

## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

RIN 1506-AA09

**Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations—Definition and Registration of Money Services Businesses**

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 statute generally referred to as the Bank Secrecy Act to require certain money services businesses to register with the Department of the Treasury and to maintain a current list of their agents for examination, on request, by any appropriate law enforcement agency. As a corollary to the proposed registration requirement, FinCEN is also proposing to amend the Bank Secrecy Act regulations to revise, and group together in a separate category called "money services businesses," the definitions of certain non-bank financial institutions. The revised definitions would also modify the treatment of the United States Postal Service under the regulations. The proposed rule regarding registration and maintenance of an agent list reflects changes to the law made by the Money Laundering Suppression Act of 1994.

**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, VA 22182, Attention: NPRM—MSB Registration. 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—MSB Registration." 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 a.m. and 4 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 proposes a rule that would amend 31 CFR part 103 to require money services businesses to register with the Department of the Treasury and, as part of the registration requirement, to maintain a current list of their agents in a central location for examination by appropriate law enforcement agencies. Money services businesses generally include businesses that provide check cashing, currency exchange, or money transmitting services, or that issue or redeem money orders, traveler's checks, or other similar instruments. The proposed rule would implement the terms of 31 U.S.C. 5330, which was added to the Bank Secrecy Act by section 408 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 (September 23, 1994).

In addition, this document proposes to amend 31 CFR part 103 by revising the definition of financial institution in 31 CFR 103.11. The revised definition would make changes to the term "United States Postal Service" and would add a new term, "money services business," under which would be grouped the types of businesses required to register under the proposed rule (replacing and revising the present definitions of those businesses in 31 CFR 103.11(n)).

Finally, this document proposes to revise the structure of 31 CFR part 103. Under the new structure, subparts D through F would be redesignated as subparts E through G, respectively. A new subpart D, Special Rules for Money Services Businesses, would be added. The sections in redesignated subparts E through G would also be redesignated to reflect the addition of new subpart D, and corresponding changes would be made to the references to such redesignated sections in other portions of part 103.

**II. Background****A. Statutory Provisions**

The statute generally referred to as 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 require 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.

Under 31 U.S.C. 5330, any person who owns or controls a money services business (which the statute refers to as a "money transmitting business"<sup>1</sup>), whether or not the business is licensed as a money services business in any State, must register the business with the Secretary of the Treasury. 31 U.S.C. 5330(a). (A money services business required to be registered under 31 U.S.C. 5330 remains subject to any State law requirements relating to the operation of the business in the State.) The form and manner of registration must be prescribed by regulations.

The purpose of the registration requirement is to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. See, section 408(a), Public Law 103-325. In requiring the registration of money services businesses, Congress recognized that such businesses are largely unregulated and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful enterprises and to evade the requirements of Title II of the Bank Secrecy Act, the Internal Revenue Code of 1986, and other laws of the United

<sup>1</sup> 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 statute'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.

States. Congress also found that information on the identity of money services businesses and the names of the persons who own or control, or are officers or employees of, a money services business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings. *Id.*

The statute defines a money services business<sup>2</sup> as any business, other than 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 or remittance services,<sup>3</sup> or issues or redeems money orders, traveler's checks or other similar instruments. 31 U.S.C. 5330(d)(1). Depository institutions (as defined in 31 U.S.C. 5313(g)), however, are not money services businesses for purposes of the registration requirement. 31 U.S.C. 5330(d)(1)(C).

Section 5330 requires the Secretary of the Treasury to issue regulations treating certain agents of a money services business as money services businesses for purposes of section 5330. 31 U.S.C. 5330(c)(2). Those regulations must establish a threshold, based on criteria the Secretary determines to be appropriate, for treating an agent as a registrable money services business.

Under section 5330, a money services business must be registered not later than the end of the 180-day period beginning on the later of the date of enactment of the Money Laundering Suppression Act of 1994 (September 23, 1994), and the date on which the business is established. 31 U.S.C. 5330(a). On May 18, 1995, FinCEN issued a notice explaining that regulations prescribing the form and manner of registration would not require initial registration of money services businesses before the 90th day following the effective date of the implementing regulations. FinCEN Notice 95-1. The notice further explained that no penalty or other compliance sanction would be imposed under the provisions of the Bank Secrecy Act on account of the failure of any money services business to register

<sup>2</sup> Again, the statutory term is "money transmitting business," for which the term "money services business" is being substituted by FinCEN. See footnote 1, *supra*.

<sup>3</sup> Section 5330(d)(2) provides that the term "money transmitting service" includes accepting currency or funds denominated in the currency of any country and transmitting 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.

before the last date for initial registration specified by regulation.

Section 5330 specifies the information that must be included as part of the registration. 31 U.S.C. 5330(b). The required information is—

(1) The name and location of the business;

(2) The name and address of each person who owns or controls the business, is a director or officer of the business, or otherwise participates in the conduct of the affairs of the business;

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act);

(4) An estimate of the volume of business in the coming year, which shall be reported annually to the Secretary; and

(5) Such other information as the Secretary of the Treasury may require.

