FEDERAL RESERVE BANK
OF NEW YORK

AT-10845

April 3, 1996

To the Addressee:

Our Circular No. 10845, dated March 29, 1996, contained the text of a press release by the Board of Governors of the Federal Reserve System, announcing the adoption of amendments, jointly with the Department of the Treasury, to their rule that requires enhanced recordkeeping related to certain funds transfers by financial institutions, in accordance with the Bank Secrecy Act. The amendments become effective on May 28, 1996.

Enclosed is a copy of the amendments, as published in the Federal Register. (The U.S. Government Printing Office also makes the Federal Register available on the Internet; the address is "http://www.access.gpo.gov/".) For those of you who maintain sets of the Board's regulations, the amendments should be filed with Regulation S, "Reimbursement to Financial Institutions for Assembling or Providing Financial Records."

Circulars Division

federal register

Monday
April 1, 1996

Part III

Federal Reserve System
12 CFR Parts 219

Department of the Treasury
31 CFR Parts 103

Amendments to the Bank Secrecy Act Regulations; Recordkeeping Requirements for Certain Financial Records; Final Rules

[Ref. Cir. No. 10845]

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FEDERAL RESERVE SYSTEM

[Docket No. R–0807]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA16

Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Banks and other Financial Institutions

AGENCY: Board of Governors of the Federal Reserve System; Department of the Treasury.

ACTION: Joint final rule; delay of effective date.

SUMMARY: On January 3, 1995, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly published a final rule that requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions, effective January 1, 1996. (60 FR 220). On August 24, 1995, the Treasury and the Board delayed the effective date of the joint final rule until April 1, 1996, because of the uncertainty by financial institutions as to their responsibilities under the joint final rule with respect to international transfers pending final action on proposed amendments to the rule (60 FR 44144). To ensure that there is an adequate implementation period following final action on the proposed amendments, which are published elsewhere in today's Federal Register, the Treasury and the Board have delayed the effective date of the joint final rule until May 28, 1996.

EFFECTIVE DATE: Effective April 1, 1996, the effective date of the joint final rule amending 31 CFR part 103 published on January 3, 1995, at 60 FR 220, is further delayed until May 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Treasury: Roger Weiner, Assistant Director, 202/622–0400; Stephen R. Kroll, Legal Counsel, 703/905–3534, FinCEN.

Board: Louise L. Roseman, Associate Director, 202/452–2789; Jeff Stehm, Manager, Fedwire Section, 202/452–2217; Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, 202/452–3625; or Elaine Boutilier, Senior Counsel 202/452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson, 202/452–3544.

The effective date of the joint final rule amending 31 CFR part 103 published by the Board and Treasury at 60 FR 220 on January 3, 1995, and delayed from January 1, 1996, to April 1, 1996 (60 FR 44144, August 24, 1995), is further delayed until May 28, 1996.

In concurrence:

By order of the Board of Governors of the Federal Reserve System, March 26, 1996.

William W. Wiles,

Secretary to the Board.

By the Department of the Treasury, March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7683 Filed 3–29–96; 8:45 a.m.]

BILLING CODE Board: 6210–01–P (50%)
Treasury: 4820–03 (50%)

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0807]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 3, 1995, the Board of Governors of the Federal Reserve System (Board) published a final rule that established Subparts A and B of Regulation S (60 FR 231). Subpart B cross-references the substantive provisions of a joint rule adopted by the Board and the Department of the Treasury on the same day. The joint rule requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions. The Board and the Department of the Treasury have delayed the effective date of the joint final rule until May 28, 1996, to provide financial institutions sufficient time to prepare to comply with the rule pending final action on the proposed amendments, which are published elsewhere in today's issue of the Federal Register. Because Subpart B of Regulation S relies on the joint final rule for its substantive provisions, its effective date is also delayed until May 28, 1996.

EFFECTIVE DATES: Effective April 1, 1996, the effective date for 12 CFR part 219, Subpart B, which was added at 60 FR 231 published on January 3, 1995, is further delayed until May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Associate Director, 202/452–2789; Jeff Stehm, Manager, 202/452–2217; Darrell Mak, Financial Services Analyst, 202/452–3223, Fedwire Section, Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, 202/452–3625; or Elaine Boutilier, Senior Counsel 202/452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, 202/452–3544.

The effective date of 12 CFR part 219, Subpart B, added by the Board at 60 FR 231 on January 3, 1995, and delayed from January 1, 1996, to April 1, 1996 (60 FR 44144, August 24, 1995), is further delayed until May 28, 1996.

