Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) *Effective date.* This section is effective [30 days after the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**].

Dated: May 16, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–13303 Filed 5–16–97; 4:32 pm]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA19

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—Special Currency Transaction Reporting Requirement for Money Transmitters

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the Bank Secrecy Act to require money transmitters and their agents to report and retain records of transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with the transmission or other transfer of funds to any person outside the United States, and to verify the identity of senders of such transmissions or transfers. The proposed rule is intended to address the misuse of money transmitters by money launderers and is in addition to the existing rule requiring currency transaction reports for amounts exceeding $10,000.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before August 19, 1997.

ADDRESSES: Written comments should be submitted to: Office of Legal Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention*: NPRM—Money Transmitters—Special CTR Rule. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov,'' with the caption, in the body of the text, ''*Attention*: NPRM—Money Transmitters—Special CTR Rule.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the FinCEN reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, and Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3920; Stephen R. Kroll, Legal Counsel, Joseph M. Myers, Deputy Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, Albert R. Zarate, Attorney-Advisor, and Eileen P. Dolan, Legal Assistant, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document contains a proposed rule that would amend 31 CFR part 103 to impose requirements on money transmitters and their agents to report and retain records of transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with the transmission or other transfer of funds to any person outside the United States. The proposed rule also would amend the regulations implementing the Bank Secrecy Act to require that money transmitters verify the identity of the sender of the kind of transmission described above. Treasury has been moved to this unusual step by continuing evidence of serious abuses of the money transmitting industry by money launderers.

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 5313 grants the Secretary of the Treasury broad authority to require financial institutions to report domestic transactions in coins or currency. Paragraph (a) of that section states:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A person acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

Under 31 CFR 103.22, which was issued under the broad authority of section 5313(a), financial institutions generally are required to report transactions in currency in excess of $10,000. Under the Bank Secrecy Act, the term ''financial institution'' at present (that is, before the changes proposed to be made today) includes, *inter alia*, ''licensed transmitter[s] of funds, or other person[s] engaged in the business of transmitting funds.'' 31 CFR 103.11(n)(5).

In 1992, Congress amended the Bank Secrecy Act to allow the Secretary to require financial institutions to carry out anti-money laundering programs. *See* 31 U.S.C. 5318(h) (added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550 (October 28, 1992)). Under section 5318(h), anti-money laundering programs must at a minimum include, *inter alia*, the ''development of internal policies, procedures, and controls.'' In 1994, Congress again amended the Bank Secrecy Act, this time to require the registration of money services businesses. *See* 31 U.S.C. 5330 (added to the Bank Secrecy Act by section 408 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994)). Section 5330 defines a money services

business[1] as any business, other than a bank or the United States Postal Service, that is required to file reports under 31 U.S.C. 5313 and that provides check cashing, currency exchange, or money transmitting services, or issues or redeems money orders, traveler's checks, and other similar instruments. In requiring the registration of money services businesses, Congress recognized that such businesses are ''frequently used in sophisticated schemes to * * * transfer large amounts of money which are the proceeds of unlawful enterprise.'' 31 U.S.C. 5330 (Historical and Statutory Notes).[2]

B. Nature of the Problem

1. Money Transmitters—General

This notice is the third in a set of three notices of proposed rulemaking being published in this separate part of the **Federal Register** that deal with the application of the Bank Secrecy Act to money services businesses. The first of these notices relates to the registration of money services businesses (the ''Registration Rule''). The second would impose on some of these businesses a requirement to report suspicious transactions (the ''Suspicious Transaction Rule''). In proposing these rules, the Department of the Treasury is responding to the need to update and more carefully tailor the application of the Bank Secrecy Act to a major, if little understood, part of the financial sector in the United States.[3]

''Money services business'' is a newly coined term that refers to five distinctive types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. These businesses are quite numerous; based on a study performed for FinCEN by Coopers & Lybrand, L.L.P., they comprise approximately 158,000[4] outlets or selling locations, and provide financial services involving approximately $200 billion. To a significant extent, the customer base for such businesses lies in that part of the population that does not use, either in whole or in part, traditional financial institutions, primarily banks.

The proposed special reporting rule contained in this document relates to money transmitters, a class of money services businesses. For purposes of this notice of proposed rulemaking, and consistent with the definition proposed in the Registration Rule, a money transmitter is

(i) any person, whether or not licensed or required to be licensed, who accepts currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network; or (ii) [a]ny other person engaged as a business in the transfer of funds.

