Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997, or Boeing Service Bulletin 757–25–0200, dated January 21, 1999; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 24, 1999.

Issued in Renton, Washington, on August 13, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506–AA09

Amendment to the Bank Secrecy Act Regulations—Definitions Relating to, and Registration of, Money Services Businesses

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments revise the definitions of certain non-bank financial institutions for purposes of the Bank Secrecy Act and group the revised definitions together in a separate category called ''money services businesses.'' The amendments also 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. The amendments regarding registration and maintenance of agent lists by money services businesses reflect changes to the law made by the Money Laundering Suppression Act of 1994.

DATES: *Effective Date:* September 20, 1999.

Applicability Date: Registration of money services businesses will not be required prior to December 31, 2001, and maintenance of the agent list will not be required prior to January 1, 2002. See § 103.41(f) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3930; Charles Klingman, Financial Institutions Policy Specialist, FinCEN, (703) 905–3602; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate and Christine L. Schuetz, Attorney-Advisors, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions—General

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

31 U.S.C. 5312. The Bank Secrecy Act generally applies to financial institutions, a term broadly defined in 31 U.S.C. 5312(a)(2)(A–Z). The statutory definition includes, *inter alia:*

* * * * *

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

* * * * *

(R) a licensed sender of money;

* * * * *

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

31 U.S.C. 5330. 31 U.S.C. 5330 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). Under that section, any person who owns or controls a money services business (which the statute refers to as a ''money transmitting business'' [1]), 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. 31 U.S.C. 5330(a)(3).) 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), of the Money Laundering Suppression Act. 31 U.S.C. 5311 (Note). In requiring the registration of money services businesses, Congress found 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

[1] The statute uses the term ''money transmitting business'' to name those businesses subject to registration. *See* 31 U.S.C. 5330(a)(1) and (d)(1). However, FinCEN believes that the 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 under the final rule.

requirements of Title II of the Bank Secrecy Act, the Internal Revenue Code of 1986, and other laws of the United States. Congress also found that information on the identity of each money services business 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 transmitting business''[2] 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,[3], 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 within the classes of institutions required to register under the statute. 31 U.S.C. 5330(d)(1)(C).

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.

Section 5330 contains two provisions directed explicitly at agents of money services businesses. First, 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, and the list must be made available on request to any appropriate law enforcement agency. See 31 U.S.C. 5330(c)(1). Second, the Secretary is to establish by regulation, on the basis of such criteria as the Secretary deems appropriate, a threshold point for treating an agent of a money services business as itself a money services business for purposes of section 5330.

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.

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 before the last date for initial registration specified by the implementing regulation.

II. Money Services Businesses—General

The rulemaking of which this final rule is a part deals with a number of aspects of the application of the Bank Secrecy Act to money services businesses. In conducting the rulemaking, 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.[4]

The term ''money services business'' 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 LLP (now a part of PriceWaterhouse Coopers LLP), they comprise approximately 158,000[5] outlets or selling locations, and provide financial services involving approximately $200 billion annually. To some significant extent, the customer base for such businesses lies in that part of the population that does not use 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 services 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 competes 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 to the same sets of customers.[6] Far less is known about this

[2] Although the statutory term is ''money transmitting business,'' FinCEN has decided to use the term ''money services business'' in this rule. *See* footnote 1, *supra.*

[3] 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. 31 U.S.C. 5330(d)(2).

[4] 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).

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

[6] Members of the second group may include, for example, a travel agency, courier service, convenience store, grocery or liquor store.

second tier of firms than about the major providers of money service products.[7]

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 or her check to a check casher to have it converted to cash. He or she can then purchase money orders to pay his or her bills. Finally, he or she may choose to send funds to relatives abroad, using the services of a money transmitter.

III. Notice of Proposed Rulemaking

On May 21, 1997, FinCEN published a notice of proposed rulemaking, 62 FR 27890—27900 (the ''Notice''), that described several proposed changes to the Bank Secrecy Act rules of the Department of the Treasury. First, the Notice proposed amendment of 31 CFR 103.11 to revise definitions of certain non-bank financial services businesses that had been treated as financial institutions for purposes of the Bank Secrecy Act (or in the case of stored value, to add a definition of a product whose issuers, sellers, and redeemers would be so treated) and to group the revised and new definitions together under the heading money services business; the businesses involved generally provide check cashing, currency exchange, or money transmitting services, or issue, sell, or redeem money orders, traveler's checks, or other similar instruments. Second, the Notice proposed the addition to 31 CFR part 103 of a set of new rules to require certain 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.[8] The rules proposed in this portion of the Notice were designed to implement the terms of 31 U.S.C. 5330.

The Notice was one of three notices of proposed rulemaking dealing with money services businesses issued on May 21, 1997. The second notice, 62 FR 27900—27909, proposed to amend the Bank Secrecy Act rules to require money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions to the Department of the Treasury. The third notice, 62 FR 27909–27917, proposed to add a special currency transaction reporting requirement—and related customer verification requirements—for money transmitters involved in the transmission or other transfer of funds to persons outside of the United States.

The proposed rules were designed as part of a coordinated approach to dealing with abuse of money services businesses by criminals and to strengthening the application of general Bank Secrecy Act concepts to this part of the nation's payment system. The decision to deal with each rule separately, rather than finalizing the rules as a group, reflects a number of practical and policy considerations, most importantly the desire to allow time for the construction of the necessary administrative and compliance structures by both the Department of the Treasury and the money services businesses subject to the rules. As indicated in greater detail below, following the Section-by-Section Analysis, the Department of the Treasury is planning next to issue the rule relating to the reporting of suspicious transactions, and will be working with interested parties, independently of the rulemaking itself, to advance the preparation of guidance about particular patterns of suspicious activity of which money services businesses must be aware.

FinCEN held five public meetings during the summer of 1997, in order to provide interested parties with the opportunity to present their views about the potential effects of the three proposed regulations, as well as to provide FinCEN with additional information useful in preparing the final rule.[9] Transcripts of these meetings were then made available by FinCEN to requesting parties.

The first of the five meetings, which was held in Vienna, Virginia, dealt particularly with issues raised by the Notice, and the San Jose, California, meeting dealt with the Notice's treatment of stored value. The final meeting, also held in Vienna, Virginia, dealt with the details of the various prototype compliance forms designed in connection with the issuance of both the Notice and the two related notices of proposed rulemaking and produced further discussion of the money services business registration requirements.

