New York Bank 2.	Intermediary FI.	Intermediary FI.
California Bank.	Recipient's FI.	Intermediary FI.
Japanese Bank 1.	Recipient	Intermediary FI.
Japanese Bank 2.	Recipient's FI.
Japanese Company.	Recipient.

¹ In limited circumstances, a beneficiary's bank will also have travel rule obligations. If the recipient's financial institution is not a bank, then the bank that sends a transmittal order to the recipient's financial institution will be a beneficiary's bank and an intermediary financial institution subject to the requirements of 103.33(g)(2).

Effect on Law Enforcement; Ongoing Review

Treasury believes that these proposed changes, while reducing the burden of compliance, will maintain the usefulness for law enforcement of the information passed on in transmittal orders pursuant to the travel rule. While the requirement placed on an intermediary financial institution is limited to information that it receives, the information passed on should be of greater use because it will pertain to the true transmitter and recipient in the transaction. Furthermore, the financial institutions that must be identified will more likely be ones with which the transmitter and recipient have account relationships. Under the rule adopted in January, transmitter's financial institutions and intermediary financial institutions may not be required to pass along information pertaining to these parties when a transmittal involves a foreign financial institution.

Under the proposed amendments, an intermediary financial institution will be required to pass on information to a receiving financial institution even when the receiving financial institution is located outside the U.S. Treasury believes that in the interests of international cooperation in law enforcement, and recognizing the use for illicit purposes of the global payments system, there is a law enforcement benefit to this requirement. In addition to the potential availability of information that is forwarded to foreign financial institutions, this rule lays a foundation for international cooperation in setting standards for improving law enforcement efforts while imposing a minimal administrative burden on financial institutions.

As stated in the joint and travel rules when they were adopted, Treasury will monitor the effectiveness of the rules to assess their usefulness to law enforcement and their effect on the cost and efficiency of the payments system. Within 36 months of April 1, 1996, Treasury will review the effectiveness of the travel rule and will consider making any appropriate modifications.

Addition of Exceptions

This proposed rule also proposes the addition of new § 103.33(g)(3), which incorporates exceptions to the joint rule that appear in §§ 103.33(e)(6) and 103.33(f)(6). Those sections provide that a transmittal of funds is not subject to the requirements of the joint rule if the parties to the transmittal are both banks or brokers and dealers in securities, or their subsidiaries, or government

entities, or if the transmitter and recipient are the same person and the transmittal involves a single bank or broker/dealer. These exceptions apply to the travel rule as well.

Request for Comment

These proposed amendments to the travel rule specify that the requirements of the travel rule apply only to financial institution offices that are located within the U.S. Treasury requests comments on these proposed amendments, and comments on the effect on the travel rule of the proposed amendments to the joint rule.

Executive Order 12866

Treasury finds that these proposed amendments to a final rule are not a significant rule for purposes of Executive Order 12866. The final rule is not anticipated to have an annual effect on the economy of \$100 million or more. It will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. It creates no inconsistencies with, nor does it interfere with actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues. A cost and benefit analysis is therefore not required.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, Treasury hereby certifies that these proposed amendments to the final rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments eliminate uncertainty as to the application of the final rule and reduce the cost of complying with the rule's requirements. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information required by the final rule whose amendment is proposed in this document was submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1505-0063. See 60 FR 237 (January 3, 1995). The collection is authorized, as before, by 12 U.S.C. 1829b and 1959 and 31 U.S.C. 5311-5330.

The changes to the final rule proposed in this document will eliminate information collection requirements that were required by the final rule.

Therefore no additional Paperwork Reduction Act submissions are required.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), signed into law on March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Treasury has determined that it is not required to prepare a written budgetary impact statement for the proposed amendments, and has concluded that the proposed amendments are the most cost-effective and least burdensome means of achieving the stated objectives of the rule.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN 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. 5311-5330.

2. In § 103.33, paragraphs (g) introductory text and (g)(1) introductory text are revised and paragraph (g)(3) is added to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(g) Any transmitter's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (g):

(1) A transmitter's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

* * * * *

(3) Exceptions. The requirements of this paragraph (g) shall not apply to transmittals of funds that are listed in paragraphs (e)(6) or (f)(6) of this section.

Dated: July 31, 1995.

Stanley E. Morris,

*Director, Financial Crimes Enforcement
Network.*

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