Based on the study performed by Coopers & Lybrand, L.L.P., several broad generalizations can be made about the money transmitting industry in the United States. Due to the global trend of rapidly increasing electronic commerce and the increase in the number of persons who use international transfer services to send money to family and friends, the United States market for money transmission services has grown steadily over the last ten years. Money transmitters in the United States remitted approximately $10.8 billion in 1996, exclusive of fees, each year, through approximately 43,000 locations nationwide. The international component of the money transmission market has been growing at a rate of at least 20 per cent per year for the last five years. Even these estimates are believed to be low, because there is by all accounts a significant, ''informal'' international money transfer market.

The ''formal'' part of the non-bank money transmitter industry is highly concentrated: the vast majority of the formal funds transfers are handled by two major national companies through their network of agents. Most of the money transmission outlets are concentrated in six major states: California, New York, Texas, New Jersey, Florida, and Illinois. There appears to be a disproportionately large number of outlets as well in Georgia, Michigan, North Carolina, and Pennsylvania.

Most of the smaller money transmitters in competition with the major national companies are oriented toward particular markets and rely on their own service infrastructures for transferring funds and for communications and settlement among outlets. These niche transmitters often are bilingual, with outlets located in urban communities. Their customers are willing to pay a premium for value added services, such as receiving informal news from other countries.

State regulators have been monitoring the growing money transmission market with great interest. Twenty-three states now have licensing requirements for money transmitters. Some states, such as New York, also require each licensed money transmitter to register the names and locations of each of its legal agents or vendors, but in general, state regulations vary a great deal, and are primarily focused on consumer protection issues.

2. Use of Money Transmitters by Money Launderers

Work of the El Dorado Task Force. Since 1992, the El Dorado Task Force (the ''Task Force'') has been conducting an investigation into the money transmitting industry in the New York metropolitan area and its use by drug traffickers to return drug proceeds to narcotics source countries.[5] In the course of its work, the Task Force uncovered widespread abuse within segments of the money transmitter industry in New York.[6] One major money transmitter has itself pled guilty to money laundering charges,[7] and investigations of several other

[1] The statute uses the term ''money transmitting business'' to name those businesses subject to registration. See 31 U.S.C. 5330(a)(1) and (d)(1). However, FinCEN believes that the statutes's use of this term to refer to all the types of businesses subject to registration and its later use of the nearly identical term ''money transmitting service'' to refer to a particular type of business subject to registration, *compare* 31 U.S.C. 5330(d)(1)(A) *with* 31 U.S.C. 5330(d)(2), may lead to confusion. Therefore, FinCEN has adopted the term ''money services business'' in place of the term ''money transmitting business'' throughout this document and uses the same terminology in the other rules it is proposing today.

[2] *See also*, H. Conf. Rep. 652, 103d Cong., 191 (1994).

[3] The Congress has long-recognized the need generally to address problems of abuse by money launders of ''non-bank'' financial institutions. *See, e.g.*, Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[4] The number does not include Post Offices (which sell money orders), participants in stored value product trials, or sellers of various stored value or smart cards in use in, *e.g.*, public transportation systems.

[5] The Task Force was established by Treasury law enforcement agencies in 1992 specifically to investigate narcotics related money laundering in the New York metropolitan area. The Task Force is a joint effort of federal, state, and local authorities, and includes approximately 140 agents, police officers and administrative personnel from the Customs Service, the Criminal Investigative Division of the Internal Revenue Service, the Secret Service, the New York State Banking Department, the New York City Police Department, and a number of other local police authorities.

[6] The Task Force's investigations have led to the conviction of 97 persons and the seizure and forfeiture of over $10 million associated with money laundering through the licensed money transmitters.

[7] *United States* v. *Vigo Remittance Corp.*, No. 96–575 (J.S.)(E.D.N.Y.)(July 24, 1996)(entry of plea). It is fair to note that, since its guilty plea, Vigo has strengthened its Bank Secrecy Act compliance measures significantly.

transmitters and their agents are underway.[8]

The results of the Task Force's investigations confirm that the money transmitting industry in New York shares many common characteristics with the industry nationwide. First, the typical legitimate customer of a money transmitter in New York is someone who, because of lack of access for credit reasons or lack of sufficient documentation, has decided not to use banks to obtain financial services.

Second, with rare exceptions, almost all licensed money transmitters in New York operate through agents. Agents of the licensed money transmitters receive the transmitted funds from the sender, along with sender information, such as name, address, and telephone number, and recipient information, usually name and telephone number. The agents enter this information into computers provided by the money transmitters, and invoices are generated. The agents then send the information to the money transmitters by computer (or by fax, if the particular agent does not have a computer).

The agents must deposit the funds to be transmitted into bank accounts set up for the agents but controlled by the money transmitters. On a daily basis, each money transmitter will transfer all of the money it intends to transmit into one of several main transmission accounts maintained at a financial institution with access to CHIPS and FEDWIRE.[9] The funds are then moved through the domestic and foreign banking system by way of wire transfer. Once the transmitted funds have arrived at their destinations, foreign correspondents notify the recipients that their money is available to be picked up.