Under section 5330, a money services business must maintain a list containing the names and addresses of its agents and such other information about the agents as the Secretary may require. 31 U.S.C. 5330(c). Section 5330 requires a money services business to make the list available on request to any appropriate law enforcement agency.

Section 5330 prescribes a civil penalty for any person who fails to comply with any requirement of 31 U.S.C. 5330 or the regulations thereunder. The penalty is \$5,000 for each violation; each day a violation of 31 U.S.C. 5330 or the regulations thereunder continues constitutes a separate violation. 31 U.S.C. 5330(e).

A failure to comply with 31 U.S.C. 5330 or the regulations under section 5330 may also result in a criminal penalty under 18 U.S.C. 1960. See the discussion of proposed 31 CFR 103.41(e), below.

#### B. Money Services Businesses—General

This is the first of 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. In proposing these rules, FinCEN and the Department of the Treasury are not only following the mandate of Congress in the Money Laundering Suppression Act and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102-550, but are more generally 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.<sup>4</sup>

"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. (The five types of financial services are complementary and are often provided together at a common location.) These businesses are quite numerous; based on a study performed for FinCEN by Coopers & Lybrand, L.L.P., they comprise approximately 158,000<sup>5</sup> outlets or selling locations, and provide financial services involving approximately \$200 billion annually. 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.

Money services businesses, like banks, can be large or small. It is estimated that approximately eight business enterprises account for the bulk of money service business financial products (that is, money transmissions, money orders, traveler's checks, and check cashing and currency exchange availability) sold within the United States, and also account, through systems of agents, for the bulk of locations at which these financial products are sold. Members of this first group include large firms, with significant capitalization, that are publicly traded on major securities exchanges.

A far larger group of (on average) far smaller enterprises compete with the eight largest firms in a highly bifurcated market for money services. In some cases, these small enterprises are based in one location with two to four employees. Moreover, the members of this second group may provide both financial services and unrelated products or services<sup>6</sup> to the same sets of customers. Far less is known about this

<sup>4</sup>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).

<sup>5</sup>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.

<sup>6</sup>E.g., as a travel agency, courier service, convenience store, grocery or liquor store.

second tier of firms than about the major providers of money service products.<sup>7</sup>

Because money services businesses primarily serve individuals, they have grown to provide a set of financial products, albeit in large part for non-depository customers, that others look to banks to provide. For example, a money services business customer who receives a paycheck can take his check to a check casher to have it converted to cash. He can then purchase money orders to pay his bills. Finally, he may choose to send funds to relatives abroad, using the services of a money transmitter.

### III. Section-by-Section Analysis

#### A. Definitions.

1. *31 CFR 103.11(n)(3)—Definition of financial institution to include "money services business"*. This proposed section adds a new category called "money services business" to the definition of financial institution. This new category collects, with revisions discussed below, the financial institutions now defined at 31 CFR 103.11(n) (3), (4), (5), and (9). The change will permit these institutions to be referred to, when necessary, by one convenient term. FinCEN believes this restructuring of the definition of financial institution will clarify, and facilitate flexibility in the administration of, the Bank Secrecy Act regulations. (As a result of this restructuring, current 31 CFR 103.11(n) (3), (4), (5), and (9) will be deleted, and current 31 CFR 103.11(n) (6), (7), and (8) will be redesignated as 31 CFR 103.11(n) (4), (5), and (6)).

2. *31 CFR 103.11(uu)—Definition of money services business*. This proposed section defines money services business. The term includes each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in (1)–(6) below. (It should be noted that only one registration form per money services business is required.)

<sup>7</sup>For example, according to the Coopers & Lybrand study, two money transmitters and two traveler's check issuers make up approximately 97 percent of their respective known markets for non-bank money services. Three enterprises make up approximately 88 percent of the \$100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector is somewhat less concentrated, with the top two non-bank market participants accounting for 40 percent of a known market that accounts for \$10 billion. Check cashing is the least concentrated of the business sectors; the two largest non-bank check cashing businesses make up approximately 20 percent of the market, with a large number of competitors.

(1) *Currency dealer or exchanger*. A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than \$500 in currency or monetary or other negotiable instruments for any person any day).

(2) *Check casher*. A person engaged in the business of cashing checks (other than a person who does not cash checks in an amount greater than \$500 in currency or monetary or other negotiable instruments for any person any day).

Proposed 31 CFR 103.11 (uu)(1) and (uu)(2) would replace the definition of financial institution in existing 31 CFR 103.11(n)(3); that section is proposed to be broken into two sections, one dealing with currency dealers or exchangers<sup>8</sup> and one dealing with check cashers, for ease of reference. In addition, unlike existing 31 CFR 103.11(n)(3), which contains no dollar floor, proposed 31 CFR 103.11 (uu)(1) and (uu)(2) generally treat currency dealers or exchangers and check cashers as financial institutions only if they engage in transactions involving more than \$500 for any person any day.