The comment period for the three notices of proposed rulemaking originally ended on August 19, 1997, but it was extended to September 30, 1997, by a notice published on July 30, 1997 (62 FR 40779). FinCEN received a total of 82 comment letters on the three notices of proposed rulemaking; 60 comment letters dealt in whole or in part with issues raised by the Notice. Of these, 17 were submitted by money services businesses and their affiliates, 11 by banks or bank holding companies, 17 by financial institution trade associations, 5 by law firms, 5 by agencies of the United States government, 2 by credit unions, and 3 by private individuals.

IV. Summary of Comments and Revisions

A. Introduction

The format of the final rule is generally consistent with the Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

Definitions

- The definition of money services business has been revised to exclude from treatment as money services businesses for any purpose banks and persons registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.
- The definition of money transmitter has been revised to make plain that the activity that makes one a money transmitter must be carried on as a business and to provide a general limitation to the definition.
- The dollar thresholds for treatment of persons as money services businesses on account of activities related to check cashing, currency exchange, and money order, traveler's checks, and stored value transactions has been raised from $500 to $1,000.

[7] For example, according to the Coopers & Lybrand study, at the time of that study, two money transmitters and two traveler's check issuers made up approximately 97 per cent of their respective known markets for non-bank money services. Three enterprises made up approximately 88 per cent of the $100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector was found by Coopers & Lybrand to be somewhat less concentrated, with the top two non-bank market participants accounting for 40 per cent 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 per cent of the market, with a large number of competitors.

[8] The Notice proposed to place section 103.41 in a new subpart D, Special Rules for Money Services Businesses, of Part 103, and to redesignate existing subparts D through F as subparts E through G of Part 103. The sections in redesignated subparts E through G were to be redesignated to reflect the addition of new subpart D, and corresponding changes were to be made to the references to such redesignated sections in other portions of part 103.

[9] These public meetings were held in Vienna, Virginia, on July 22, 1997; New York, New York, on July 28, 1997; San Jose, California, on August 1, 1997; Chicago, Illinois, on August 15, 1997; and Vienna, Virginia, on September 3, 1997.

Registration

- Registration will not be required prior to December 31, 2001.
- Persons are excluded from the registration requirements to the extent that they are issuers, sellers, or redeemers of stored value products.[10]
- The requirement that agents whose gross transaction amount exceeds $50,000 for any month must register has been eliminated; registration by a person that is a money services business solely because that person serves as an agent of another money services business is indefinitely deferred.
- The agent list maintained by each money services business that offers its products or services through agents must include an indication of each month in the preceding 12 months in which the gross transaction amount of an agent exceeded $100,000.
- A money services business is not required to keep records required by section 103.41 in a centralized location so long as the records are maintained in the United States and are readily available at the request of FinCEN or any appropriate law enforcement agency; the agent list, however, must be maintained in a central location in the United States.
- Certain publicly traded businesses are not required to re-register before the end of their renewal period when there is a 10-per cent or more change in the ownership of such businesses.
- Agent lists must be updated annually, as of January 1 of each year, rather than quarterly.
- For any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the agent list need not include information about the year in which the agent first became an agent and the agent's branches or subagents, but such information must be readily available at the request of FinCEN or any appropriate law enforcement agency.
- The effective date of the registration rule is September 20, 1999; the initial registration must be filed, by December 31, 2001, and the initial agent list must be prepared by January 1, 2002.

B. Comments on the Notice—Overview and General Issues

Definitions

Comments on the proposed changes to the Bank Secrecy Act definitions relating to money services businesses concentrated on five matters: (i) The relationship between the general Bank Secrecy Act definitions and the language of 31 U.S.C. 5330(d)(1) and (2), defining the businesses required to register as money services businesses; (ii) whether the Notice properly invoked the authority required for a change in the general Bank Secrecy Act definitions; (iii) the proposed inclusion of businesses issuing, selling, or redeeming stored value within the definition of ''financial institution'' for Bank Secrecy Act purposes; (iv) the treatment under the Notice of financial businesses subject to other federal regulatory systems; and (v) the application of the money services business definition to various kinds of businesses whose activities include the transmission of funds.[11]

1. *Relationship between 31 U.S.C. 5312 and 31 U.S.C. 5330.* Several commenters argued that the Department of the Treasury mistakenly relied upon the terms of 31 U.S.C. 5330, in seeking to revise the definition of financial institution, as part of proposed 31 CFR 103.11(uu). These commenters asserted that the Notice reflected a misunderstanding of the relationship of the general Bank Secrecy Act definitional provision, 31 U.S.C. 5312, and the registration provisions. In their view, the definition of the sorts of businesses required to be registered under 31 U.S.C. 5330 bore no relationship to the definition of the ''financial institutions'' covered by the remainder of the Bank Secrecy Act, and the designation of registrable businesses in 31 U.S.C. 5330 provides no independent authority for making such businesses otherwise subject to the Bank Secrecy Act. In support of this argument, the commenters cited the language at the beginning of 31 U.S.C. 5330(d) that the definitions of a money transmitting business and money transmitting service apply ''[f]or purposes of this section.'' In addition, they cited the requirement that the definition be limited only to a business that ''is required to file reports under [31 U.S.C.] section 5313.'' Thus, according to the commenters, the broad definitional language in section 5330 cannot be used to define a financial institution for a Bank Secrecy Act purpose other than registration. This language further suggests, according to the commenters, that the class of registrable money services businesses is necessarily larger than the class of money services businesses that were both registrable and otherwise subject to the Bank Secrecy Act's reporting and recordkeeping rules.

FinCEN believes that this argument misperceives both the relationship of the registration provisions to the remainder of the Bank Secrecy Act and the basis for the redefinition of money services business proposed in the Notice. In enacting 31 U.S.C. 5330, Congress made a direct finding that:

> Money transmitting businesses are subject to the recordkeeping and reporting requirements of subchapter II of chapter 53 of title 31. * * * Section 408(a)(1)(A) of the Money Laundering Suppression Act, 31 U.S.C. 5330 (Note).

Thus, Congress assumed that the sorts of businesses for which it was requiring registration were precisely the sorts that would be (and indeed that were already) subject to the Bank Secrecy Act's rules. FinCEN therefore believes that Congress intended the definition of money transmitting business to describe that class of enterprises that were both financial institutions and required to register as money transmitting services (or money services businesses) and that the harmonized definitions could not be read to include any businesses that were not otherwise eligible for treatment as financial institutions under 31 U.S.C. 5311. The purpose of the changes to the definitions of financial institution was, in accordance with this understanding of Congress' intent and as stated in the Notice (62 FR 27890 and 27891), to harmonize the two sets of rules by modernizing the definitions of money transmitter and the other terms included as components in the new money services business subcategory of the general definition of ''financial institution.''