The primary method of laundering funds through money transmitters in New York that has come to light to date is the structuring of transactions beneath the thresholds for recordkeeping and reporting imposed by existing Bank Secrecy Act rules. Corrupt agents accept illicit funds, in amounts greater than $3,000 or $10,000, structure the funds to avoid the recordkeeping and reporting requirements, and then deposit the funds into accounts controlled by the money transmitter. The money transmitter then transmits the funds to the designated recipient locations.

Most often, the traffickers bring the agents large amounts of currency which need to be returned to a drug source country. The agents create invoices which make it appear as if the money had been brought in by a number of different senders, in amounts below the recordkeeping and reporting thresholds. These corrupt agents also provide the money transmitters with lists of recipient names in the foreign countries for each remittance, again using a different name for each remittance. In this way, each time it appears as if there were a number of smaller, unrelated remittances instead of one remittance, in excess of $3,000, that would trigger the recordkeeping rules of 31 CFR 103.33, or in excess of $10,000, which would trigger the filing of a Currency Transaction Report (''CTR'').

New York Geographic Targeting Order. Based in large part on the evidence produced by the Task Force, a large group of money transmitters (now 23 licensed transmitters and their approximately 3,200 agents) in the New York Metropolitan Area have been the subject of a Geographic Targeting Order (the ''Order''). Issued last August, the Order is grounded in 31 U.S.C. 5326 and 31 CFR 103.26, and is directed at the remittance of funds to Colombia.[10] The Order, first directed against 12 money transmitters and 1,600 agents, was expanded in October 1996, and again in April 1997. Its original 60-day period has been extended several times under the statutory rules, and the Order is at present set to expire on June 2, 1997.

The Order requires daily reporting by agents of the 23 money transmitters, and weekly reporting by their principals (*i.e.*, state-licensed money transmission companies), of information about the senders and recipients of all money transmissions of $750 or more to Colombia paid for with currency or bearer monetary instruments, as well as the reporting of any transactions or patterns of transactions that appear suspicious. Special verification of identity rules for such transactions are also imposed by the Order.

A number of factors in addition to the direct evidence adduced by the Task Force supported the Order's issuance. Perhaps most strikingly, the New York area money transmitters' business volume to Colombia was significantly out of harmony with legitimate demographic expectations. New York State Banking Department figures indicated that the 12 originally targeted transmitters had been sending approximately $1.2 billion annually to South America; about two thirds of this amount, or approximately $800 million, went to Colombia. To account for this figure, each of the approximately 25,500 Colombian households in the New York area (earning an average gross annual income of $27,000) would have had to send approximately $30,000 per year through money transmitters to Colombia.

Implementation of the Order almost immediately caused dramatic changes in the volume and character of money transmissions, indicating a major reduction in the amount of illicit funds moving through New York money transmitters.[11] Analysis of data generated by the Order is ongoing, but the targeted money transmitters' business volume to Colombia appears to have dropped approximately 30 percent. (Three of the money transmitters subject to the Order have simply stopped sending any funds to Colombia.) Most of the money that would in the past have been placed abroad through the use of money transmitters appears to have been physically removed from the New York Metropolitan area, either for transfer through money transmitters operating in other American cities, or for bulk smuggling out of the United States. The change demonstrates graphically both that narcotics money launderers have been extensively abusing a segment of the relatively unsupervised money transmitter industry, and that the underground market does respond to regulatory and enforcement pressures.

Ancillary results of the Order also have been significant. The Treasury has observed a dramatic increase in Customs Service interdiction and seizure activity at air and seaports, on common carriers, and on highways—over $50 million during the first seven months of the Order's operation, a figure over three times higher than that for comparable periods in prior years. Also significant is the fact that the cost of sending funds to Colombia through money transmitters in New York has dropped, from 7 percent to 5 percent of

[8] *See, e.g., United States* v. *Remesas America Oriental*, No. S1 96 Cr. 919 (S.D.N.Y. 1996).

[9] Clearing House Interbank Payments System (CHIPS) and FEDWIRE are commonly-used funds transfer systems.

[10] The Order was issued by Raymond W. Kelly, Under Secretary (Enforcement) of the Department of the Treasury, in response to an application from the United States Attorneys for the Eastern District of New York, the Southern District of New York, and the District of New Jersey and senior officials of the Customs Service and the Internal Revenue Service. (The statute allows such orders to be issued either upon a request from an appropriate law enforcement authority, or by the Treasury upon its own initiative.) Issuance of an order requires a finding, amply documented in this case, that there is reason to believe that special reporting or recordkeeping requirements are necessary to carry out the purposes, or prevent evasions of, the Bank Secrecy Act.