The addition of explicit floors in the definitions relating to currency exchange and check cashing businesses is proposed in an attempt to eliminate from Bank Secrecy Act treatment those businesses, such as grocery stores and hotels, that cash checks or exchange currency as an accommodation to customers who are otherwise purchasing goods, services, or lodging from the businesses involved. (Of course, exceeding the threshold has other, more immediate consequences if the amounts involved are sufficiently high to implicate particular Bank Secrecy Act reporting or recordkeeping thresholds.) Treasury invites comments on the appropriateness of the proposed \$500 floor.

In determining whether the \$500 floor is met in the case of a particular definition, different money services provided by the same business are not aggregated. Thus, for example, a hotel that limits its check cashing services to \$250 for a customer on any day and limits its currency exchange services to \$300 for a customer on any day does not meet the \$500 floor for check cashers or for currency exchangers.

(3) *Issuer of traveler's checks, money orders, or stored value*. An issuer of traveler's checks or money orders or

<sup>8</sup>This document would retain the definition of currency dealer or exchanger at 31 CFR 103.11(i). FinCEN specifically invites comments on whether the definition at 31 CFR 103.11(i) is still necessary for its carve out of banks from the recordkeeping requirements of 31 CFR 103.37.

stored value or similar instruments (other than a person who does not issue such checks or money orders or stored value or similar instruments in an amount greater than \$500 in currency or monetary or other negotiable instruments to any person any day).

Proposed 31 CFR 103.11(uu)(3) would replace the treatment of money order and traveler's check businesses in existing 31 CFR 103.11(n)(4). The definition of issuer of traveler's checks or money orders has been separated from the definition of seller or redeemer of traveler's checks or money orders in the proposed regulations, for ease of reference. In addition, unlike existing 31 CFR 103.11(n)(4), which contains no dollar floor for an issuer, the proposed definition generally treats an issuer of traveler's checks or money orders as a financial institution only if it engages in transactions involving more than \$500 for any person any day.

(4) *Seller or redeemer of traveler's checks, money orders, or stored value*. A seller or redeemer of traveler's checks or money orders or stored value or similar instruments (other than a person who does not sell or redeem such checks or money orders or stored value or similar instruments in an amount greater than \$500 in currency or monetary or other negotiable instruments to (or in the case of redemption, for) any person any day).

The \$500 floor in proposed 31 CFR 103.11(uu)(4) is designed to replace the definitional floor (of \$150,000 sold in instruments per 30-day period) for selling agents in present 31 CFR 103.11(n)(4). The \$150,000 limitation produces a great deal of unnecessary complexity (dealing with the movement of particular businesses into or out of the scope of the Bank Secrecy Act) and does not, in FinCEN's view, any longer provide a meaningful threshold for distinguishing between businesses that ought to, and that need not, incorporate appropriate Bank Secrecy Act rules into their operations (or the operations they undertake on behalf of their principals). The definition in proposed 31 CFR 103.11(uu)(4) extends to "redeemers" of money orders and traveler's checks only insofar as the instruments involved are redeemed for monetary value—that is, for currency or monetary or other negotiable instruments. The taking of the instruments in exchange for goods or services is not a redemption for purposes of these rules. (See, however, 26 CFR 1.6050I-1(c)(1)(ii)(B) for situations in which certain traveler's checks or money orders (among other instruments) may be treated as currency, if taken in exchange for certain goods or services, for purposes of the requirement that non-financial

businesses report transactions in currency in excess of \$10,000.)

(5) *Money transmitter.* (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) Any other person engaged as a business in the transfer of funds.

Proposed 31 CFR 103.11(uu)(5) revises the definition in existing 31 CFR 103.11(n)(5), which simply treats as a financial institution "a licensed transmitter of funds, or other person engaged in the business of transmitting funds." The substitute definition proposed is that of the registration statute for a "money transmitting service," expanded to include "any other person engaged as a business in the transfer of funds." See 31 U.S.C. 5330(d)(2).<sup>9</sup> Particular classes or subclasses of money transmitters can be excluded from the operation of the definition for particular substantive rules (as for example the rule proposed today relating to the reporting of suspicious activities by money transmitters excludes from its coverage sellers or transmitters of stored value or other advanced electronic payment system products).

FinCEN recognizes that the statutory definition is very broad and can encompass activities far beyond the traditional enterprises thought of popularly as money transmitters. For example, financial and other professionals that control the management of funds for their principals may in certain cases be money transmitters under the definition. Thus, Treasury specifically invites comments about whether it is necessary or appropriate specifically to exclude certain activities from the scope of registration of money services businesses (and perhaps as well from the definition of money transmitter for

purposes of the Bank Secrecy Act regulations generally).

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

This proposed paragraph revises the part of the definition of financial institution concerning the United States Postal Service, currently at 31 CFR 103.11(n)(9). Unlike the current regulation, which treats the United States Postal Service as a financial institution only with respect to the sale of money orders, the proposed rule would treat the Postal Service as a financial institution with respect to its provision of any money services products.

