a. In paragraph (d) removing the language ''§ 103.48'' and adding the language ''§ 103.58'' in its place.

b. In the first sentence of paragraph (e) removing the language ''§ 103.53'' and adding the language ''§ 103.63'' in its place.

§ 103.72 [Amended]

8. Newly redesignated § 103.72 is amended by removing the language ''§ 103.61'' from the introductory text and adding the language ''§ 103.71'' in its place.

§ 103.73 [Amended]

9. Newly redesignated § 103.73 is amended by:

a. In paragraph (a) introductory text removing the language ''§ 103.61'' and adding the language ''§ 103.71'' in its place.

b. In paragraph (a)(1) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

c. In paragraph (b) introductory text removing the language ''§ 103.61'' and adding the language ''§ 103.71'' in its place.

d. In paragraph (b)(1) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

§ 103.74 [Amended]

10. Newly redesignated § 103.74 is amended by removing the language ''§ 103.62'' from paragraph (a) and adding the language ''§ 103.72'' in its place.

§ 103.75 [Amended]

11. Newly redesignated § 103.75 is amended by:

a. In the first sentence of paragraph (a) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

b. In paragraph (c) introductory text removing the language ''103.62(a)'' and adding the language ''103.72(a)'' in its place and removing the language ''§ 103.62 (b) or (c)'' and adding the language ''§ 103.72 (b) or (c)'' in its place.

§ 103.76 [Amended]

12. Newly redesignated § 103.76 is amended by:

a. In the first sentence removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

b. In the second sentence removing the language ''§ 103.62(a)'' and adding the language ''§ 103.72(a)'' in its place.

§ 103.82 [Amended]

13. Newly redesignated § 103.82 is amended by removing the language ''§ 103.71'' from the first sentence and adding the language ''§ 103.81'' in its place.

§ 103.83 [Amended]

14. Paragraph (b) of newly redesignated § 103.83 is amended by:

a. In the first sentence removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

b. In the last sentence removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

§ 103.85 [Amended]

15. Newly redesignated § 103.85 is amended by removing the language ''§ 103.71'' from the first sentence and adding the language ''§ 103.81'' in its place.

§ 103.86 [Amended]

16. Newly redesignated § 103.86 is amended by:

a. In paragraph (a) introductory text removing the language ''§ 103.75'' and adding the language ''§ 103.85'' in its place.

b. In the second sentence of paragraph (b) removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

Dated: May 16, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–13304 Filed 5–16–97; 4:32 pm]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA20

Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations—Requirement of Money Transmitters and Money Order and Traveler's Check Issuers, Sellers, and Redeemers To Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the Bank Secrecy Act regulations to require money transmitters, and issuers, sellers, and redeemers, of money orders and traveler's checks, to report suspicious transactions involving at least $500 in funds or other assets. The proposal is a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering strategy of the Department of the Treasury.

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—Suspicious Transaction Reporting—Money Services Businesses. 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—Suspicious Transaction Reporting—Money Services Businesses.'' 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, Albert R. Zarate, Attorney-Advisor, Cynthia L. Clark, detailed to the Office of Legal Counsel of FinCEN, and Eileen P. Dolan, Legal Assistant, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes to add a new section 103.20 to 31 CFR part 103, to require (i) money transmitters, (ii) issuers, sellers, and redeemers of money orders, and (iii) issuers, sellers, and redeemers of traveler's checks, to report to the Department of the Treasury any suspicious transaction relevant to a possible violation of law or regulation. The proposal would extend to these ''money services businesses,'' which are part of the universe of financial institutions subject to the Bank Secrecy Act, the suspicious transaction reporting regime to which the nation's banks,

thrift institutions, and credit unions have been subject since April 1, 1996.[1]

II. Background

A. Statutory Provisions

The Bank Secrecy Act, 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 the Bank Secrecy Act has been delegated to the Director of FinCEN.