While the final definition of money transmitter tracks to some extent the language used in 31 U.S.C. 5330, this in no way indicates a reliance upon that section for authority, but instead indicates the Department of the Treasury's desire to follow Congress' lead in construing the term ''money transmitter'' in a way that reflects technological advances, and the need to adapt the application of the Bank Secrecy Act to the continually evolving nature of the industry that comprehends ''financial institutions.''

31 U.S.C. 5312 does provide such authority, there is every reason for the definitions to be the same, and the language of the preamble to the Notice, although not perhaps ideal, was sufficient to put the public on notice

[10] Although the final rule expressly excludes redeemers of stored value products, it should be noted that as with redeemers of traveler's checks and money orders, FinCEN did not intend that the Notice would apply to redeemers of stored value products to the extent the products are taken in exchange for goods or general services.

[11] A related issue, whether and the extent to which it was necessary to define the term ''agent'' as used both in the definition of money services business and the registration provisions, is discussed below.

that both matters were at issue in the rulemaking.

2. *Authority for Revisions to the Definition of Financial Institution.* Commenters argued that the Notice gave insufficient indication that a general exercise of Treasury's authority to define financial institution for purposes of the Bank Secrecy Act in proposing 31 CFR 103.11(uu) was a subject of the rulemaking. They also argued that no findings had been made, or suggested by the Notice, that the changes were required to fight money laundering, and that there was no basis in the record in any event for such findings.

Combining the new registration requirements with the rewriting of provisions of the financial institution definition in a single document may have led to a misunderstanding of the reasons or basis for the definitional changes. However, as indicated above, FinCEN believes that the Notice made it clear that the revision of existing Bank Secrecy Act definitions involved in the components of money services business was proposed under the authority of 31 U.S.C. 5312 and for all purposes of the Bank Secrecy Act. See 62 FR 27890, 27893, and 27897.

In addition, the changes made to the definitions, with the exception of the addition of ''stored value,'' discussed separately below, merely clarified the scope of the coverage already inherent in the existing language of the Bank Secrecy Act definitions. For example, the definition of money transmitter contained in 31 CFR 103.11(n)(5) (revised as of July 1, 1999), which section 103.11(uu)(5) of the final rule will replace, stated that the term financial institution included:

> (5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds.

In adopting the revised definition, FinCEN is clarifying the meaning of the term ''person engaged in the business of transmitting funds'' within the scope of the interpretive range of the existing language of the rule; in that context, adoption of the language provided by the Congress in the registration provisions is appropriate—if not mandated—in light of the Congress' view that it was itself simply explicating the scope of the existing regulatory language in requiring registration of certain types of financial institutions. Treasury, indeed, explicitly sought (and received) comments on 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).'' 62 FR 27893.

Other commenters argued that the definitional changes could not be made in any event without specific findings showing that the changes were required to fight money laundering. The purposes of the Bank Secrecy Act are not so narrowly set. The statute is aimed at assuring the maintenance of records constituting a financial trail, and the reporting of certain transactions, in each case because the records and reports ''have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.'' The Congressional findings underlying the money services business registration rules adopt the same objective.[12]

3. *Stored Value.* The final rule continues to treat ''stored value'' as a financial instrument whose issuers and sellers are financial institutions for purposes of the Bank Secrecy Act. However, the final rule revises the Notice to exempt stored value issuers and sellers from any money services business registration obligation. Under the circumstances, the only immediate consequence of the rule will be to make clear that currency transactions in excess of $10,000 by stored value issuers and sellers require reporting under the Bank Secrecy Act (rather than under section 6050I of the Internal Revenue Code) and that businesses that participate as financial intermediaries in transactions in which stored value is transferred electronically may, if otherwise covered, be subject to the rules requiring the maintenance of records for funds transfers of $3,000 or more.

This limited treatment of stored value—which frees the industry from registration requirements to which issuers and sellers of money orders and traveler's checks will be subject—eliminates the ''chilling effect'' on the technology industry to which commenters objected. The limited step that is being taken should create certainty as to the outlines of the Bank Secrecy Act's application to electronic funds equivalents, while allowing further development prior to any rulemaking that deals with more specific issues such as, for example, exemptions for ''closed system'' or small denomination stored value devices or the terms for possible tailored application of the registration or other Bank Secrecy Act requirements to aspects of these emerging payment products.

4. *Other Regulated Financial Businesses.* A number of commenters argued that the final rule should eliminate any possible application to other classes of financial institutions, of rules aimed at money services businesses; the argument was made by banks, securities businesses subject to the jurisdiction of the Securities and Exchange Commission, and futures commission merchants and other businesses regulated by the Commodity Futures Trading Commission. (Banks and brokers and dealers in securities are, of course, already subject to the Bank Secrecy Act.)

Congress characterized money services businesses as ''largely unregulated,'' and FinCEN believes that Congress generally did not find a need for the money services business regime under the Bank Secrecy Act to extend to other federally regulated financial services providers. Accordingly, under the final rule, depository institutions, or securities brokers and dealer, futures commission merchants, or other persons registered with and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission are explicitly excluded from the money services business definition. (For further discussion, see ''Section-by-Section Analysis,'' below.)

5. *Application of Money Transmitter Definition to Other Businesses Whose Activities Include Transmission of Funds.* A number of commenters sought clarification of the definition of money transmitter and objected to any interpretation of the definition that would cause to be classed as money transmitters particular businesses that simply transmit funds as part of their other business activities. Commenters raising such issues included, for example, operators of hedge funds and public and private investment companies, representatives of financial professionals, persons involved in real estate closing activities, bank credit card systems, clearing corporations and associations, insurance companies, and bank holding companies and subsidiaries. All of these commenters sought assurance that their businesses could not fall within the definition of money transmitter in the Notice.