3. *31 CFR 103.11(vv)—Definition of stored value.* This proposed section defines stored value as funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

The inclusion in the rule of a specific definition of "stored value" and the cross-references to the stored value definition in the language of the definition of "money services business" is the first step in the characterization of stored value and other advanced electronic payment system products for purposes of the Bank Secrecy Act. The Department of the Treasury believes that stored value products are generally comprehended within the statutory reference to other instruments "similar" to money orders and traveler's checks and that businesses that operate systems that permit the transmission of stored value or other electronic representations of funds are comprehended within the statutory definition of money transmitting services, see 31 U.S.C. 5330(d)(2), which is carried over into the regulatory definition of money transmitter in proposed 31 CFR 103.11(uu)(5).<sup>10</sup>

Thus, under the proposed rule, most offerors of stored value products and operators of other advanced electronic payment systems would be treated as "money services businesses" for

purposes of the Bank Secrecy Act. To fail to deal in any manner with stored value products and other such systems, in the context of a rule designed to implement 31 U.S.C. 5330, would belie the importance of such systems, would run contrary to the Congressional intent that the statutory term "money transmitter" be construed broadly, and would adopt yesterday's concepts to tomorrow's issues.

The other proposed rules being published today dealing with money services businesses do not affect advanced electronic payment systems. The proposed suspicious activity reporting rules for money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks specifically exclude stored value and similar products from the scope of the reporting obligation at present; the difference in treatment reflects the fact that the treatment of stored value and similar systems in the money services business registration rule is intended to constitute for the most part the beginning of the policy cycle for determining the most effective way to deal with advanced electronic payment systems under the Bank Secrecy Act.

Of course, the definitions in proposed 31 CFR 103.11(uu) apply for all purposes under the Bank Secrecy Act, and thus the proposed language would eliminate any lingering doubt that offerors and operators of advanced electronic payments systems are subject to the Bank Secrecy Act. That treatment could cause such persons to become subject to existing Bank Secrecy Act requirements if, for example, they engaged in transactions in currency in excess of \$10,000, or initiated funds transmittals of at least \$3,000.

The Department of the Treasury naturally recognizes that as mechanisms for the issuance or transmission of stored value or other electronic representations of funds develop, the appropriateness of any particular characterization for Bank Secrecy Act purposes may change. It also recognizes that the characteristics of advanced electronic payment systems may present special issues that need to be considered as specific Bank Secrecy Act recordkeeping and reporting requirements for such systems are formulated. Comments are specifically invited on:

1. The manner in which the rules of the Bank Secrecy Act should be applied to advanced electronic payment systems;

2. The potential impact of Bank Secrecy Act compliance on the design and operation of such systems

<sup>9</sup>The term "money transmitter" in proposed 31 CFR 103.11(uu)(5) is not necessarily synonymous with the term "transmitter's financial institution" in existing 31 CFR 103.11(mm). As explained above, the term money transmitter follows the statutory definition of money transmitter in 31 U.S.C. 5330(d)(2), with one change, designed to flesh out the statutory phrase "money transmitting or remittance services." The term "transmitter's financial institution" in existing 31 CFR 103.11(mm) was designed with a narrower purpose in mind—"to preserve as much uniformity as possible" between the special rules for recordkeeping for wire transfers and the language of Article 4A of the Uniform Commercial Code. See 60 FR 220 (January 3, 1995).

<sup>10</sup> It should be clearly understood that the treatment of stored value and similar products as instruments "similar" to money orders and traveler's checks for purposes of the operation of 31 U.S.C. 5330 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.

(including, if possible, estimates of costs); and

3. Whether products such as telephone cards ("closed system" products), or products that are limited to facilitating very small transactions (so-called "micro" transactions) should be treated differently than other stored value products for purposes of the registration requirements of the proposed rule.<sup>11</sup>

#### *B. Registration of Money Services Businesses*

1. *31 CFR 103.41(a)(1)—Registration requirement; In general.* Proposed paragraph (a)(1) contains the requirement that a money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, must maintain a list of its agents.

Proposed paragraph (a)(1) excludes from the registration and list requirement the following persons: the United States Postal Service; a depository institution (as defined in 31 U.S.C. 5313(g)); the United States, any State or political subdivision of a State; or a broker or dealer in securities or commodities (to the extent of such activities) registered with, and regulated or examined by, the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). Thus, for example, even though the United States Postal Service is a money services business as defined in 31 CFR 103.11(uu), it is not required to register as a money services business. Similarly, banks, and brokers registered with the SEC under the Securities and Exchange Act of 1934, are not required to register as such. However, if a bank has a non-bank subsidiary or affiliate (e.g., a brother-sister subsidiary owned by the bank's holding company) that itself engages in a money services business (or a broker-dealer has a non-broker-dealer affiliate that engages in a money services business), the affiliate must register even though the bank (or broker-dealer) is not required to register. FinCEN specifically invites comments on

whether there are other persons who should be excluded from the registration requirements.