The authority to require reporting of suspicious transactions is contained in 31 U.S.C. 5318(g). That subsection was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the ''Annunzio-Wylie Anti-Money Laundering Act''), Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

The provisions of 31 U.S.C. 5318(g) deal with the reporting of suspicious transactions by financial institutions subject to the Bank Secrecy Act and the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent

> that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[2] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' *Id.*, at subsection (g)(4)(B).

B. Importance of Suspicious Transaction Reporting in the Treasury's Counter-Money Laundering Program

The Congressional mandate to require reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and anti-financial crime programs. First, it is to financial institutions that money launderers must go, either initially or eventually. Second, the officials of those institutions are more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Moreover, because money laundering transactions are designed to appear legitimate in order to avoid detection, the creation of a meaningful system for detection and prevention of money laundering is impossible without the cooperation of financial institutions. Indeed, many non-banks have come increasingly to recognize the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also a key to the emerging international consensus on the prevention of money laundering. One of the central recommendations of the Financial Action Task Force—recently updated and reissued—is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[3] Annex 1 (Recommendation 15). The recommendation, which applies equally to money services businesses as to banks, revises the original recommendation, issued in 1990, that required institutions to be either ''*permitted or* required'' to make such reports. (Emphasis supplied.) The revised recommendation makes clear the international consensus that a mandatory suspicious transaction reporting system is essential to an effective counter-money laundering program.

Similarly, the European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord*, *the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[4] All of these documents recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to

[1] The suspicious transaction reporting rules for banks are found at 31 CFR 103.21 (which this notice of proposed rulemaking proposes to renumber as 31 CFR 103.18). The term bank, for purposes of the Bank Secrecy Act regulations, includes all depository institutions. *See* 31 CFR 103.11(c).

[2] This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[3] The FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[4] The OAS reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

recognize that non-banks as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8).

C. Suspicious Transaction Reporting by Money Services Businesses

This notice of proposed rulemaking, the second of the notices of proposed rulemaking being published in this separate part of the **Federal Register** dealing with application of the Bank Secrecy Act to money services businesses, would generally require money transmitters, businesses issuing, selling, or redeeming money orders, and businesses issuing, selling, or redeeming traveler's checks, to report suspicious transactions to the Department of the Treasury.[5] Money services businesses have not in the past been the subject of the same concentrated attention as banks in the administration of the Bank Secrecy Act.[6] The Annunzio-Wylie Anti-Money Laundering and Money Laundering Suppression Acts were crafted by the Congress in significant part to give the Treasury flexible tools to deal with non-bank institutions, and today's notices of proposed rulemaking represent an attempt by the Department of the Treasury to design Bank Secrecy Act rules that address the problems encountered by law enforcement agents, regulators, and money services businesses themselves, in fighting money laundering in this part of the financial sector. The notice and its timing reflect both the general course of Treasury's counter-money laundering program and specific developments that indicate the need for immediate extension of updated and appropriately-tailored Bank Secrecy Act rules to money services businesses, especially to money transmitters, but also to money order and traveler's check services.[7]

It should be emphasized at the outset that, as in the case of the nation's banks and securities firms, most money service business operators and agents are completely law-abiding and as interested in cost-effective financial law enforcement as the Treasury itself.

Money Transmitters. Since last August, 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 pursuant to 31 U.S.C. 5326 and 31 CFR 103.26, that is directed at the remission of funds to Colombia.[8] The original 60-day period of the Order has been extended several times under the statutory rules, and the Order is at present set to expire on June 2, 1997. The Order, first directed against 12 money transmitters and 1,600 agents, was expanded in October 1996 and again in April 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 remittances 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.