[11] One money transmitter surrendered its license to the New York Banking Department immediately before the Order became effective. Two other money transmitters subject to the Order simply stopped sending any funds to Colombia.

the value of the transfer, since the Order was put in place.

At the same time, it is clear that a significant number of money transmitter agents have been willing to structure transactions beneath the Order's $750 reporting threshold, in an attempt to move narcotics-tainted funds abroad even during a period of known surveillance of the industry and its agents. (At least one money transmitter has itself actively worked with federal authorities during this period to identify suspicious transactions, even those involving its own agents.) The number of transactions in amounts below $750 has risen sharply, and the amount of funds transferred to Colombia in such increments appears to have almost doubled. The Task Force has already executed search warrants on twenty-two money transmitter agents suspected of intentionally structuring transactions in violation of the Order; all but five businesses served have closed, five people have been indicted, and four people have already pleaded guilty. Three additional arrest warrants are outstanding. The Task Force is continuing to pursue investigations of this type, and the Treasury will consider imposing civil penalties against violators who are not pursued criminally.

Texas State Investigations. The New York GTO experience is not an isolated phenomenon. The Texas Attorney General's office began investigating so called ''giro houses'' in the Houston area in the early 1990s. Giro houses are independent money transmitters that also provide ancillary services such as cargo shipment and long distance telephone access. Before 1991, there were as many as 100 giro houses in Houston processing over $450 million per year in wire transfers, primarily to Colombia. The Texas Attorney General's Office, working with the Texas Department of Banking and the Houston office of the Internal Revenue Service, opened formal investigations of a number of giro houses. These investigations, like the El Dorado Task Force's investigations in New York, revealed a pattern of money laundering through false invoices designed to justify the large currency deposits at local banks.

From late 1994 through 1995 the Texas Attorney General's Office obtained and executed 11 search warrants at Houston giro houses. Many businesses closed while under investigation, and the overall effect of the Texas investigations on the illegitimate trade was dramatic. A recent count of giro houses lists eight sending funds to Colombia, and the total amount of money processed through giro houses has dropped to approximately $10 million.

A significant factor in the Texas investigations has been the state requirement that any wire transaction over $1,000 be recorded on a receipt that includes driver's license and social security or other photo identification numbers, birth date and address of the sender. Because false identification and addresses are commonly used by money launderers sending funds in excess of $1,000, the identification requirement has provided a clear mechanism for detecting and proving illegal behavior. In the case of businesses that are willing to structure transactions beneath the $1,000 threshold, surveillance has been used to document the deviation between the number of people observed patronizing the business and the number of customers reflected in business records during the surveillance period.

C. Need for Special Reporting and Recordkeeping Rules for Money Transmitters

This notice proposes to amend the Bank Secrecy Act regulations to require money transmitters and their agents to report and keep records of, and verify the identity of senders of, transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with a transmission or other transfer of funds to any person outside the United States. While Treasury recognizes the significance of this proposed action, it believes that the step is nevertheless clearly warranted based on the potential, and the record of actual, abuse of the money transmission industry documented, *inter alia*, by the Task Force's investigations and the results of the Order.

As indicated above, the Order and the Texas investigations have had a significant impact in providing crucial information to the Treasury as well as disrupting the flow to Colombia, through money transmitters, of illegally-derived funds. But geographic targeting orders are by their nature relatively temporary measures, intended to illuminate, rather than solve, long-term enforcement problems. Given the structural factors that created the situation to which the Order was addressed (plus the evidence of extensive structuring that has taken place to avoid even the Order-imposed threshold of $750), the likelihood that launderers are now moving large sums through other money transmitters in other cities, and will resume doing so in New York once the Order expires, cannot responsibly be discounted, let alone ignored.

The Task Force's investigations and the Order focused on money transmitters in the New York Metropolitan Area. But the Texas giro house investigations and the consensus of law enforcement officials simply confirms what the New York situation itself would lead one to expect, namely that elements of the money transmission industry, given a combination of factors, are very susceptible to systematic misuse, extending unfortunately in some cases to infiltration and corruption, by money launderers.

It should be emphasized at the outset that, as in the case of the nations's banks and securities firms, most money services business operators and agents are completely law-abiding and as interested in cost-effective financial law enforcement as the Treasury itself. A number of major national money remitters and issuers of traveler's checks and money orders have already taken their own steps to devise anti-money laundering compliance programs.

The challenges for reasonable implementation of the Bank Secrecy Act posed by the situation the New York Order illuminates are daunting. Implementation of a comprehensive counter-money laundering strategy for money transmitter and other money services businesses raises significant issues not present in devising counter-money laundering strategies for banks, largely due to unique structural factors affecting money services businesses. Money transmitters (like other money services businesses) operate largely through the medium of independent enterprises that agree to serve as agents for the businesses' products or services.