The information required to be included on the registration form for a money services business and the agent list maintained by the business may include privileged and confidential trade secrets, commercial, and financial information. Congress has affirmed that confidential proprietary or trade secret information provided by registrants may be disclosed only subject to applicable law. H. R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 192-93 (1994). At the same time, however, Congress recognized that some of the registration data will have legitimate uses outside of law enforcement. Thus, Congress has indicated that it intends that such latter information will be made available to the public in a manner that balances the need to protect confidential business information and the need of the public to have access to information about businesses on which it relies. *Id.* at 193. FinCEN specifically invites comments on how to make such information available to the public in as much detail as possible without revealing confidential business information.

2. *31 CFR 103.41(a)(2)—Agents treated as registrable money services businesses.* Proposed paragraph (a)(2) sets forth the threshold (registration threshold) an agent must meet before it is itself treated as a money services business that must independently register with the Department of the Treasury and maintain a list of its own agents. The registration threshold focuses on both the extent and the dollar amount of the agent's money services business activities. An agent meets the registration threshold if the agent satisfies any of the following four paragraphs—

(i) The agent's primary business is a business described in 31 CFR 103.11(uu), and the agent's money services gross transaction amount is more than \$50,000 for any month;

(ii) The agent engages in more than one of the businesses described in 31 CFR 103.11(uu) as an agent for one money services business, and the agent's money services gross transaction amount is more than \$50,000 for any month;

(iii) The agent is an agent for more than one money services business, and the agent's money services gross transaction amount is more than \$50,000 for any month; or

(iv) The agent has subagents, and the agent's money services gross transaction amount is more than \$50,000 for any month.

The money services gross transaction amount is the agent's combined gross amount (excluding fees and commissions) received from transactions in all its businesses described in 31 CFR 103.11(uu). Thus, for example, if an agent sells a \$600 money order, charging an \$18 fee and receiving a \$6 commission on the sale, the agent's gross transaction amount is \$600. An agent is not required to compute a gross transaction amount for any month beginning before the effective date of the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**.

FinCEN realizes that the registration threshold, as proposed, may require registration by certain agents, for example, grocery or retail food stores, that have a high volume of transactions, none of which individually exceeds the \$500 floor in 31 CFR 103.11 (uu)(1)-(uu)(4) that would cause the agent to be a money services business in its own right under 31 CFR 103.11 (uu)(1)-(uu)(4). FinCEN specifically invites comments on whether the registration threshold should include a floor for individual transactions by these agents like the floor in 31 CFR 103.11 (uu)(1)-(uu)(4).

3. *31 CFR 103.41(b)(1)—Registration procedures in general.* Proposed paragraph (b)(1) provides that a money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service. The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner required by the form.

A branch office or location or an agent of a money services business is not required to file a registration form for the business, except for agents treated as a money services business because they meet the registration threshold. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

A money services business must retain a copy of any registration form it files (and any registration number that the Detroit Computing Center may assign to the business) at a central location in the United States reported on the form and for the 5-year period specified in § 103.38(d).

4. *31 CFR 103.41(b)(2)—Registration period.* Proposed paragraph (b)(2) provides that after an initial registration period of two calendar years (initial registration period), the registration must be renewed every two years (renewal period). The initial registration

<sup>11</sup> Stored value systems may be loosely characterized as "closed" or "open" systems. In a purely closed system, the stored value card is accepted only by a single merchant or entity and operates as prepayment for specific goods and services, such as public transportation or telephone calls. In contrast, an open system permits stored value cards (issued by one or more issuers of such cards) to be accepted by multiple merchants, or other consumers, and operates as a general payment and value transfer system. Certain arrangements—for example a university or stadium card system that permits payments to multiple merchants within a set geographic area—may contain aspects of both "closed" and "open" systems.

period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. Each two-calendar-year period following the initial registration period is a renewal period.

5. *31 CFR 103.41(b)(3)—Due date.* Proposed paragraph (b)(3) sets forth the due date for filing the registration form for the initial registration period and each renewal period. For the initial registration period, the registration form must be filed by the end of the 180-day period beginning on the later of (i) the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**, and (ii) the date the business is established. In the case of an agent required to be registered under this section, the registration form for the initial registration period must be filed not later than the end of the 180-day period beginning on the date the agent meets the registration threshold. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

6. *31 CFR 103.41(b)(4)—Special rule for agents treated as money services businesses.* Proposed paragraph (b)(4) clarifies that once an agent meets the registration threshold, it must be registered for the initial registration period and each renewal period, even if its money services gross transaction amount later falls below \$50,000.