The Order was issued against a backdrop of several years of intensive investigative work conducted by the Customs and Internal Revenue Service-led El Dorado Task Force, which had uncovered widespread laundering of narcotics funds within segments of the money transmitter industry in New York. El Dorado agents have been able repeatedly to show the complicity of money remitter agents in the simple scheme of structuring of large cash transactions to evade the existing Bank Secrecy Act reporting and recordkeeping obligations applicable to such transactions, using, for example, false invoices and fabricated identities of senders and recipients.[9] One major licensed money transmitter had itself pled guilty to money laundering charges,[10] and investigations of several other transmitters and their agents were underway.[11]

But a number of other factors also supported the Order's issuance. Perhaps most strikingly, the New York area money transmitters' business volume to Colombia was strikingly 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.

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.[12] 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 transmission services 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

[5] Readers of the discussion that follows may wish to refer to the Notice of Proposed Rulemaking entitled ''Amendment to the Bank Secrecy Act Regulations—Definition and Registration of Money Services Businesses,'' for a general description of money services businesses in the United States.

[6] The placement of illegally-derived currency into the financial system and the smuggling of such currency out of the country remain two of the most serious issues facing financial law enforcement efforts in the United States and around the world. But banks, in cooperation with law enforcement agencies and federal and state banking regulators, have responded in many positive ways to the challenges posed by money laundering. It is now far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed and far easier to identify and isolate those banks and officials still willing to assist or ignore money launderers.

[7] The Congress has long-recognized the need generally to address problems of abuse by money launderers 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).

[8] 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 such 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 record keeping requirements are necessary to carry out the purposes, or prevent evasions, of the Bank Secrecy Act.

[9] Over the years preceding the issuance of the Order, El Dorado's ''Operation Wire Drill'' investigations 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.

[10] *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 sought to strengthen its Bank Secrecy Act compliance measures significantly.

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

[12] One money transmitter surrendered its license to the New York State Banking Department upon being served with the Order.

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 have also 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 $36 million during the first six months of the Order's operation, a figure approximately four times higher than for comparable periods in prior years.

Despite the Order, it is clear that a not insubstantial 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 the same time, at least one money transmitter has itself 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 El Dorado Task Force has already executed search warrants on 22 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.

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 IRS, 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 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.

Money Order Sellers. The use by money launderers of money orders, whether issued by the United States Postal Service or private companies, is well-documented. As one example, a Postal Inspection Service investigation beginning in the late 1980s and early 1990s, whose offshoots continue to this day, revealed a multiple step scheme in which money orders, in individual amounts of $1,000 or less, were purchased from New York area banks and post office outlets (often in bulk), sent abroad for negotiation or deposit, and then repatriated to the United States for clearance or deposit into banks from which the aggregated funds were again to be wired abroad. The scheme involved some 99,000 money orders worth approximately $70 million that were deposited into three bank accounts in New York and Miami; it resulted in the 1992 guilty plea of two individuals, and the 1993 forfeiture of approximately $2.1 million.

The ease with which money orders can be redeemed or negotiated—the very factors that make them attractive commercially—also make them an attractive tool for money launderers. The orders are negotiable, may be made out to ''cash,'' and operate as virtually the equivalent of cash, especially when backed by the credit of the Postal Service or one of the two major commercial money order issuers that, together with the Postal Service, dominate the money order market. Money order issuers have made major strides in recognizing their obligations to report suspicious activity and in designing computer systems to, *e.g.,* identify suspicious sequential money order purchases, and to that extent today's proposal recognizes those developments and makes clear that the protective provisions of 31 U.S.C. 5318(g) (2)–(3) apply equally to reports by money order issuers, sellers, and redeemers as to reports by banks. Despite that fact, however, the extremely large number of agents and other businesses that deal in money orders as financial instruments makes the promulgation of a general suspicious transaction reporting rule for such businesses essential.

Traveler's Checks. Traveler's checks raise the same issues as money orders. Clearly, the requirement that traveler's checks be counter-signed on issuance and at the time they are negotiated makes them more difficult to abuse, but the counter-signature requirement can be evaded by a corrupt sales agent and may have less force abroad than in the United States. Traveler's checks are already included within the definition of monetary instruments at 31 CFR 103.11(u)(ii), and their potential for abuse was recognized in the 1992 amendments to the definition of ''cash'' for purposes of the reporting of cash purchases of goods and services valued over $10,000. *See* 26 U.S.C. 6050I(d)(2); 26 CFR 6050I–1(c)(1)(ii); 56 FR 57974, 57977 (Nov. 15, 1991).