FinCEN agrees that the breadth of the definition of money transmitter proposed in the Notice requires limitation to avoid both unnecessary

[12] Information about the identity and ownership of money services businesses ''would have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings''; the registration requirement will assist federal and other law enforcement and supervisory authorities ''to effectively enforce the criminal tax, [sic] and regulatory laws and prevent such money services businesses from engaging in illegal activities.'' *See* section 408(a)(1)(C) and (a)(2) of the Money Laundering Suppression Act, 31 U.S.C. 5330 (Note).

burden and the extension of the Bank Secrecy Act to businesses whose money transmission activities either do not involve significant intermediation or are ancillary to the completion of other transactions. But the varieties of methods by which funds are transmitted and remitted by persons performing the function of financial intermediary for that purpose, as well as the pace of financial change, make any rigid definition both impossible and inadvisable. Ultimately, the question of whether a particular person is in the ''business'' of transmitting funds is a question of facts and circumstances. The final rule attempts to respond to the comments, as described in more detail below, by providing a limitation on the scope of the definition to make clear that the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission or transfer, for example, a bona fide sale of securities or other property, will not cause a person to be a money transmitter for purposes of the Bank Secrecy Act.

Registration

Comments on the proposed registration requirements concentrated on four matters: (i) exclusions from those requirements, (ii) agent registration, (iii) registration procedures, and (iv) the content and terms of the agent list.

1. *Exclusions from the Registration Requirements.* The Notice excluded the following persons from the registration requirements: the United States Postal Service, depository institutions (as defined in 31 U.S.C. 5313(g)), the United States, a State or political subdivision of a State, or a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission. In response to a specific request for comment in the preamble to the Notice, FinCEN received comments suggesting that other persons should be excluded from the registration requirements.

A number of commenters asked that issuers, sellers, or redeemers of stored value products be so excluded. Those commenters were concerned that the application of the registration requirements to issuers of stored value products would cause the issuers to defer the development of such products, or limit their design in commercially undesirable ways simply in order to avoid the registration requirements. They were also concerned that businesses that might otherwise wish to sell or redeem stored value products would not do so if they might be required to comply with the registration requirements, and that the manner in which the new products would be marketed was not sufficiently settled to permit the design of a reasonable registration system.

Some commenters, however, agreed with the inclusion of businesses engaged in issuing or selling stored value products within the scope of the registration requirements. In general, these commenters believed it was appropriate to subject non-bank providers of electronic payment systems to Bank Secrecy Act requirements in order to treat purveyors of competing financial services in the same manner.

The final rule excludes issuers, sellers, or redeemers of stored value products from the registration requirements. Although the final rule expressly excludes redeemers of stored value products, it should be noted that as with redeemers of traveler's checks and money orders, FinCEN did not intend that the Notice would apply to redeemers of stored value products to the extent the products are taken in exchange for goods or general services.

One commenter recommended that a money services business should not be required to register if it would qualify as an exempt person under the currency transaction reporting rules (31 CFR 103.22(d)). The final rule does not adopt this suggestion. The suggestion would exclude from registration, and consequently the agent list requirement, publicly traded money services businesses that could qualify as exempt persons under 31 CFR 103.22(d). Because these publicly traded money services businesses operate through extensive networks of agents, which may not be exempt from currency transaction reporting, the suggestion would seriously limit information about agents of money services businesses.

Several commenters were concerned that because some credit unions provide money transmitting services to their customers, and some banks might be acting as agents of a money services business, these depository institutions could be subject to the registration rules in § 103.41. The commenters asked for clarification that banks and credit unions are not required to be registered. Paragraph (a)(1) of § 103.41 of the Notice provided that the section did not apply to depository institutions. The final rule goes further and expressly excepts banks from the definition of money services business so that the sentence in proposed paragraph (a)(1) relating to depository institutions is no longer necessary. Under the final rule, all of section 103.41 is inapplicable to depository institutions such as banks and credit unions.

Several commenters asked that non-bank affiliates and subsidiaries of banks be excluded from the registration requirements.[13] One commenter argued that because these companies are subject to regulation by the Federal Reserve Board under the Bank Holding Company Act, they should be excluded. Another commenter recommended excluding a bank's non-bank affiliates and subsidiaries if they can demonstrate that they have some type of Bank Secrecy Act compliance program in place.

The Bank Secrecy Act rules, in general, do not adopt a consolidated group approach to determining whether a company is or is not subject to particular Bank Secrecy Act provisions. That is, the Bank Secrecy Act rules do not look to the status of a parent company in a bank holding company group for the purpose of determining what rules a company owned by the parent must apply. For example, the Bank Secrecy Act regulations do not generally treat non-bank subsidiaries as falling within the definition of bank for purposes of the Bank Secrecy Act regulations. Thus, the final rule continues to require non-bank affiliates and subsidiaries to register and maintain a list of their agents.

One commenter suggested that issuers of monetary instruments that are sold only through banks should be excluded from the registration requirements. In light of 31 CFR 103.29, which requires banks to keep records of certain transactions, the commenter believed there would be little informational value gained by requiring such issuers to register. The final rule does not adopt this suggestion. The registration requirements are designed to create a comprehensive picture of money services businesses, which will provide law enforcement agencies with information either currently not available or not available in an accessible format. Excluding an issuer whose products are sold exclusively through banks would eliminate information about a segment of this industry.

One commenter questioned the sufficiency of the rulemaking record

[13] The preamble to the Notice clarified that 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.

with respect to the registration of check cashers. According to the commenter, nothing in the record, including the New York enforcement operations and geographic targeting orders discussed in the May 21, 1997 notices of proposed rulemaking, supports the proposition that the check cashing function has been or is being abused by the illicit drug industry and criminal money laundering. The comment fails to take into account the fact that Congress specifically included check cashers among those businesses that are required to register with the Department of the Treasury when it enacted 31 U.S.C. 5330.

A commenter also recommended that check cashers should not be required to register if they engage in other money services business activities, for example, money transmitting, as an agent for others. The commenter indicated that approximately 90 per cent of check cashers are also agents for money transmitters and would be included on the agent lists of the transmitters. The final rule does not adopt this recommendation. Section 5330 does not contemplate that businesses that conduct money services activities on their own behalf will be excluded from registration simply because they also act as agents for other money services businesses.

One commenter suggested that, in the future, ''wire transmitters'' should be exempt from state registration requirements if the transmitters comply with federal registration requirements. FinCEN is interested in sharing information, and otherwise coordinating with, state regulators to reduce administrative burden, but 31 U.S.C. 5330(a)(3) states that the federal registration requirements ''shall not be construed as superseding any requirement of State law relating to money [services] businesses operating in such State.''

2. *Agent Registration*. Commenters raised a number of issues about agent registration. Most of the comments sought a clarification of the meaning of the term ''agent,'' sought an increase in the dollar amount of the registration threshold, and questioned the need for agent registration.