7. *31 CFR 103.41(b)(5)—Events requiring re-registration.* Proposed paragraph (b)(5) requires a money services business to be re-registered before the end of a registration period upon the occurrence of certain events. Re-registration is required if the money services business experiences a change in ownership or control that requires re-registration under a State law registration program for money services businesses, more than 10 per cent of its voting power or equity interests is transferred, or the number of its agents increases by more than 50 per cent during any registration period. The form for the re-registration must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

8. *31 CFR 103.41(c)—Persons required to file registration form.* Proposed paragraph (c) provides that, as required by 31 U.S.C. 5330(a), any person who owns or controls a money services business shares the responsibility for

seeing that the business is registered as required by this rule. Only one registration form, however, is required to be filed for each registration period. Proposed paragraph (c) further provides that if more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business.

9. *31 CFR 103.41(d)(1)—List of agents; In general.* Proposed paragraph (d)(1) provides that a money services business must prepare and maintain a list of its agents. Proposed paragraph (d)(1) then explains the time and manner of preparing and maintaining the agent list. The initial list of agents must be prepared by the time the initial registration form is filed and must be revised each calendar quarter to contain current information. The list is not filed with the registration form but is maintained at the location in the United States reported on the registration form. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). The original list of agents and any revised list must be retained for five years, as specified in 31 CFR 103.38(d).

The proposed rule does not contain a specific definition of the term "agent" for purposes of the money services business registration rules, including the requirement that a list of agents be maintained by each money services business as part of its registration requirement. Instead the proposed rule speaks simply of a list of "agents." Treasury understands that the relationships between money services businesses and their outlets may take many forms, some of which reflect traditional agency agreements while others are styled by the parties as creating independent contractor or similar relationships for state law purposes. Treasury intends that the concept of "agent" for the list requirement should be as broad as the common law of agency would allow, that is, it would extend to any relationship that would be deemed to create obligations of principal and agent at common law. Thus, for example, it is likely that virtually all independent

contractor arrangements for money services business—whatever their characterization for employment law or income tax purposes—would be treated as creating principal-agent relationships to define the parameters of the rights, obligations, and direct and derivative liabilities of the parties. See *Restatement (Second) of Agency*, Sections 2(c) and 14N.

*Distribution mechanism involving outlets other than agents.* 31 U.S.C. 5330 speaks only of money services businesses and "agents" of those businesses. Congress intended that the registration requirement of the Money Laundering Suppression Act should be implemented in a manner that eliminated the need for direct registration of all the businesses—in many cases small businesses—through which money services products created and backed by others are offered to the public.<sup>12</sup> Thus, FinCEN specifically invites comments on whether, and how, the language of the proposed rule could be altered to treat money services businesses in the distribution chain for financial services products that are not technically agents within the meaning of 31 U.S.C. 5330 and the proposed regulations in the same manner as agents for purposes of the registration requirements.

10. *31 CFR 103.41(d)(2)—Information included on the list of agents.* Proposed paragraph (d)(2) sets forth the information with respect to each agent that must be included on the list (including any revised list) of agents. This information is—

- (i) The name of the agent, including any trade names or doing-business-as names,
- (ii) The address of the agent, including street address, city, state, and ZIP code,
- (iii) The telephone number of the agent,
- (iv) The type of service or services (sale or redemption of money orders, traveler's checks, stored value, check sales, check cashing, currency exchange, and money transmitting) the agent provides,
- (v) The year in which the agent first became an agent of the money services business,
- (vi) The number of branches or subagents the agent has, and
- (vii) The name and address of any depository institution at which the

<sup>12</sup>The intent of the Conferees is to eliminate the need for all agents of money transmitting businesses to register with the Secretary. Such massive registration of thousands of agents would only create another needless and costly administrative burden." H.R. Conf. Rep. No. 652, 103 Cong., 2d Sess. 193 (1994).

agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for its money services business whether in the agent's or principal's name.

11. *31 CFR 103.41(e)—Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* Proposed paragraph (e) explains that it is unlawful to do business without complying with 31 U.S.C. 5330 and the regulations thereunder, and that under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enforce the violation. Proposed paragraph (e) also explains the penalties that may be imposed for failing to comply with 31 U.S.C. 5330 or the regulations thereunder. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or the regulations thereunder is liable for a civil penalty. Such a failure includes the filing of false or materially incomplete information in connection with the registration of a money services business. The penalty is \$5,000 for each violation; each day a violation of 31 U.S.C. 5330 or the regulations thereunder continues constitutes a separate violation.

A person may also be liable for a criminal penalty under 18 U.S.C. 1960 for operating a money services business without complying with the registration requirements of 31 U.S.C. 5330 and regulations issued thereunder. 18 U.S.C. 1960 provides in part that any person who conducts, controls, manages, supervises, directs, or owns all or part of a money transmitting business<sup>13</sup> knowing that the business affects interstate or foreign commerce in any manner or degree and that the business has failed to comply with the registration requirements of 31 U.S.C. 5330 or the regulations thereunder is subject to a fine, imprisonment for not more than five years, or both.