Thus, the public does not deal directly with the businesses that issue the instruments, or actually perform the services, purchased, and the activities of the agents are subject to less systematic control than in the case, for example, of branch banks or brokerage offices.

Even more important, the experience encountered in New York and Texas indicates that the rules of the Bank Secrecy Act are not now appropriately tailored to reflect the particular operating realities, problems, and potential for abuse of an industry that deals in sums far below $10,000 per transaction. Given a truly ''cash'' industry, that moves impressively large sums in the aggregate, with few of the structural controls in place that banks and their regulators impose, and that is not subject to the sorts of market discipline to which banks are subject with respect to avoiding collaboration

with criminals, a single strategy does not easily suggest itself.

The issue facing the Treasury is how to move from the world of a temporary geographic targeting order to stabilize the situation of this industry. The decision to propose a $750 currency transaction reporting requirement for outbound transmissions reflects two determinations. The first is that such a rule, while in effect, will create a source of information that should help nationwide to stop the relatively uncontrolled outflow of narcotics proceeds through money transmitters. The second is that such a rule will allow more long-term (and less absolute) measures, most important, heightened industry procedures and programs based on a mandatory suspicious transaction reporting regime, backed by nation-wide registration of money services businesses, the time to become effective.

Treasury has considered a number of alternatives in seeking to craft the proposed rule. The value of reporting in this situation is plain. Mandatory reporting creates a critical source of information for Treasury enforcement and bank regulators about the transactions that move through money transmitters. That the reporting requirement also creates a deterrent effect and drives launderers from the system, cannot, Treasury believes, be seriously debated.

No Bank Secrecy Act requirement other than the New York Order (and previous geographic targeting orders, in Phoenix in 1989 and Houston in 1991) has ever keyed reporting requirements or special recordkeeping requirements at a level as low as $750. The next standard rung in the ladder is $3,000; money transmitters, like other financial institutions, currently are subject to a requirement to maintain records of funds transfers of $3,000 or more, *see* 31 CFR 103.33, and to a requirement to report transactions in currency of more than $10,000. *See* 31 CFR 103.22(a). It is, in part, the evasion of the $3,000 recordkeeping requirement that the New York Order was put in place to prevent.

In addition, enforcement and regulatory analyses increasingly confirm what the experience under the Order amply demonstrates, namely that a $3,000 threshold has small relevance to an industry that most commonly deals in sums far below that amount. A study by Coopers & Lybrand concluded that the average transaction amount for funds transferred by money transmitters to persons outside the United States is approximately $320. The fact that $750 is more than twice the amount of the average transaction decreases the likelihood that legitimate transactions will be put off track by this simple reporting requirement.

Another issue is whether the rule should apply to transfers to all destinations outside the United States, rather than, say, applying only to transmissions to particular countries. Any rule directed at transmissions to a particular nation would simply move the process to create a switching station in some third country, for funds ultimately bound to the country designated. (For example, there is some basis for a conclusion that funds destined for Colombia, once the New York Order was in place, were simply routed through transmitters in other Latin American nations, on their way to their ultimate destination in Colombia.) Not only is singling out a particular country likely to be ineffective, but it could also contravene international agreements to which the United States is a party.

Money transmitters provide a valuable service, especially in lower-income communities in which access to banks may be limited. In issuing this notice of proposed rulemaking, Treasury has sought to avoid imposing undue hardship on any segment of the United States population. On the contrary, by establishing a reporting threshold more than double the average amount of funds transferred outside the United States by a money transmitter, it is targeting the criminals who misuse money transmitters to send the profits of their illegal activity to drug source countries. Indeed, if the New York experience holds true, a lower reporting threshold may actually lead to a *reduction* in the cost to customers of remitting funds abroad through money transmitters.

As indicated above, it is not necessarily the case that any special $750 reporting rule, once made final, would be permanent. The Department of the Treasury intends carefully to review the experience of the industry and the results of reporting under the blanket $750 reporting rule. The Department of the Treasury intends, at the same time that its programs emphasize a government-industry thrust to bring counter-money laundering programs in the money services industry up to a workable standard, to determine whether, and to what extent, a special reporting rule continues to be necessary.

D. Authority for Special Reporting and Recordkeeping Rule for Money Transmitters

This notice of proposed rulemaking is grounded in the broad authority granted the Secretary of the Treasury by section 5313(a) and section 5318(h). Section 5313(a) authorizes the Secretary to require a domestic financial institution to report transactions involving coins, currency or other monetary instruments. Section 5318(h) authorizes the Secretary to require a financial institution to carry out anti-money laundering programs, including at a minimum the development of internal policies, procedures, and controls.