The Notice did 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 Notice spoke simply of ''agents.'' Commenters recommended that the term ''agent'' be defined or that the term be replaced with a more neutral term such as selling outlet. A number of commenters argued that they did not believe that the terms of the contracts under which they authorize persons to sell their money services products should be read to treat those persons as agents.

FinCEN believes that the relationship between issuers or service providers and persons at the point of sale for particular products is governed by the law of agency, and that in most (if not all) cases the businesses at which these products or services are sold to the public are non-servant agents of the issuers or service providers [14]; thus, such businesses must be included on the agent lists required to be maintained with respect to ''agents'' by 31 U.S.C. 5330(c)(1)(A). As indicated elsewhere in this preamble, Congress's use of the term ''agent'' in 31 U.S.C. 5330 indicates a similar understanding. Thus, it is expected that a money services business will include on the agent list any businesses it authorizes to sell its money services or money products.

The bulk of the comments on the registration requirement concerned the registration of businesses whose status as money services businesses derived solely from the fact that they sold products or services issued or performed by others. The Notice had required independent registration of such agent businesses if the volume of money services products or services sold or performed through such businesses was $50,000 in any month.

Commenters questioned the level of the proposed registration threshold. Most of these commenters believed that the threshold was too low and recommended increasing the threshold to at least $100,000 a month or preferably $500,000 a month (or $500,000 a month, annualized). One commenter, however, recommended lowering the threshold to $25,000 a month or even zero. Another commenter suggested that a threshold based on an annual rather than a monthly amount would be less likely to cause agents to meet the threshold because of seasonal or holiday sales. As explained below, the final rule defers agent registration and thus eliminates the registration threshold.

[14] Of course, in cases in which the products or services are offered at branches of the issuers or providers, the individuals involved are likely servants of the issuers or providers. (It has long been clear that an ''agent'' of a financial institution is itself a financial institution. *See*, 31 CFR 103.11(n).) FinCEN is aware of few, if any, claims prior to the issuance of the Notice, that the language in section 103.11(n) does not fully comprehend businesses at which money services products were sold to the public.

Commenters argued that because a money services business includes information about its agents on its agent list, no agent should be required to register independently with Treasury. Instead, several of these commenters argued, a money services business should register its agents with Treasury, or as one commenter suggested, should simply submit its agent lists to the Treasury Department.

This registration requirement for agents reflected the terms of 31 U.S.C. 5330(c)(2). That paragraph states that:

> The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of [section 5330].

The mandate to require registration of ''large agents'' was tempered both by the grant to the Secretary of discretion to fix the criteria defining registrable agents, and by a Congressional statement, in the Conference Report accompanying the bill, that:

> 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. This legislation is designed to reduce unnecessary paperwork, not create additional administrative burdens for law enforcement.

The statute's agent registration requirement permits the identification of significant points for the movement of funds into the financial system, especially points at which one or more money services business products or services are grouped together (as, for example, in so-called ''giro houses''). But selecting criteria that will further that objective in a cost efficient manner is difficult at best. Money services business volume levels are unlikely to be uniform throughout the nation, and even within particular areas variations can reflect the size of an agent's other business rather than any absolute variation from a theoretical norm.

Rather than attempting to set criteria on the basis of imperfect knowledge, the Department of the Treasury has decided to defer any implementation of the agent registration provisions. Instead, money services businesses are asked simply to note on the agent lists they are required to maintain the months in the preceding twelve month period in which every agent generated a volume of money services business products of more than $100,000.

Thus, under the final rule, a firm that is a money services business solely

because it offers products or services on behalf of another money services business need not now register with the Department of the Treasury. It should be noted that a firm that both offers products or services on behalf of another money services business and in addition offers its own money services products or services (that is, exchanges currency, cashes checks, or transmits funds for customers through channels or mechanisms of its own) is required independently to register under this rule (and, to the extent that it is an agent, must be carried on the agent list of another money services business as well).

3. *Registration Procedures.* The Notice set forth the general requirement to register a money services business and to report on the registration form the information required by section 5330(b) and any other information required by the form. In the preamble to the Notice, FinCEN noted its understanding that information required to be included on the registration form (and on the agent list) might include privileged and confidential trade secrets, commercial, and financial information. FinCEN also explained that while Congress affirmed in the legislative history that confidential proprietary or trade secret information provided by registrants may be disclosed only subject to applicable law, Congress anticipated that certain information derived from the registration material would be made available to the public, but in a manner that balances the need to protect confidential business information and the need for the public to have access to information about businesses on which the public relies. H.R. Conf. Rep. No. 652, 103 Cong., 2d Sess. 192–93 (1994). FinCEN specifically invited comment on how to make certain information provided by registrants available to the public without revealing confidential business information.

Several commenters expressed concerns about the need, for competitive reasons, to avoid disclosure to the public of confidential information on the registration form or agent list, particularly information about business volume and the dollar size of transactions. FinCEN will not release confidential information on the registration form or agent list except as required or permitted by law. Moreover, before FinCEN releases any other information that may be included on the registration form or agent list, FinCEN will work with money services businesses to establish specific procedures for release of such information to the public. FinCEN anticipates that such procedures would exclude the release of information (other than perhaps limited statistical information) about agents of money services businesses.

4. *Agent List.* Most of the commenters addressing the agent list requirement recommended that a money services business be permitted to provide less information than the Notice required. The commenters argued that information not now on agent lists prepared for state licensing purposes—especially information about the year in which an agent first became an agent and about the agent's transaction accounts—would be difficult to provide. The commenters indicated they would either have to compile the rest of the information from other records (which might not be in electronic format, or in a format, electronic or otherwise, that was easily retrievable) or request the necessary information from their agents. Some commenters suggested that money services businesses be permitted to provide all the requested information prospectively rather than trying to gather the information for existing agents. Alternatively, commenters suggested that the information required to be included on the agent list should be limited to the same information that a money services business must provide about its agents for state licensing purposes. Generally this information includes only the name of the agent, the agent's locations, and the services the agent provides.[15]

The final rule continues generally to require that the information requested by the Notice must be included on the agent list. In response to the comments, however, the final rule provides that with respect to any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the list need not include information about the year in which the agent first became an agent and the agent's branches or subagents. Such information must be made available, however, upon the request of FinCEN or 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). With respect to any agent that becomes an agent on or after the first day of the month beginning after February 16, 2000, the list must include all of the requested information, including the date the agent first becomes an agent and the agent's branches or subagents.