18 U.S.C. 1960 imposes penalties not only upon operating a money transmitting business without compliance with the registration requirements of 31 U.S.C. 5330 (and its implementing regulations), see 18 U.S.C. 1960(b)(1)(B), but also upon the knowing operation of such a business without an appropriate money transmitting license in any state in which operation without a license is a

<sup>13</sup> As indicated above, this document, and the rules proposed herein and in the related notices of proposed rulemaking published today, generally use the phrase "money services business" as the equivalent of the definition of "money transmitting business," in 31 U.S.C. 5330(d)(1)(A), in order to avoid confusion between the latter phrase and the statutory definition of "money transmitting service," in 31 U.S.C. 5330(d)(2). In quoting the terms of 18 U.S.C. 1960(b)(1)(B), however, the text naturally uses the statutory language.

crime, see 18 U.S.C. 1960(b)(1)(A). References to 18 U.S.C. 1960 in this preamble, and in proposed 31 CFR 103.41(e), naturally concern exclusively the relationship of 31 U.S.C. 5330 to 18 U.S.C. 1960. That relationship, and the meaning of the relevant terms of 31 U.S.C. 5330, of 18 U.S.C. 1960(b)(1)(B), and of the rules proposed by this document, are solely matters of federal law. As also specifically noted in the discussion above of stored value products and other advanced electronic payment systems, the rules proposed by this document should not 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.

12. *31 CFR 103.41(f)—Effective date.* Proposed paragraph (f) would make the regulations effective on [the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**]. That publication date would start the running of the 180-day period for filing the form for the initial registration of a money services business.

#### IV. 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.

#### V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. FinCEN anticipates that the provisions of the proposed rule generally excluding agents of money services businesses from registration will limit the impact of the proposed registration rule on small businesses. Further, most of the recordkeeping and reporting requirements that would be imposed by this proposed regulation concern information already found in routine business records. For example, as part of their business records, money services businesses (to the extent such businesses are small entities) will

generally have information needed for the required agent list, such as the name and address of their agents and agent transaction account information, because such information is necessary to establish and maintain the relationship between the businesses and their agents. In addition to recordkeeping and reporting requirements, other requirements of the proposed regulation may also be satisfied with information that is currently available. For example, many businesses currently have policies in place regarding the maximum dollar amount of a money service transaction they will perform for a customer, such as the maximum check the business will cash, which may help (assuming the policy is observed) them determine whether they have exceeded the \$500 floor in several of the definitions in the proposed regulation. Further, agents will generally have information currently available to help them determine whether they meet the \$50,000 element of the registration threshold, for example, the monthly statement for the bank account they maintain pursuant to agreement with the money services business for which they are an agent.

#### VI. Paperwork Reduction Act Notices

##### *Registration for 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 1320, the following information concerning the collection of information on the *Registration for Money Services Businesses* form 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 25,000 *Registration for 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:* Registration for Money Services Businesses.

*OMB Number:* to be determined.

*Description of Respondents:* Money Services Businesses.

*Estimated Number of Respondents:* 25,000.

*Frequency:* Once every two years, or as required to be updated.

*Estimate of Burden:* Reporting average of 45 minutes per response; recordkeeping average of 3 hours per response.

*Estimate of Total Annual Burden on Respondents:* 25,000 responses.

Reporting burden estimate = 18,750 hours; recordkeeping burden estimate = 75,000 hours. Estimated combined total of 93,750 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 \$1,875,000.

*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 103.41*

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 103.41 is presented to assist those persons wishing to comment on the information collection.

*Title:* Registration of Money Services Businesses.

*OMB Number:* 1506-0006.

*Description of Respondents:* Money Services Businesses.

*Estimated Number of Respondents:* 25,000.

*Frequency:* Once every two years, or as required.

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

*Estimate of Total Annual Burden on Respondents:* Recordkeeping burden estimate = 2,500,000 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 \$50,000,000.

*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.

#### 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

Accordingly, 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 is amended by—
  - a. Removing paragraphs (n)(3), (n)(4), (n)(5), and (n)(9),
  - b. Adding a new paragraph (n)(3),
  - c. Redesignating paragraphs (n)(6), (n)(7), and (n)(8) as paragraphs (n)(4), (n)(5), and (n)(6), respectively,
  - d. In newly redesignated paragraph (n)(6), removing “:.” and adding a period in its place, and
  - e. Adding new paragraphs (uu) and (vv).

The added paragraphs read as follows:

#### § 103.11 Meaning of terms.

\* \* \* \* \*

(n) *Financial institution.* \* \* \*

(3) A money services business as defined in paragraph (uu) of this section.