Special Structural Problems Affecting Money Services Businesses. In issuing this notice of proposed rulemaking, the Department of the Treasury is again expressing its judgment that reporting of suspicious transactions in a timely fashion is a component of the flexible and cost-efficient compliance system required to prevent the use of the nation's financial system—in this case money services businesses—for illegal purposes. Implementation of a comprehensive counter-money laundering strategy for money services businesses, however, raises significant issues not present in devising counter-money laundering strategies for banks, largely due to unique structural factors affecting money services businesses.

First, most money services businesses operate through the medium of independent enterprises that agree to serve as agents for the businesses' products or services; thus the public often does not deal directly with the businesses that issue or back the instruments, or actually perform the services, purchased. Second, and as a corollary, money services businesses permit performance of a specific function—the conversion of money into a money order or traveler's check, or the sending of money to a distant location—but generally neither offer nor are capable of maintaining continuing account relationships. Third, money services businesses are not subject generally to federal regulation and are regulated, in differing degrees, by some, but not all, states.[13] Finally, and perhaps

[13] Section 407 of the Money Laundering Suppression Act, 31 U.S.C. 5311 note, states the

Continued

most important, the rules of the Bank Secrecy Act have not been 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. For all of these reasons, the assumptions that underlay design of a suspicious transaction reporting system for banks cannot be assumed to apply with equal force to the money services businesses with which this notice of proposed rulemaking deals.

Check Cashers and Currency Exchangers. Check cashers and currency exchangers would not be subject to the suspicious transaction reporting requirement contained in this proposed rulemaking. Because the operations of those businesses generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services.

A reporting money services business is subject to this section only with respect to transactions that involve or relate to the business activities described in § 103.11(uu) (3), (4), (5), or (6). Thus, for example, a seller of money orders (a money services business described in § 103.11(uu)(4)) that is also a check casher (a money services business described in § 103.11(uu)(2)) is not required to report under this section with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, the purchase of money orders if the money order purchases were required to be reported hereunder. In addition, check cashing and currency exchange services may be subject to the suspicious activity rules to the extent they redeem either money orders or traveler's checks for currency (U.S. or other) or other monetary or negotiable instruments and hence qualify as redeemers of money orders or traveler's checks, to whom the proposed rules do apply. *See* proposed section 103.11(uu)(4), which would treat as a redeemer of money orders and traveler's checks, respectively, any enterprise that redeems such instruments ''in an amount greater than $500 in currency or monetary instruments per person per day.'' [14]

Stored Value Products. As noted in the preamble to the Registration Rule, the Department of the Treasury believes that a business that issues or facilitates the digital transfer of electronically-stored value [15] is a money services business covered by the Bank Secrecy Act.[16] However, it is not appropriate, given the infancy of the use of stored value products in the United States, to propose a rule specifically dealing with suspicious transaction reporting by non-banks with respect to stored value products at this time. Thus, proposed paragraph (a)(4) would exempt transactions solely involving such products from the operation of the rule at present. Treasury invites specific comments about the manner in which the suspicious transaction reporting rules for money services businesses should apply to transactions involving stored value products.

III. Specific Provisions [17]

A. 103.11(ii)—Transaction

The definition of ''transaction'' in the Bank Secrecy Act regulations for purposes of suspicious transaction reporting conforms generally to the definition Congress added to 18 U.S.C. 1956 when it criminalized money laundering in 1986. *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986). This notice proposes to amend that definition explicitly to include the purchase of any money order and the payment or order for any money remittance or transfer. No similar amendment is necessary in the case of traveler's checks, which are already defined clearly as monetary instruments in 31 CFR 103.11(u)(ii). This definition of transaction is broad enough to cover all activity that should be reported under the proposed rule.