As indicated above, one additional element is added to the information required to be included in the agent list. That element is the notation of each month in the 12-month period immediately preceding January 1, 2002, and each January 1 thereafter, in which the gross transaction amount of the agent's sale of products or services offered by the money services business maintaining the list exceeded $100,000. Setting the requirement at $100,000 generally limits it to agents doing more than $1 million of money services business transactions annually, is an amount suggested in the comments as a threshold for agent registration, and gives knowledge about agent volume which can be evaluated to determine whether the implementation of agent registration should continue to be deferred. That requirement is prospective, does not take effect for at least 18 months, and involves a single recordkeeping threshold. Moreover, the requirement involves only information that must flow to each money services business in the performance of its normal business functions, and the addition of this element to the agent list derives from the elimination from the rule of the most heavily criticized element of the original proposal, the agent registration requirement.

V. Section-by-Section Analysis

A. 103.11—Meaning of Terms

1. 31 CFR 103.11(c)(7)—Definition of ''Bank''

One component of the definition of ''bank'' in 31 CFR 103.11(c) speaks of ''[a]ny other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State.'' In many states, various money services businesses are licensed or examined by state banking departments. In order to avoid any confusion about the interaction of the ''bank'' and ''money services business'' definitions, the phrase ''(except a money services business)'' has been added to 31 CFR 103.11(c)(7).

2. 31 CFR 103.11(n)(3)—Definition of Financial Institution to Include ''Money Services Business''

The final rule retains the addition of a new category called ''money services

[15] More than one commenter argued that requiring the information requested on the agent list exceeds FinCEN's authority under 31 U.S.C. 5330. According to the commenters, FinCEN may ask for the agent's name and address only. Although section 5330 specifically requires the agent's name and address, the section does not constrain FinCEN's authority in the manner suggested by the commenters. Section 5330 authorizes FinCEN to request, in addition to the name and address, ''such other information about such agents as the Secretary may require.'' 31 U.S.C. 5330(c)(1)(A).

business'' to the definition of financial institution. The new category includes the financial institutions previously defined at 31 CFR 103.11(n)(3), (4), (5), and (10), and 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, 31 CFR 103.11(n)(4), (5), and (10) will be deleted, and 31 CFR 103.11(n)(6), (7), (8) and (9) will be redesignated as 31 CFR 103.11(n)(4), (5), (6) and (7)).

3. 31 CFR 103.11(uu)—Definition of Money Services Business

This 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.)

Regulated Businesses. The definition of ''money services business'' excludes persons registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission. This provision excludes from the new regulatory structure for money services businesses the financial services businesses regulated by those agencies. The exclusion from the definition does not apply to issuers whose securities offerings are registered with the SEC under the Securities Act of 1933 or companies whose securities are registered with the Commission under the Securities Exchange Act of 1934. The companies themselves are not registered with the SEC, and these entities are not intended to be excluded from the rule's definition of money services businesses because the Commission neither regulates nor examines the business activities of those companies. Instead, it establishes, by regulation, disclosure, accounting, and other related standards for them. Accordingly, businesses that engage in the activities described in 31 CFR 103.11(uu) are not excluded from the definition merely because their shares are publicly held and registered with the SEC.

Several commenters asked that any exemption for depository institutions or other regulated businesses be extended to holding companies or subsidiaries of those businesses—for example to bank holding companies or bank operating subsidiaries. As explained in greater detail at ''Exclusion from the Registration Requirement'' above, the Bank Secrecy Act rules at present operate on an individual entity rather than a consolidated group basis; so long as that is so, each corporation in a controlled group must be analyzed separately to determine its characterization under the Bank Secrecy Act and its rules.

Thresholds. The Notice contained a threshold of $500 for any person any day at or below which a business otherwise included within the definition of a currency dealer or exchanger, a check casher, or an issuer, seller, or redeemer of money orders, traveler's checks or stored value would not be a money services business. In the final rule that threshold has been raised in each case to $1,000 for any person any day in one or more transactions.

The addition of explicit floors in the definitions relating to currency exchange and check cashing businesses is 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, currency exchange and check cashing businesses that exceed the threshold become subject to the general Bank Secrecy Act reporting and recordkeeping requirements if the amounts involved are sufficiently high to implicate particular reporting or recordkeeping thresholds, for example, the $10,000 threshold for currency transaction reporting.)

In determining whether the $1,000 definitional 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 in fact limits its check cashing services to $650 for a customer on any day and in fact limits its currency exchange services to $600 for a customer on any day does not meet the $1,000 definitional floor for check cashers or for currency exchangers.

(1) *Currency dealer or exchanger.* The definition of currency dealer or exchanger is unchanged, other than for the increase of the $500 threshold to $1,000. The Notice invited comment on whether the old definition of currency dealer or exchanger appearing at 31 CFR 103.11(i) was still necessary in light of the carve out of banks from the recordkeeping requirements of 31 CFR 103.37. In response to comments, that definition is removed from 31 CFR 103.11(i), but the language of the recordkeeping rules of 31 CFR 103.37 is being amended specifically to exclude banks that offer services in dealing or exchanging currency to their customers as an adjunct to their regular services.

(2) *Check casher.* The definition of check casher is also unchanged, other than for the increase of the $500 threshold to $1,000. Several commenters suggested that the threshold should be lowered rather than raised; however, the registration of businesses that only cash checks, especially those that do so as an accommodation for customers and then in an amount of $1,000 or less per day, is not necessary at this time to accomplish the Congressional intent behind section 5330.

(3) *Issuer of traveler's checks, money orders, or stored value.* The definition of issuer of traveler's checks or money orders or stored value is also unchanged other than for the increase of the $500 threshold to $1,000.[16]

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* The definition of seller or redeemer of traveler's checks or money orders or stored value is also unchanged other than for the increase of the $500 threshold to $1,000.

The $1,000 floor in 31 CFR 103.11(uu)(4) replaces the definitional floor (of $150,000 sold in instruments per 30-day period) for selling agents in 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, or that need not, incorporate appropriate Bank Secrecy Act rules into their operations (or the operations they undertake on behalf of their principals). Moreover, the operation of the $150,000 limitation would exclude from Bank Secrecy Act treatment particular transactions (for example purchases of money orders of more than $3,000 under the customer verification and recordkeeping rules of 31 CFR 103.29, or transactions in excess of $10,000 under the currency transaction reporting rules of 31 CFR 103.22) that ought not be so excluded, regardless of the overall volume of sales of a particular business.