\* \* \* \* \*

(uu) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed as follows—

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than \$500 in currency or monetary or other negotiable instruments for any person any day);

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$500 in currency or monetary or other negotiable instruments for any person any day);

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, stored value, or similar instruments (other than a person who does not issue such checks or money orders or stored value or similar instruments in an amount greater than \$500 in currency or monetary or other negotiable instruments to any person any day);

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A



seller or redeemer of traveler's checks or money orders or stored value or similar instruments (other than a person who does not sell or redeem such checks or money orders or stored value or similar instruments in an amount greater than \$500 in currency or monetary or other negotiable instruments to (or in the case of redemption, for) any person any day);

(5) *Money transmitter.* (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) Any other person engaged as a business in the transfer of funds; or

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

3. Part 103 is further amended by redesignating the following subparts and sections as follows—

#### *Old Subparts and Sections*

##### Subpart D

103.41  
103.42  
103.43  
103.44  
103.45  
103.46  
103.47  
103.48  
103.49  
103.50  
103.51  
103.52  
103.53  
103.54

##### Subpart E

103.61  
103.62  
103.63  
103.64  
103.65  
103.66  
103.67

##### Subpart F

103.70  
103.71  
103.72  
103.73

103.74  
103.75  
103.76  
103.77

#### *New Subparts and Sections*

##### Subpart E

103.51  
103.52  
103.53  
103.54  
103.55  
103.56  
103.57  
103.58  
103.59  
103.60  
103.61  
103.62  
103.63  
103.64

##### Subpart F

103.71  
103.72  
103.73  
103.74  
103.75  
103.76  
103.77

##### Subpart G

103.80  
103.81  
103.82  
103.83  
103.84  
103.85  
103.86  
103.87

4. Add a new subpart D to Part 103 to read as follows:

#### **Subpart D—Special Rules for Money Services Businesses**

Sec.

103.41 Registration of money services businesses.

#### **Subpart D—Special Rules for Money Services Businesses**

##### **§ 103.41 Registration of money services businesses.**

(a) *Registration requirement—(1) In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to a depository institution as defined in 31 U.S.C. 5313(g), to the United States, any State or political subdivision of a State, or to

a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(2) *Agents treated as money services businesses—(i) Registration threshold.* For purposes of this section, an agent of a money services business and is required to register with the Department of the Treasury and maintain a list of its agents only if the agent meets the registration threshold in this paragraph (a)(2)(i). (See, however, § 103.11(uu), which, for other purposes of the Bank Secrecy Act, provides that an agent of a money services business is a money services business whether or not the agent meets the registration threshold.) An agent meets the registration threshold if—

(A) The agent's primary business is a business described in § 103.11(uu), and the agent's money services gross transaction amount is more than \$50,000 for any month;

(B) The agent engages in more than one of the businesses described in § 103.11(uu) as an agent for one money services business, and the agent's money services gross transaction amount is more than \$50,000 for any month;

(C) The agent is an agent for more than one money services business, and the agent's money services gross transaction amount is more than \$50,000 for any month; or

(D) The agent has subagents, and the agent's money services gross transaction amount is more than \$50,000 for any month.

(ii) *Money services gross transaction amount.* The money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions by all its businesses described in § 103.11(uu). Thus, for example, if an agent sells a \$600 money order, charging an \$18 fee and receiving a \$6 commission on the sale, the agent's gross transaction amount is \$600.

(iii) *Transition rule.* An agent is not required to compute a money services gross transaction amount for any month beginning before the effective date in paragraph (f) of this section.

(b) *Registration procedures—(1) In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service. The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner required by the form.

(ii) A branch office or location or an agent of a money services business is not required to file a registration form for the business, except for agents treated as a money services business under paragraph (a)(2) of this section. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that the Detroit Computing Center may assign to the business at a central location in the United States reported on the form and for the period specified in § 103.38(d).

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed not later than the end of the 180-day period beginning on the later of [the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**], or the date the business is established. In the case of an agent required to be registered under this section, the registration form for the initial registration period must be filed not later than the end of the 180-day period beginning on the date the agent meets the registration threshold. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Special rule for agents treated as money services businesses.* An agent treated as a money services business under paragraph (a)(2) of this section must be registered during each renewal period, even though its money services gross transaction amount falls below the registration threshold after the agent's initial registration.

(5) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if more than 10 percent of the voting power or equity interests of a money services business is transferred, the money services business must be re-

registered under this section. Finally, if a money services business experiences a more than 50 percent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents—(1) In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by the time the initial registration form is filed and must be revised each calendar quarter to contain current information. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). The original list of agents and any revised list must be retained for the period specified in § 103.38(d).

(2) *Information included on the list of agents.* A money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(i) The name of the agent, including any trade names or doing-business-as names;

(ii) The address of the agent, including street address, city, state, and ZIP code;

(iii) The telephone number of the agent;

(iv) The type of service or services (money orders, traveler's checks, stored value, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(v) The year in which the agent first became an agent of the money services business;

(vi) The number of branches or subagents the agent has; and

(vii) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for its money services business whether in the agent's or principal's name.

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C. 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of \$5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

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

#### § 103.36 [Amended]

5. Paragraph (b)(10) of § 103.36 is amended by removing the language “§ 103.54(a)” and adding the language “§ 103.64(a)” in its place.

#### § 103.56 [Amended]

6. Paragraph (b)(7) of newly redesignated § 103.56 is amended by removing the language “§ 103.48” and adding the language “§ 103.58” in its place.

#### § 103.57 [Amended]

7. Newly redesignated § 103.57 is amended by:

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.*

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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,