By order of the Board of Governors of the Federal Reserve System, March 26, 1996.

William W. Wiles,

Secretary to the Board.

[FR Doc. 96–7684 Filed 3–29–96; 8:45 a.m.]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA17

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

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 3, 1995 (60 FR 234), the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly adopted a final rule (the joint rule) requiring financial institutions to collect and retain certain information pertaining to transmittals of funds, and Treasury adopted a final rule (the travel rule) requiring financial institutions to include in transmittal orders certain information collected under the joint rule. On August 24, 1995 (60 FR 44144), Treasury delayed the effective date of the travel rule until April 1, 1996. In response to industry concerns about the application of the

joint rule and the travel rule to transmittals of funds involving foreign financial institutions, Treasury and the Board have amended the joint rule to conform certain of the definitions of the parties to transmittals of funds to definitions found in Article 4A of the Uniform Commercial Code. Treasury has also amended the travel rule: To clarify that the exceptions applicable for the joint rule are also applicable for the travel rule; and to accommodate a compliance concern raised by the banking industry after the close of the comment period. To ensure that there is an adequate implementation period following final action on the proposed amendments, which are published elsewhere in today's Federal Register, the Treasury has delayed the effective date of the final travel rule until May 28, 1996.

EFFECTIVE DATE: Effective April 1, 1996, the effective date of the final rule published on January 3, 1995, at 60 FR 234, is further delayed until May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Charles D. Klingman, Office of Financial Institutions Policy, at (703) 905–3920, or Joseph M. Myers, Office of Legal Counsel, (703) 905–3590.

Therefore, the effective date of the final rule issued by Treasury and published at 60 FR 234, January 3, 1995, delayed from January 1, 1996 to April 1, 1996 (60 FR 44144, August 24, 1995), is further dalayed until May 28, 1996.

Dated: March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7680 Filed 3–29–96; 8:45 am]

BILLING CODE 4820–03–P

FEDERAL RESERVE SYSTEM

[Docket No. R–0888]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA16

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

AGENCY: Department of the Treasury; Board of Governors of the Federal Reserve System.

ACTION: Joint final rule.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly have adopted amendments to their final rule that requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions (the joint rule). These amendments revise the joint rule's definitions and make technical conforming changes to the substantive provisions of the joint rule to conform the definitions of the parties to an international transfer to their meanings under Article 4A of the Uniform Commercial Code (UCC 4A). The revised definitions will also affect the provisions of a Treasury companion rule, adopted in January 1995, known as the travel rule, which requires financial institutions to include in transmittal orders certain information that must be maintained under the joint rule. Treasury is also publishing amendments to its travel rule. See companion final rule amending the travel rule published elsewhere in today's issue of the Federal Register. The amendments are intended to reduce confusion of banks and nonbank financial institutions as to the applicability of the joint rule and the travel rule and to reduce the cost of complying with the rules' requirements. The Treasury and the Board believe that the amendments will not have a material adverse effect on the rules' usefulness in law enforcement investigations and proceedings. The amendments should not affect a bank's responsibilities under the rules with respect to domestic funds transfers. Furthermore, to ensure that there is an adequate implementation period following final action on the proposed amendments, the Treasury and the Board have delayed the effective date of the joint final rule until May 28, 1996. See the final rule; delay of effective date published elsewhere in today's issue of the Federal Register.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Treasury: Roger Weiner, Assistant Director, 202/622–0400; Stephen R. Kroll, Legal Counsel, 703/905–3534, FinCEN.

Board: Louise L. Roseman, Associate Director, 202/452–2789; Darrell Mak, Financial Services Analyst, 202/452–3223; Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, 202/452–3625; or Elaine Boutilier, Senior Counsel 202/452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, 202/452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The statute generally referred to as the Bank Secrecy Act (BSA) (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5330) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN. The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550), which authorizes the Treasury and the Board to prescribe regulations to require maintenance of records regarding domestic and international funds transfers. The Treasury and the Board are required to promulgate jointly, after consultation with state banking supervisors, recordkeeping requirements for international funds transfers by depository institutions and nonbank financial institutions. The Treasury and the Board are required to consider the usefulness of recordkeeping rules for international funds transfers in criminal, tax, or regulatory investigations or proceedings and the effect of such rules on the cost and efficiency of the payments system. The Treasury and the Board are authorized to promulgate regulations for domestic funds transfers by depository institutions. The Treasury, but not the Board, is authorized to promulgate recordkeeping and reporting requirements for domestic funds transfers by nonbank financial institutions.