B. 103.15—Determination by the Secretary

Section 103.20 is redesignated as section 103.15 in order to make room in part 103 for the proposed rule and to create space for future changes to the Bank Secrecy Act regulations.

C. 103.18—Reports by Banks of Suspicious Transactions

Section 103.21 is redesignated as section 103.18 to make room in subpart B, ''Reports Required To Be Made,'' for the suspicious transaction reporting requirement proposed in this notice.

D. 103.20—Reports of Suspicious Transactions, General

Proposed section 103.20 contains the rules setting forth the obligation of certain money services businesses to file reports of suspicious transactions involving at least $500 in funds or other assets. Paragraph (a) contains the general statement of the obligation to file, and a general definition of the term ''suspicious transaction.'' It is important to recognize that transactions are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.

The choice of a $500 threshold for suspicious transaction reporting by reporting money services businesses reflects the judgment, discussed more generally above, that the levels of reporting appropriate for other financial institutions, for example, the $5,000 suspicious activity reporting threshold for banks, are not appropriate given the patterns of transactions prevalent in such money services businesses. The threshold reflects FinCEN's understanding of normal transaction levels for the businesses involved. Given the fact that one of the purposes of suspicious transaction reporting is to identify structuring, a higher reporting threshold would significantly limit the effectiveness of the proposed rule, in light of the reporting levels proposed for special currency transaction reporting by money transmitters, in the third of the related notices of proposed rulemaking relating to money services businesses that are being published today.

Reporting Institutions. Any enterprise that is a money services business,

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sense of the Congress that, ''[f]or purposes of preventing money laundering and protecting the payment system from fraud and abuse,'' the states should ''establish uniform laws for licensing and regulating'' the businesses which are referred to as money services businesses in the proposed amendments to the Bank Secrecy Act regulations published today, and ''provide sufficient resources * * * to enforce such laws * * *.'' Section 407(c) calls for the Secretary of the Treasury to study the progress of the states in meeting the Congressional goal and section 407(d) requires the Secretary to report to Congress on the results of its study and any recommendations flowing therefrom.

[14] In addition, of course, a business that engages in business as a money transmitter, or in covered money order or traveler's check services, as well as check cashing or currency exchange services, would be subject to the suspicious transaction reporting rules with respect to the former services, even if not to the latter.

[15] *See* proposed 31 CFR 103.11(vv), which defines stored value.

[16] It should be clearly understood that the treatment of stored value and similar products for purposes of the operation of 31 U.S.C. 5330 and the Registration Rule is solely a matter of federal law and cannot be taken as the expression of any view by the Department of the Treasury on the issue whether particular money services businesses are (or, indeed, should be) within the scope of state laws requiring the registration of money transmitters, check cashers, currency exchange businesses, or issuers, sellers, or redeemers of money orders or traveler's checks.

[17] Because proposed § 103.20 reflects the terms of the reporting rule for banks, readers of this document may wish to consult the notice of proposed rulemaking and the document containing the final reporting rule for banks, at 60 FR 46556 (September 7, 1995) (proposed rule) and 61 FR 4326 (February 5, 1996) (final rule). The bank suspicious activity reporting rule is found at § 103.21, but proposed by this notice to be renumbered as § 103.18).

within the definition proposed today, because it is a money transmitter or an issuer, seller, or redeemer [18] of money orders or traveler's checks (including the Postal Service), is subject to the proposed suspicious activity reporting rule. However, banks, broker-dealers, and casinos are not subject to the proposed rule.

Reportable Transactions. The proposed rule designates three classes of transactions as requiring reporting. The first class, described in proposed paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the money services business knows of no reasonable explanation after examining the available facts relating thereto.