While 31 CFR 103.22(a) imposes a general reporting and recordkeeping threshold of more than $10,000 for domestic financial institutions, section 5313(a) does not mandate any single threshold amount. Instead, the statute grants the Secretary the discretion to require reports of transactions ''in an amount, denomination, or amount and denomination'' as the Secretary may prescribe. FinCEN believes this language permits the Secretary to impose a reporting threshold lower than $10,000, where the circumstances warrant.[12]

Similarly, the statute is silent on whether the Secretary may set a different reporting threshold for different kinds of financial institutions. Section 5313(a) does state, however, that reports of transactions may be required ''under circumstances the Secretary prescribes by regulation.'' FinCEN reads this broadly-stated language as permitting the Secretary to set a reporting threshold for money transmitters that is different than the reporting threshold for other financial institutions.[13]

The proposal contained in this document that would lower the general reporting threshold of more than $10,000 has historical antecedents. Both Congress and the Department of the Treasury have in the past each drafted a law or proposed a rule that would have lowered the $10,000 reporting threshold generally applicable to financial institutions. On these occasions, FinCEN is unaware of any challenge ever being made to Treasury's legal authority under the Bank Secrecy Act or its implementing regulations to make such a change.

In August 1986, the House of Representatives considered legislation (HR 5484) aimed at countering the misuse of financial institutions by narcotics launderers. One provision of that bill would have authorized the Secretary of the Treasury to order domestic financial institutions to report

[12] This plain reading of section 5313(a) is consistent with the statute's relevant legislative and administrative histories.

[13] Again, the relevant legislative and administrative histories of section 5313(a) do not conflict with this plain reading of the statute.

and retain records of any transaction of more than $3,000 involving currency or other monetary instruments. The version of the bill containing this provision was never enacted into law.[14]

When HR 5484 was introduced, the Department of the Treasury issued a notice of proposed rulemaking that would have amended the Bank Secrecy Act regulations to require domestic financial institutions to report and retain records of certain transactions in currency less than $10,000. *See* 51 FR 30233 (August 25, 1986). Specifically, the notice would have required that financial institutions obtain and retain a report from each purchaser of any official bank check, cashier's check, money order or traveler's check, if the purchase involved a transaction in currency of $3,000 or more. The rule then proposed would have required that each such report be signed by the purchaser and certify whether or not the purchaser had purchased more than $10,000 of these kinds of instruments in any one day. Under the notice, the selling financial institution would have been required to treat any affirmative certification, or refusal to certify, as a reportable transaction, that would require the financial institution to file a CTR. Based on Treasury's conclusions that these proposals were ''not advisable at this time,'' the proposals were eventually withdrawn. *See* 58 FR 6611 (February 29, 1988).

The notice of proposed rulemaking containing these proposals generated approximately 300 comments. While most commenters objected to lowering the reporting threshold from $10,000 to $3,000 for transactions involving the kinds of instruments listed above, no commenter questioned Treasury's legal authority under the Bank Secrecy Act and its implementing regulations to establish either a reporting threshold other than $10,000 or a different reporting threshold for different kinds of transactions.

III. Specific Provisions

A. 31 CFR 103.22(i)(1) General

Proposed paragraph (i)(1) states the special reporting rule for money transmitters. It provides that money transmitters and their agents must report transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with a transmission or other transfer of funds to any person outside the United States.

Reporting Institutions

Any enterprise that is a money transmitter, within the definition proposed in the Registration Rule, or agent of a money transmitter, is subject to the proposed special reporting rule contained in this document.

As proposed, the special reporting rule would not apply to depository institutions, despite the fact that some depository institutions accept funds transmission business from non-customers. Depository institutions are subject to national examination by the federal financial supervisory agencies for, *inter alia*, compliance with the Bank Secrecy Act and adequacy of systems to prevent money laundering. They are also subject to the obligation to report suspicious transactions to the Department of the Treasury, and FinCEN will be issuing a suspicious transaction report advisory to banks with respect to the potential for abuse of the funds transmittal system by non-account customers in the near future. In addition, FinCEN does not possess information about the segment of the money transmission business that involves bank transmissions for non-account customers that indicates the sorts of abuses demonstrated, in the case of some non-bank money transmitters and their agents, by the New York Order, the Texas investigations, other enforcement activities, and industry analyses.

Under these circumstances, and in the absence of demonstrated abuse of the bank non-customer segment of the money transmission industry, the Department of the Treasury is not proposing the extension to depository institutions, at this time, of the rules proposed for other money transmitters by this notice of proposed rulemaking. However, comments are specifically requested on the question whether either competitive or other factors make it necessary for the special reporting rules to apply to banks, for non-customers, as well as to other money transmitters.