In January 1995, the Treasury and the Board jointly published enhanced recordkeeping requirements related to certain funds transfers and transmittals of funds by banks and other financial institutions, in accordance with the BSA (60 FR 220, January 3, 1995). At the same time, the Treasury adopted a companion rule, known as the travel rule, which requires financial institutions to include in transmittal orders certain information that must be retained under the joint rule (60 FR 234, January 3, 1995). The joint rule sets forth definitions of terms used in both rules.

Subsequent to adoption of the joint rule, several large banks as well as bank counsel advised the Treasury and the

Board that compliance with the joint rule and the travel rule would be complicated if the parties to an international funds transfer were defined differently in the joint rule than they are in the Uniform Commercial Code Article 4A (UCC 4A). Under the joint rule adopted in January, the first U.S. bank office that handles an incoming international funds transfer was defined as the originator's bank.[1] Under UCC 4A and the Board's Regulation J governing Fedwire transfers (12 CFR Part 210, subpart B), which incorporates UCC 4A, if the U.S. bank receives a payment order from a foreign bank and executes a corresponding payment order to a subsequent receiving bank, the first U.S. bank would be deemed an intermediary bank rather than the originator's bank. Large banks that regularly process international funds transfers believe that substantial confusion would result from defining the parties to an international funds transfer for the purposes of the BSA rules differently from the manner in which they are defined under UCC 4A. In addition, several banks indicated that they believe the difference between the BSA and the UCC 4A definitions may cause certain problems in the application of the joint rule and the travel rule to international funds transfers.

In August 1995, the Treasury and the Board proposed amendments to the joint rule to address industry concerns regarding the confusion created by defining the parties to an international funds transfer in a manner that is not consistent with the roles of the parties as defined by UCC 4A (60 FR 44146, August 24, 1995). In their notice of the proposed amendments, the Treasury and the Board included a detailed illustration of the operational issues raised by industry representatives.

Under the proposed amendments, the definition of the first U.S. bank office that handles an incoming international funds transfer would be changed from an originator's bank to an intermediary bank. Corresponding changes were proposed to address the same issues with respect to nonbank financial institutions that conduct international transmittals of funds. In addition, the Treasury and the Board proposed amending section 103.33(e)(6) by deleting the word "domestic" prior to the word "bank" and prior to the words "broker or dealer in securities." These changes have no material effect on the scope of the exclusions set forth in this section as the word "bank" is defined to be limited to offices located within the United States and the term "broker or dealer in securities" is limited to brokers registered with the Securities and Exchange Commission.

Also in August 1995, Treasury and the Board deferred the effective date of the joint rule until April 1, 1996 from January 1, 1996, to provide financial institutions sufficient time to prepare to comply with their responsibilities under the joint final rule with respect to international transfers pending final action on the proposed amendments to the joint rule (60 FR 44144, August 24, 1995). To ensure that there is an adequate implementation period following final action on the proposed amendments, the Treasury and the Board have delayed further the effective date of the joint final rule until May 28, 1996. See the final rule; delay of effective date published elsewhere in today's issue of the Federal Register.

II. Summary of Public Comments

The Treasury and the Board received eleven comments on the proposed amendments. The following table identifies the number of commenters by type of organization:

Commercial Banks	4
Federal Reserve Banks	3
Savings Institutions	1
Trade Association	1
Credit Union Association	1
Clearing House Association	1
Total Public Comments	11

Ten comment letters supported the proposed amendments to the joint rule. Commenters agreed that amending the definitions of the parties to an international transfer in the joint rule will reduce confusion with respect to the interpretation of the rules and will facilitate compliance with the rules' requirements.

One commenter requested that the Treasury and the Board define how intermediary banks might be expected to retrieve records. All banks are subject to the general retrievability requirements under section 103.38(d). Under this standard, the expected timeliness of retrievability will vary by request. Generally, records should be accessible within a reasonable period of time, considering the quantity of records requested, the nature and age of the record, the amount and type of information provided by the law enforcement agency making the request, as well as the particular bank's volume and capacity to retrieve the records. Intermediary banks are obligated to comply with any properly executed subpoena or search warrant. No changes have been made to the final rule with respect to the retrievability requirements.

Another commenter requested that the Treasury and the Board clarify the applicability of the joint rule in cases in which an originator's bank accomplishes a transfer by issuing a check payable to another bank. The Treasury and the Board plan to address this and other issues in a commentary that will be published to address various aspects of the joint rule.