The operating circumstances of money services businesses, especially the absence of account relationships, necessarily make the standards by which transactions are to be evaluated less easy to apply than in the case of banks in many situations. For that reason, and given the differences in structure, operation, and regulation between banks and money services businesses, the proposed rule contains specific illustrations (noted below) of the sorts of transactions for which reporting is sought within the text of the rule itself.

Paragraph (a)(2)(iii) provides the following examples (by way of illustration, but not limitation) of such transactions:

A. The contemporaneous purchase of multiple remittances to the same beneficiary or city by the same purchaser;

B. The purchase of multiple instruments or remittances in the same or similar amounts by the same person;

C. A large volume of transactions, sequential invoices, or both, directed to one correspondent from one agent (operating either through a single or multiple offices) on a single day;

D. Patterns of remittances to the same city or correspondent purchased at approximately the same time;

E. The deposit of large numbers of instruments, especially sequentially-numbered instruments, into or through the same or related bank or other financial institution accounts;

F. Patterns of instruments or remittances purchased just below the dollar thresholds for particular Bank Secrecy Act reporting or recordkeeping requirements;

G. Presentation for redemption or encashment of third-party endorsed instruments, or of blocks of instruments purchased by the party seeking redemption, in either case in sums outside of normal commercial or personal usage;

H. Significant changes or fluctuations in volume at one or more of the business' agents or branches;

I. Significant variations in the size of the average remittance at a business' agents or branches; and

J. Multiple senders of remittances using the same recipient's last name, address, or telephone number.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transaction and the money services customer in question. Different fact patterns will require different types of judgments. In some cases, the circumstances of the transaction or pattern of transactions may clearly indicate the need to report. For example, an individual's seeking regularly to purchase or redeem instruments in bulk, or to purchase transmissions to multiple overseas locations, all to the same named beneficiary should, in the absence of unique qualifying circumstances, place the money services business on notice that a suspicious transaction is underway. Similarly, the fact that a customer refuses to provide information necessary for the money services business to make reports or keep records required by 31 CFR 103 or other regulations, provides information that a money services business determines to be false, or seeks to change or cancel the transaction *after* such person is informed of currency transaction reporting or information verification or recordkeeping requirements relevant to the transaction or of the money services business' intent to file a currency transaction report with respect to the transaction, would all indicate that a SAR–MSB should be filed. (Of course, as the proposed rule makes clear, the money services business may not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.)

Treasury ultimately must rely on creation of a working partnership with the various types of money services business that will assist those businesses to apply their knowledge of both their customers and business patterns to identify and report suspicious activity. FinCEN hopes and expects to enter into a dialogue with the money services businesses to which this rule would apply about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

Treatment of Agents. 31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by ''any director, officer, employee, or agent of any financial institution.'' The authorization parallels the definition of financial institution itself in 31 U.S.C. 5312 (a)(2) and (b), and 31 CFR 103.11(n). The operating realities of money services businesses place special importance on the relationships between the operators of the money services businesses involved and the otherwise unrelated businesses that, in many cases, sell the financial products involved, in the case of money orders or traveler's checks, or that serve, in the case of money remissions, as receivers of the funds to be transmitted.

Thus, paragraph (a)(3) places responsibility for reporting on each money services business, as well as its agents,

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

It is important to recognize that the definition of money services business for this purpose is broader than it is for purposes of the registration rules proposed to be added to part 103 as 31 CFR 103.41. Thus, an agent of a money transmitter may (indeed usually will) itself be a money services business for purposes of the reporting rule (although not necessarily for purposes of the registration rule).

Certain patterns of suspicious dealing that may not be apparent to a particular agent may become visible when various remission or instrument purchase activities are aggregated by the principal business. In other situations, a principal may, upon reviewing transaction records, uncover an indication of patterns of suspicious transactions at a particular agent that, unfortunately, arise because of the cooperation of the agent with money launderers. Thus, it is impossible to specify the particular method for reporting that will

[18] Under the definition in proposed § 103.11(uu)(4), a person is a ''redeemer'' of money orders and traveler's checks only insofar as the instruments involved are redeemed for monetary value—that is, for currency or monetary instruments. The taking of the instruments in exchange for goods or services is not a redemption for purposes of the rules proposed today.

comprehend all situations. The same issues arise, of course, when headquarters or central processing facility bank compliance officials uncover a pattern of suspicious dealing at or through a bank branch.