Reportable Transactions

The proposed reporting rule applies to transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with a transmission or other transfer of funds to any person outside the United States. (At the more than $10,000 level, the normal reporting rules apply.) The $750 threshold for reporting under the proposed rule reflects information about the money transmitting industry provided voluntarily by the industry, collected by Coopers & Lybrand, L.L.P., and confirmed by the Task Force's investigations and the results of the Order. Law enforcement sources agree that, across the industry and throughout the United States, the average legitimate funds transfer to Colombia ranges in amount between $200 and $500.[15] Thus, reports about transfers of $750 or more should impose neither an undue burden on the legitimate business conducted by money transmitters nor an undue government intrusion into the financial affairs of their legitimate customers. In this regard, it is worth noting that the maximum available value of a U.S. Postal Service money order—a monetary instrument widely used for bill paying by the same part of the population that has a legitimate need for the services of money transmitters such as those targeted by the proposed special reporting rule—is $700.

Any transmission or other transfer of funds to any person outside the United States of at least $750 but not more than $10,000 would be subject to the proposed reporting rule. As discussed above, any limitation of the rule's attention to a particular country or group of countries would ignore the reality that organized financial crime and its money-moving circuits are worldwide in scope and would likely raise far more problems than it solved. Any such limitation would be both unfair and ill-tailored to the realities of the money laundering problem.

The reporting range for this proposed special reporting rule has been set at an amount of at least $750 but no more than $10,000 to avoid any overlap with the general reporting requirement of 31 CFR 103.22(a) to report transactions in currency of $10,000 or more. Moreover, the proposed special reporting rule does not affect in any way the obligation of money transmitters to comply with the suspicious transaction reporting requirements, as set forth in the Suspicious Transaction Rule. The proposed rule further does not affect the obligation for money transmitters to comply with the recordkeeping requirements for funds transfers as set forth in 31 CFR 103.33.

B. 31 CFR 103.22(i)(2) Identification Required

Proposed paragraph (i)(2) requires that before any money transmitter or agent completes a transaction in currency of at least $750 but not more

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[14] Nevertheless, certain amendments to the Bank Secrecy Act (*e.g.*, making structuring a crime) eventually were made by the Money Laundering Control Act of 1986, Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570 (October 27, 1986).

[15] According to the Coopers & Lybrand study, noted above, the average amount of a funds transfer from the United States to another country is approximately $320.

than $10,000 in connection with any transmission or other transfer of funds to any person outside the United States, the money transmitter or agent involved must verify and record the name and address of the sender of the funds and satisfy with respect to such transaction the requirements of 31 CFR 103.28, provided that for purposes of the special reporting requirement, only a drivers license, passport, alien registration card or state-issued identification card, containing a photograph of the individual involved, may be accepted for verification of identity.

C. 31 CFR 103.22(i)(3) Person Required To File and Keep Records

As is the case with the Suspicious Transaction Rule, proposed paragraph (i)(3) places responsibility for reporting on each money transmitter, as well as on its agents,

regardless of whether, and the terms on which, the money transmitter treats such person as an agent or independent contractor for other purposes.

The allocation of principal-agent liability in particular cases, under the governing terms of the Bank Secrecy Act, is too complex a subject to be dealt with in this notice of proposed rulemaking. However, the Department of the Treasury believes that at a minimum the operators of money transmitters have a duty to know their agents sufficiently well to be able to fulfill the reporting and recordkeeping obligations involved in compliance with the proposed rule. As in the case of the rules for suspicious activity reporting by banks, 31 CFR 103.21, and exemptions from the requirement to report transactions in currency by banks, 31 CFR 103.22(h), the proposed rule is intended to introduce a concept of due diligence into the reporting procedures, and that diligence applies equally to a review of activities of agents as to a review (by both principals *and* agents) of transactions of consumer-customers of money transmitters.

Treasury invites comments on whether the rule should contain more detailed procedures or rules dealing with the allocation of responsibility between principals (the money transmitters) and agents, as well as specific rules for compliance programs that recognize the realities of the business operations in this part of the financial sector.

D. 31 CFR 103.22(i)(4) Recordkeeping

Proposed paragraph (i)(4) makes it clear that records maintained by a money transmitter or its agent in compliance with and administration of the rules of this paragraph (i) must be maintained in accordance with the recordkeeping provisions of 31 CFR 103.38, which, *inter alia*, requires that records be maintained for a period of five years.

E. 31 CFR 103.27(a)(3)

Proposed paragraph (a)(3) states the filing deadline applicable to any report required to be filed by proposed paragraph (i)(1). Any such report must be filed within 30 days following the day on which the reportable transaction occurred.

IV. Proposed Effective Date

The amendments to 31 CFR Part 103 contained in this notice of proposed rulemaking will become effective 30 days following the publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates.