The definition in 31 CFR 103.11(uu)(4) extends to ''redeemers'' of money orders and traveler's checks only insofar as the instruments involved are

[16] The definition eliminates the phrase ''similar instruments'' in response to comments that said the phrase was too vague. The phrase has also been eliminated from the definition of seller or redeemers.

redeemed for monetary value—that is, for currency or monetary or other negotiable or other instruments. The taking of the instruments in exchange for goods or general 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 businesses not subject to the rules in 31 CFR part 103 report transactions in currency in excess of $10,000.)

(5) *Money transmitter.* The definition of money transmitter continues to reflect the determination that the definitions of that term for purposes of the general Bank Secrecy Act rules and the registration rules should be the same. As noted above, a limitation on the definition has been added to clarify insofar as possible the reach of the definition, when it is combined with the general limitation on the scope of money services business.[17] Particular classes or subclasses of money transmitters can be excluded from the operation of the definition for particular substantive rules (as for example the proposed rule relating to the reporting of suspicious activities by money transmitters excluded from its coverage sellers or transmitters of stored value or other advanced electronic payment system products).

(6) *United States Postal Service.* The definition of United States Postal Service has not been changed. Thus, unlike the prior regulation, which treated the United States Postal Service as a financial institution only with respect to the sale of money orders, the final rule treats the Postal Service as a financial institution with respect to its provision of any money services products. The Postal Service, in its comments, requested clarification of the status of an ''international postal money order'' under the rules. FinCEN believes that that topic is not appropriate for treatment in a general rule.[18]

4. 31 CFR 103.11(vv)—Definition of Stored Value

The definition of stored value is unchanged. Given the determination to exclude stored value from the registration requirements, FinCEN does not believe that it is necessary now to exclude particular ''closed systems'' from the limited application of the Bank Secrecy Act to such instruments, or to issue a threshold exclusion based upon the maximum value capable of storage on particular media. It agrees that consideration of both such steps would be appropriate if the treatment of stored value under the Bank Secrecy Act were to be expanded at a future date.

B. 103.41—Registration of Money Services Businesses

1. 31 CFR 103.41(a)(1)—Registration Requirement; In General

The final rule continues to provide 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. The final rule expressly excludes from the registration and list requirements the following persons: the United States Postal Service, an agency of the United States, of any State, or of any political subdivision of a State, and any person to the extent that the person is an issuer, seller, or redeemer of stored value. Unlike the Notice, the final rule does not expressly exclude from the registration and list requirements a depository institution (as defined in 31 U.S.C. 5313(g)) or a person registered with, and regulated or examined by, the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). Such an express exclusion in paragraph (a)(1) of section 103.41 is unnecessary because the final rule revises the definition of money services businesses to exclude those persons.

2. 103.41(a)(2)—Agent Registration

As noted above, the final rule defers indefinitely implementation of a requirement that a money services business that offers products or services as an agent on behalf of another money services business register with the Department of the Treasury if the former firm exceeds a ''threshold point'' set by the Secretary. If, however, a firm in addition to offering products or services on behalf of another money services business, offers its own money services products or services (that is, exchanges currency, cashes checks, or transmits funds for customers through channels or mechanisms of its own), the firm must register independently.

3. 31 CFR 103.41(a)(3)—Agent Status.

The final rule provides that the determination of whether a person is an agent depends on all the facts and circumstances.

4. 31 CFR 103.41(b)(1)—Registration Procedures; In General

The Notice set forth the general requirement to register a money services business and to report on the registration form the information required by 31 U.S.C. 5330 and any other information required by the form. A draft of the registration form was discussed at a public meeting in September 1997. Although this section of the preamble discusses comments on the draft form, money services businesses should bear in mind that FinCEN expects to continue to work with the money services business industry to develop the registration form. As part of that process, FinCEN will publish in the **Federal Register** a separate notice regarding the form.

A commenter pointed out that for certain items, for example, the name and address of directors, the instructions to the draft form discussed at the September 1997 public meeting request a more limited set of information than could be required under section 5330(b). The commenter asked that the information requested by the final rule be limited in the same manner as in the instructions to the form. Accordingly, the final rule continues to set forth the general requirement to register and report the information required by 31 U.S.C. 5330, but the words ''to the extent required by the form'' have been added after the words ''the information required by 31 U.S.C. 5330.'' A similar change has been made regarding the identity of the person who is responsible for filing the registration form.

Section 5330(b) provides that the registration shall include an ''estimate of the volume of business in the coming year (which shall be reported annually to the Secretary).'' The instructions to the draft form thus require an estimate of business volume. Several comments objected to the business volume requirement, and one commenter asked for clarification of how an annual estimate would be made when the form is filed only every other year.

Because section 5330 specifically requires, as part of the registration information, that a money services

[17] The term ''money transmitter'' in 31 CFR 103.11(uu)(5) is not necessarily synonymous with the term ''transmittor's financial institution'' in existing 31 CFR 103.11(mm). The term ''transmittor'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).

[18] This comment, like a number of other comments, concerns the application of these rules in specific situations, for example, armored car companies. FinCEN does not believe it is appropriate to resolve those fact specific situations in the context of a general rulemaking, but is willing to consider them in the context of specific, fact based inquiries.

business make an estimate of its business volume, FinCEN anticipates that the form will continue to require the estimate. Although a money services business is required to make an annual estimate of its business volume, FinCEN anticipates that the registration form will not require the estimate to be reported on the form itself but will permit the business to retain the estimate in its records and make it available upon request. Thus, the annual estimate requirement may be satisfied even though the registration form is required to be filed only every other year.

One commenter urged that money services businesses be permitted to file the registration form electronically. FinCEN will consider this recommendation as it works to finalize the form and the filing procedures for the form.

The Notice required a money services business to retain, at a central location in the United States, a copy of any registration form the business files and to report that location on the form. One commenter recommended that as an alternative to the requirement to keep information in a centralized file, a money services business be required only to have access to information within a reasonable period of time. One commenter requested that money services businesses be permitted to keep records concerning registration outside the United States, provided that the information was readily available at the request of FinCEN or any appropriate law enforcement agency.

The final rule continues to require records concerning registration to be maintained in the United States. The final rule does not require a money services business to keep records in a central location so long as information is readily available at the request of FinCEN or any appropriate law enforcement agency; however, the agent list must be maintained in a central location in the United States.

5. 31 CFR 103.41(b)(2)—Registration Period

Paragraph (b)(2) of the final rule continues to provide that after an initial registration period of two calendar years, the registration must be renewed every two years. One commenter asked that the registration and renewal periods be increased to five years. Given the frequency of change in this segment of the financial industry and law enforcement's need for relatively current information about these businesses, FinCEN does not believe the registration and renewal periods should be increased from two years to five years.