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 services businesses have a duty to know their agents sufficiently well to be able to satisfy the reporting obligations involved in compliance with the proposed rule. As in the case of the rules for suspicious activity reporting by banks, the proposed rule is intended to introduce a concept of due diligence into the reporting procedures, and that diligence applies equally to review of the actions of agents of money services businesses as to review of the transactions of customers of those businesses. Treasury invites comments on:

1. Whether the rule should contain more detailed procedures or rules dealing with the allocation of responsibility between principals (the issuers of the money orders or traveler's checks, and the companies actually arranging for the remission of funds) and agents;

2. Whether language should be added to the rule to make it clear that a money services business's duty of diligence extends not only to supervision of its agents but also to supervision of money services businesses in the distribution chain for financial services products that may not technically be either agents under the broad definition used in the proposed rule or independent contractors; and

3. Whether the rule should contain more specific rules for compliance programs that recognize the realities of the business operations in this part of the financial sector.

Filing Procedures. Paragraph (b) sets forth the filing procedures to be followed by money services businesses making reports of suspicious transactions. Within 30 days after a money services business becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report-MSB [19] and filing it in a central location, to be determined by FinCEN. The SAR–MSB will resemble the SAR now used by banks to report suspicious transactions, and a draft form will be made available for comment when ready.

Supporting documentation relating to each SAR–MSB is to be collected and maintained separately by the money services business and made available to law enforcement and regulatory agencies upon request. Special provision is made for situations requiring immediate attention, in which case money services businesses are to telephone the appropriate law enforcement authority in addition to filing a SAR–MSB.

Reports filed under the terms of the proposed rule will be lodged in a central data base (on the model of the data base used to process, analyze, and retrieve bank suspicious activity reports). Information will be made electronically available to federal and state law enforcement and regulatory agencies, to enhance the ability of those agencies to carry out their mandates to fight financial crime.

Maintenance of Records. Paragraph (c) provides that filing money services businesses must maintain copies of SAR–MSBs and the original related documentation for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and appropriate law enforcement authorities on request.

Safe Harbor from Civil Liability. Paragraph (d) incorporates the terms of 31 U.S.C. 5318 (g)(2) and (g)(3). This paragraph thus specifically prohibits persons filing SAR–MSBs from making any disclosure, except to law enforcement and regulatory agencies, about either the reports themselves, the information contained therein, or the supporting documentation. The paragraph also restates the broad protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions, they are described in the regulation in order to remind compliance officers and others of their existence.

Auditing and Enforcement. Paragraph (e) notes that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying money services businesses to enforcement action.

Effective Date. Finally, paragraph (f) provides that the new suspicious activity reporting rules are 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**].

IV. Submission of Comments

An original and four copies of any written hard copy 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.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The average money order sold is approximately $102, and the average money transmission is approximately $240 within the United States and approximately $320 outside the United States. Both of these amounts are substantially below the $500 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 entities.

VI. Paperwork Reduction Act Notices

Suspicious Activity Report for Certain Money Services Businesses.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information on *Suspicious Activity Report—Money Services Businesses* 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 10,000 *Suspicious Activity Report—Money Services Businesses* forms to be filed annually. This result is an estimate, based on a projection of the size and volume of the industry.

Title: Suspicious Activity Report—Money Services Businesses

OMB Number: To be determined.

[19] The term ''MSB'' is an abbreviation for ''money services businesses'' and is used to distinguish the form from forms for reporting by other non-bank institutions.

Description of Respondents: Money transmitters, and issuers, sellers, and redeemers of money orders or traveler's checks, and their agents.