One bank commented that the applicability of the BSA regulations to small banks would not serve a high degree of usefulness in criminal, tax or regulatory investigations or proceedings. The Treasury and the Board believe that exempting small institutions would facilitate money laundering through those institutions.

III. Conclusion

Based on the responses received by the commenters, the Treasury and the Board have adopted the amendments to the joint rule as proposed. The Treasury and the Board do not believe that these amendments will increase the cost of compliance with the rules' requirements for those banks and nonbank financial institutions that have prepared to comply with the rules under the assumption that the first U.S. banking office in an international transfer is subject to the originator's bank responsibilities. Further, the Treasury and the Board do not believe that identifying the banks in an international transfer in the same manner as they are defined in UCC 4A will reduce the usefulness of the information to law enforcement, *provided* that intermediary banks comply with the requirements of 103.38(d). As part of the 36-month review of the effectiveness of the joint rule and the travel rule, Treasury will monitor the experience of law enforcement in obtaining from intermediary banks information retained pursuant to the joint rule.

IV. Paperwork Reduction Act

The collection of information required by the joint final rule, which is being amended in this notice, was submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under

[1] The originator's bank was defined as "the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank." (103.11(w)) A receiving bank was defined as "the bank to which the sender's instruction is addressed." (103.11(aa)) As the definition of bank was limited to an "agent, agency, branch or office within the United States" (103.11(c)), a receiving bank must be a U.S. banking office, and therefore the originator's bank was the first U.S. banking office to handle the transfer.

control number 1505–0063. (60 FR 227, January 3, 1995) The collection is authorized, as before, by 12 U.S.C. 1829b and 1959 and 31 U.S.C. 5311–5330.

The changes to the joint final rule in this document will eliminate information collection requirements that were required by the joint final rule. Therefore, no additional Paperwork Reduction Act submissions are required.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Treasury and the Board hereby certify that these amendments to the joint final rule will not have a significant economic impact on a substantial number of small entities. The amendments eliminate uncertainty as to the application of the joint final rule and reduce the cost of complying with the joint rule's requirements. Further, the amendments affect international funds transfers and transmittals of funds, which are handled almost exclusively by large institutions. Accordingly, a regulatory flexibility analysis is not required.

VI. Executive Order 12866

The Treasury finds that these amendments to the joint rule are not "significant" for purposes of Executive Order 12866. The modifications should reduce the cost of compliance with the joint rule and the travel rule. The Treasury believes that these rule changes will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These revisions create no inconsistencies with, nor do they interfere with actions taken or planned by other agencies. Finally, these revisions raise no novel legal or policy issues. A cost and benefit analysis therefore is not required.

VII. Unfunded Mandates Reform Act of 1995 Statement

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

List of Subjects in 31 CFR Part 103

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

Amendment

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

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised 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 revising paragraphs (e), (w), (y) introductory text, (aa), (bb), (dd), (kk) introductory text, (ll), and (mm) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(e) *Beneficiary's bank.* The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

* * * * *

(w) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

* * * * *

(y) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

* * * * *

(aa) *Receiving bank.* The bank or foreign bank to which the sender's instruction is addressed.

(bb) *Receiving financial institution.* The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

* * * * *

(dd) *Recipient's financial institution.* The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

* * * * *

(kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

* * * * *

(ll) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(mm) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

* * * * *

3. In § 103.33, paragraphs (e) introductory text, (e)(1)(i) introductory text, (e)(1)(ii), (e)(1)(iii), (e)(6)(i)(A) through (e)(6)(i)(G), (e)(6)(ii), (f) introductory text, (f)(1)(i) introductory text, (f)(1)(ii), (f)(1)(iii), (f)(6)(i)(A) through (f)(6)(i)(G) and (f)(6)(ii) are revised to read as follows:

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

* * * * *

(e) *Banks.* Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (e) with respect to a funds transfer in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or

a microfilm, other copy, or electronic record of the following information relating to the payment order:

* * * * *

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

* * * * *

(6) *Exceptions.* * * *

(i) * * *

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(f) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each transmittal order that it accepts as a transmittor's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

* * * * *

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) for each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

* * * * *

(6) *Exceptions.* * * *

(i) * * *

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmittor and the recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same broker or dealer in securities.

In concurrence:

By order of the Board of Governors of the Federal Reserve System, March 26, 1996.

William W. Wiles,

Secretary to the Board.