V. Submission of Comments

An original and four copies of any comment (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

VI. Regulatory Flexibility Act

FinCEN certifies that the proposed rule contained in this document will not have a significant economic impact on a substantial number of small entities. The average money transmission from the United States to another country is approximately $320. This amount is substantially below the $750 threshold that triggers reporting under the proposed rule. Thus, FinCEN believes that the threshold has been set at a level that will avoid a significant economic burden on small businesses.

VII. Paperwork Reduction Act Notices

Special Currency Transaction Report for Money Transmitters

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information on *International Transmission of Funds Report* is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if enacted as proposed, would result in a total of 300,000 *International Transmission of Funds Report* forms to be filed. This result is an estimate, based on a projection of the size and volume of the industry.[16]

Title: International Transmission of Funds Report.

OMB Number: To be determined.

Description of Respondents: Money transmitters.

Estimated Number of Respondents: 100,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: 300,000 responses. Reporting burden estimate = 95,000 hours; recordkeeping burden estimate = 25,000 hours. Estimated combined total of 120,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated at $2,400,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: New.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Recordkeeping Requirements of 31 CFR 103.22(i)

In accordance with requirements of the Paperwork Reduction Act of 1995,

[16] Given the state of our knowledge of the industry and patterns of illegal transactions, these estimates are extremely hard to generate.

44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR Part 1320, the following information concerning the collection of information as required by 31 CFR 103.22(i) is presented to assist those persons wishing to comment on the information collection.

Title: Currency transaction special reporting.

OMB Number: 1506–0006.

Description of Respondents: All financial institutions.

Estimated Number of Respondents: 100,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 10 minutes per response; 300,000 responses.

Estimate of Total Annual Burden on Respondents: Recordkeeping burden estimate = 50,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on cost should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Comments may be submitted to FinCEN, at the address specified at the beginning of this document, *Attention:* Paperwork Reduction Act.

Responses to this request for comments under the Paperwork Reduction Act will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

VIII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

IX. 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 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. 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 because it believes that the proposed amendments will not result in the expenditure of $100 million or more in any one year by either state, local and tribal governments, in the aggregate, or by the private sector.

List of Subjects in 31 CFR Part 103

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

Proposed Amendments to the Regulations

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

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. Paragraph (i) of section 103.22 is added to read as follows:

§ 103.22 Reports of currency transactions.

* * * * *

(i) *Reporting of the transmission or other transfer of funds outside the United States*—(1) *General.* In addition to any reports required by paragraph (a) of this section, each money transmitter or its agent shall file a report, in such manner as FinCEN may prescribe, of any transaction or attempted transaction in currency or monetary instruments in an amount of at least $750 but not more than $10,000, in connection with a request or order for the transmission or other transfer of funds, directly or indirectly, to any person outside the United States. For purposes of the preceding sentence, multiple transactions in currency shall be treated as a single transaction if the money transmitter or its agent has knowledge that the transactions are by or on behalf of any person and result in the transmission or other transfer of funds of at least $750 but not more than $10,000 on a single calendar day.

(2) *Identification required.* Before concluding any transaction described in paragraph (i)(1) of this section, a money transmitter or its agent must verify and record the name and address of the individual presenting such transaction and satisfy with respect to such transaction the requirements of § 103.28, provided that for purposes of this paragraph (i), only a drivers license, passport, alien registration card, state-issued identification card, containing a photograph of the individual involved, may be accepted for verification of identity.

(3) *Person required to file and keep records.* The obligation to report each transaction that is described in paragraph (i)(1) of this section and to maintain records as described in paragraph (i)(4) of this section, rests with the money transmitter involved and its agent, regardless of whether, and the terms on which, the money transmitter treats such person as an agent or independent contractor for other purposes. Notwithstanding this paragraph (i)(3), the filing of a report and maintaining of records by either the money transmitter involved or its agent satisfies the obligations imposed by this paragraph (i). If an agent of a money transmitter completes and files a report, a copy of the report also must be sent to the money transmitter for which the agent is acting.

(4) *Recordkeeping.* The records maintained by a money transmitter or its agent to document its compliance with and administration of the rules of this paragraph (i) shall be maintained in accordance with the provisions of § 103.38.

(5) *Excluded persons.* This paragraph (i) does not require reporting by depository institutions as defined in 31 U.S.C. 5313(g).

(6) *Effective date.* This paragraph (i) is effective [30 days following the publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates].

3. In § 103.27, paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(4) and (a)(5), respectively, and new paragraph (a)(3) is added to read as follows:

§ 103.27 Filing of reports.

(a) * * *

(3) A report required by § 103.22(i) shall be filed within 30 days following the day on which the reportable transaction occurred.

* * * * *

Dated: May 16, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

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