Estimated Number of Respondents: 10,000.

Frequency: As required.

Estimate of Burden: Reporting average of 20 minutes per response; recordkeeping average of 10 minutes per response.

Estimate of Total Annual Burden on Respondents: 10,000 responses. Reporting burden estimate = 3,333 hours; recordkeeping burden estimate = 1,667 hours. Estimated combined total of 5,000 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 $100,000.

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 103.20

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.20 is presented to assist those persons wishing to comment on the information collection.

Title: Suspicious Activity Report—Money Services Businesses.

OMB Number: 1506–0006.

Description of Respondents: Specified Money Services Businesses. Money transmitters, and issuers, sellers, and redeemers of money orders or traveler's checks, and their agents.

Estimated Number of Respondents: 10,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 100 hours per Money Service Business.

Estimate of Total Annual Burden on Respondents: Recordkeeping burden estimate = 1,000,000 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 $20,000,000.

Estimate of Total Other Annual Costs to Respondents: $100 for each report of suspicious transactions made.

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 costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

VII. Executive Order 12866

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

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), 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 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 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. Section 103.11(ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

§§ 103.20 and 103.21 [Redesignated as §§ 103.15 and 103.18]

3. In Subpart B, redesignate §§ 103.20 and 103.21 as §§ 103.15 and 103.18, respectively, and add new § 103.20 to read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, other than a bank, a broker-dealer, or a casino, described in § 103.11(uu) (3), (4), (5), or (6) (for purposes of this section, a ''reporting money services business''), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the Suspicious Activity Report-MSB specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the money services business, involves or aggregates at least $500 in funds or other assets, and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this Part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Serves no business or apparent lawful purpose, as, for example, in the case of—

(A) The contemporaneous purchase of multiple remittances to the same beneficiary or city by the same purchaser;

(B) The purchase of multiple instruments or remittances in the same or similar amounts by the same person;

(C) A large volume of transactions, sequential invoices, or both, directed to one correspondent from one agent (operating either through a single or multiple offices) on a single day;

(D) Patterns of remittances to the same city or correspondent purchased at approximately the same time;

(E) The deposit of large numbers of instruments, especially sequentially-numbered instruments, into or through the same or related bank or other financial institution accounts;

(F) Patterns of instruments or remittances purchased just below the dollar thresholds for particular Bank Secrecy Act reporting or recordkeeping requirements;

(G) Presentation for redemption or encashment of third-party endorsed instruments or of blocks of instruments purchased by the party seeking redemption, in either case in sums outside of normal commercial or personal usage;

(H) Significant change or fluctuations in volume at one or more of the business' agents or branches;

(I) Significant variations in the size of the average remittance at a business' agents or branches;

(J) Multiple senders of remittances using the same recipient's last name, address, or telephone number; and, in each case, the money services business knows of no reasonable explanation for the transaction or circumstance involved, after examining the available facts relating thereto.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with the money services business as well as any agents of the money services business involved, regardless of whether, and the terms on which, the money services business treats such person as an agent or independent contractor for other purposes.

(4) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer, of stored value or the issuance, sale, or redemption of stored value shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB (''SAR–MSB''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR–MSB shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–MSB.

(3) *When to file.* A reporting money services business is required to file each SAR–MSB no later than 30 calendar days after the date of the initial detection by the reporting money services business of facts that may constitute a basis for filing a SAR–MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the reporting money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–MSB.

(c) *Retention of records.* A reporting money services business shall maintain a copy of any SAR–MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–MSB. Supporting documentation shall be identified as such and maintained by the reporting money services business, and shall be deemed to have been filed with the SAR–MSB. A reporting money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) *Confidentiality of reports; limitation of liability.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this Part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–MSB or the information contained in a SAR–MSB, except where such disclosure is requested by FinCEN or an other appropriate law enforcement or supervisory agency, shall decline to produce the SAR–MSB or to provide any information that would disclose that a SAR–MSB has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the

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]

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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