By the Department of the Treasury, March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7685 Filed 3–29–96; 8:45 am]

BILLING CODES Board: 6210–01–P (50%) Treasury: 4820–03 (50%)

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA17

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

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: On January 3, 1995, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (the Board) jointly adopted a final rule (the joint rule) requiring financial institutions to collect and retain certain information pertaining to transmittals of funds, and Treasury adopted a final rule (the travel rule) requiring financial institutions to include in transmittal orders certain information collected under the joint rule. In response to industry concerns about the application of the joint rule and the travel rule to transmittals of funds involving foreign financial institutions, Treasury and the Board have amended the joint rule to conform certain of the definitions of the parties to transmittals of funds to definitions found in Article 4A of the Uniform Commercial Code (see document published elsewhere in today's Federal Register). This final rule amends the travel rule to reflect the amended definitions in the joint rule, and amends the travel rule to clarify that the exceptions applicable for the joint rule are also applicable for the travel rule.

There is one further change to the travel rule that was not a part of the original proposed rule, new paragraph (g)(3). This change responds to a significant compliance issue that the banking industry did not identify until after the comment period: until all banks convert to the expanded Fedwire format, there will not always be enough space to include in a transmittal order all of the information required by the rule.

Finally, because solving these problems has taken longer than anticipated, this final travel rule, like the final joint rule, will be effective not on April 1, 1996, as originally planned, but on May 28, 1996.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Charles D. Klingman, Office of Financial Institutions Policy, at (703) 905–3920, or Joseph M. Myers, Office of Legal Counsel, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

The statute generally referred to as the Bank Secrecy Act (BSA) (Title I and Title II of Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5330), authorizes the Secretary of the Treasury (the Secretary) to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and to implement anti-money laundering programs and compliance procedures. The Secretary's authority to administer the BSA has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN). Section 1515 of the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Title XV of Pub. L. 102–550 (Annunzio-Wylie)), codified at 12 U.S.C. 1829b(b), amended the BSA (1) to require the Secretary and the Board jointly to promulgate recordkeeping requirements for international funds transfers by depository institutions and nonbank financial institutions; and (2) to authorize the Secretary and the Board jointly to promulgate regulations for domestic funds transfers by depository institutions. Section 1517(a) of

Annunzio-Wylie, codified at 31 U.S.C. 5318 (g) and (h), authorizes the Secretary to require financial institutions to carry out anti-money laundering programs.

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

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

The most significant effect of the difference in the definitions was the treatment of a U.S. financial institution that receives a transmittal order from a foreign financial institution. Under the definitions in the original joint rule, the foreign financial institution sending the transmittal order would be the transmittor and the U.S. financial institution would be the transmittor's financial institution. The U.S. financial institution would be subject to the travel rule requirements imposed on a transmittor's financial institution, and compliance might require significant changes in standard business practices.

II. Proposed Amendments

In response to industry concerns, Treasury and the Board proposed amendments to the joint rule to conform the definitions of banks that are parties to funds transfers to the definitions found in UCC 4A and to change the definitions of the terms applicable to financial institutions so that their meanings are parallel to the definitions in UCC 4A (60 FR 44146, August 24, 1995). At the same time, Treasury proposed amendments to the travel rule to reflect the proposed amendments to the definitions (60 FR 44151, August 24, 1995). The changes to the travel rule were necessary in order to clarify that although a foreign financial institution may be considered a transmittor's financial institution, only financial institutions located within the U.S. are subject to the requirements of the travel rule.

The proposed amendments also proposed to add to the travel rule new paragraph 103.33(g)(3), in order to clarify that transactions excepted under the joint rule pursuant to paragraphs 103.33(e)(6) and 103.33(f)(6) are also excepted from the travel rule. Those sections provide that a transmittal of funds is not subject to the requirements of the joint rule if the parties to the transmittal are both banks or brokers and dealers in securities, or their subsidiaries, or government entities, *or* if the transmittor and recipient are the same person and the transmittal involves a single bank or broker/dealer.

III. Comments

Treasury received three comments on the proposed changes to the travel rule. The commenters were in favor of the proposed amendments, and agreed that the amendments would reduce confusion and uncertainty about the application of the rules, and that the rules would be less burdensome if the proposed amendments were adopted. One commenter specifically agreed that the inclusion of the exceptions in the travel rule was a positive change. Based on the comments received, Treasury is adopting the amendments as proposed, except that the proposed new paragraph 103.33(g)(3) will appear at 103.33(g)(4).

IV. New Section 103.33(g)(3)

As noted above, there is one further change to the travel rule that was not a part of the proposed rule, new paragraph (g)(3). This change responds to a significant compliance issue that the banking industry did not identify until after the comment period: until all banks convert to the expanded Fedwire format, there will not always be enough space to include in a transmittal order all of the information required by paragraphs (g)(1) (i), (ii), and (vii) and (g)(2) (i), (ii), and (vii).[1] Banking industry representatives have assured FinCEN that the expanded Fedwire format, scheduled to be adopted industry-wide by January 1, 1998, will allow all information required by paragraph (g) to be sent and received. If the travel rule were finalized as proposed, banks that are in the process of adopting the expanded Fedwire format would have to expend considerable resources to create an interim system to accommodate all of the information required by paragraph 103.33(g) until January 1, 1998. Accordingly, new paragraph (g)(3) provides that, until it has converted to the new Fedwire format, a financial institution will be deemed to be in compliance with paragraph (g), even if some information required to be included on a transmittal order is not so included, *provided that*, when either requested by a corresponding financial institution to assist in retrieval of information in connection with Bank Secrecy Act compliance efforts or in response to a law enforcement request, or when presented itself with a judicial order, subpoena or administrative summons requesting any information required by paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), or (g)(2)(vii), the financial institution retrieves such information within a reasonable time.

Treasury notes that new paragraph (g)(3)(i)(A) still requires inclusion in the transmittal order, to the extent such items are received with the prior transmittal order, of certain recipient information as required by paragraphs (g)(1)(vi) and (g)(2)(vi). These paragraphs themselves, however, are not fully effective with respect to transmittals of funds effected through the Fedwire funds transfer system until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format. Treasury anticipates that funds transfers effected through the Fedwire system will be covered equally by both the current exception provision for paragraphs (g)(1)(vi) and (g)(2)(vi) as well as the new safe harbor provision of paragraph (g)(3). Thus, as an operational matter in pre-conversion Fedwire transfers, paragraph (g)(3) will require that the transmittal order include only one of the items otherwise required by paragraphs (g)(1)(vi) and (g)(2)(vi), if received with the transmittal order.

V. Effect on Law Enforcement; Ongoing Review

Treasury believes that today's changes in the joint rule and in this final rule will reduce the burden of compliance,

[1] In addition, some software application programs allow large, institutional customers to generate and transmit payment orders directly through a bank's electronic funds transfer system. Some of these software application programs follow the format of the Fedwire system. Thus, banks may have difficulty complying with section 103.33(g) with respect to payment orders transmitted directly by their customers.

while maintaining the usefulness for law enforcement of the information passed on in transmittal orders pursuant to the travel rule. While the requirement placed on an intermediary financial institution is limited to information that it receives, generally the information passed on should be of greater use to law enforcement because the information obtained will pertain to the true transmittor and recipient in the transaction. Furthermore, the financial institutions that must be identified will more likely be ones with which the transmittor and recipient have account relationships.

As stated in the joint and travel rules when they were adopted in January 1995, Treasury will monitor the effectiveness of the rules to assess their usefulness to law enforcement and their effect on the cost and efficiency of the payments system. Within 36 months of May 28, 1996, Treasury will review the effectiveness of the travel rule and will consider making any appropriate modifications.

VI. Executive Order 12866

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

VII. Regulatory Flexibility Act

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

VIII. Paperwork Reduction Act

The collection of information required by the rule that is amended by this final rule was submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h) and 3507(d)) under control number 1505–0063 (see 60 FR 237, January 3, 1995). The collection is authorized, as before, by 12 U.S.C. 1829b and 1959 and 31 U.S.C. 5311–5330.

This final rule will eliminate information collection requirements that were previously required. Therefore no additional Paperwork Reduction Act submissions are required.

IX. Unfunded Mandates Reform Act of 1995

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

List of Subjects in 31 CFR Part 103

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

Amendment

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

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. In § 103.33, paragraphs (g) introductory text and (g)(1) introductory text are revised and paragraphs (g)(3) and (g)(4) are added to read as follows:

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

* * * * *

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

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

* * * * *

(3) Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format. The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution before the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(i) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (g)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(1)(iii) through (v), and the information specified in paragraph (g)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (g)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (g)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(2)(iii) through (g)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (g)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or

recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) *Obligation of requesting financial institution.* Any information requested under paragraph (g)(3)(i)(B) or (g)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

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

* * * * *

Dated: March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

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