6. 31 CFR 103.41(b)(3)—Due Date

Paragraph (b)(3) of the final rule sets forth the due date for filing the registration form for the initial registration period and each renewal period. The Notice would have required the registration form for the initial registration period to be filed by the end of the 180-day period beginning on the later of (i) the date on which the final rules are published in the **Federal Register**, and (ii) the date the business is established. Commenters asked for more time to file the initial registration form. The final rule does not require the initial registration form to be filed until December 31, 2001.

7. 31 CFR 103.41(b)(4)—Events Requiring Reregistration

Paragraph (b)(4) of the final rule continues to provide that a money services business must be re-registered before the end of a renewal period upon the occurrence of certain events. That paragraph requires re-registration 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 (except in the case of certain publicly-traded businesses, as explained below), or the number of its agents increases by more than 50 per cent during any registration period.

One commenter argued that publicly-traded companies should not be required to re-register when required by state law or when there is a more than 50 per cent increase in the their agents. The final rule continues to require publicly-traded companies to register in these situations.

Several commenters suggested that re-registration was unnecessary in the case of a 10 per cent change in ownership of publicly-traded companies. One of the commenters suggested that because a 10 per cent change in ownership of a publicly-traded company would require a filing with the Securities and Exchange Commission, law enforcement agencies could get information about the ownership change from the filing. The final rule provides that a money services business is not required to re-register before the end of its regular registration or renewal period on account of a 10 per cent ownership change if that change must be reported to the Securities and Exchange Commission.

One commenter suggested that for smaller businesses, a 50 per cent change in ownership (rather than 10 per cent) would be a more appropriate standard for requiring re-registration. The final rule does not adopt this suggestion because it would permit significant changes in the ownership of smaller money services businesses, which are generally subject to little federal oversight, to take place between renewal periods without Treasury's knowledge.

One commenter recommended that ''wire transmitters'' be exempted from the re-registration requirements if the transmitters are required to re-register by state law. The final rule does not adopt this recommendation. FinCEN believes that it is important to establish uniform, national registration requirements for money services businesses.

8. 31 CFR 103.41(c)—Persons Required to File Registration Form

The Notice provided 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. (Only one registration form, however, is required to be filed for each registration period.) Commenters pointed out that the instructions to the draft form take a more limited approach, requiring only certain owners or controlling persons to register. Paragraph (c) of the final rule addresses this difference by adding the language ''to the extent provided by the form'' after the language ''any person who owns or controls.''

9. 31 CFR 103.41(d)(1)—List of Agents; In General

Paragraph (d)(1) of the final rule provides that a money services business must prepare and maintain a list of its agents, and must revise the agent list to contain current information. The Notice required the agent list to be revised each quarter. Several commenters objected to the requirement to make quarterly updates of the agent list, arguing that annual updates are more reasonable. One commenter, however, stated that quarterly updates of internal records of seller information could be required without any additional burden. The final rule requires annual updates of the agent list.

The Notice provided that the list of agents is not filed with the registration form but is maintained at the location in the United States reported on the registration form. Several commenters asked that the final rule clarify that an agent list need not be kept in the United States so long as the list is readily available. As indicated above, the agent list must be maintained in the United States.

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). One commenter stated that the requirement to make the agent list available to law enforcement is vague and potentially burdensome. This commenter suggested that it would be preferable to route all law enforcement requests for the lists through FinCEN, which would then evaluate both the appropriateness of the requests and the bona fides of the law enforcement agency.

The maintenance and ready availability of ''agent lists and other information'' is a crucial part of the scheme of 31 U.S.C. 5330. But it is equally true that a system in which money services businesses are overrun by duplicative or otherwise burdensome requests is in no one's interest. In response to the comment, and in light of the fact that 31 U.S.C. 5330(c)(1)(B) authorizes the Secretary of the Treasury to issue rules defining the terms of law enforcement access to agent list information, the final rule states that requests for agent list information shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. Such coordination will (i) avoid the imposition of unnecessary burden on money services businesses, (ii) ensure the confidentiality of sensitive business information, and (iii) facilitate the orderly administration of the agent list requirement.

The same commenter also suggested that agent lists could voluntarily be filed by money services businesses with the Department of the Treasury, under a system in which law enforcement agencies obtain access through Treasury, rather than by seeking information from the money services businesses that chose to file such lists. FinCEN believes that such a system has merit, and it intends to work with the affected businesses to develop such a system, during the period provided for implementation of this rule prior to January 1, 2002.

The Notice provided that the original list of agents and any revised list must be retained for five years, as specified in 31 CFR 103.38(d). Commenters objected to the requirement to retain lists of agents for five years. As indicated above, the requirement to update agent lists has been relaxed from quarterly updates to annual updates. Further, the Bank Secrecy Act rules generally require Bank Secrecy Act information to be retained for five years. Thus, the final rule continues to require agent lists to be maintained for five years.

One commenter recommended that FinCEN allow past lists to be substituted, in the discretion of the money services business, with any ''readily accessible'' records of the information no longer on the current list. The final rule does not adopt this recommendation. The revisions the final rule makes regarding the information on the agent list and the decrease from quarterly to annual revisions to the agent list will reduce the amount of information that has to be retained.

10. 31 CFR 103.41(d)(2)—Information Included on the List of Agents

The final rule provides that the following information must be included on the agent list—

(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, check sales, check cashing, currency exchange, and money transmitting) the agent provides,

(v) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commission) received from transaction of one or more businesses described in § 103.11(uu),

(vi) 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 name of the agent or of the money services business for which the agent acts or whose products it sells,

(vii) The year in which the agent first became an agent of the money services business, and

(viii) The number of branches or subagents the agent has.

As noted above, the final rule requires a money services business to include information about the months in the preceding 12-month period in which its agent's gross transaction amount exceeded $100,000. Again, the $100,000 need reflect only business done for the particular ''prinicipal''. Thus, money services business are not expected to obtain information about the gross transaction amount for business their agents may conduct for other principals or to disaggregate information about the gross transaction amount of any agent that conducts business for more than one principal and provides a principal with an aggregate figure reflecting business conducted for both principals. To allow time to intregrate information, the final rule provides that information about agent volume must be current within 45 days of the due date of the list.

For any agent that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000, the final rule does not require the following information to be included on the list: the year in which the agent first became an agent and the agent's branches or subagents. Such information must be made available upon the request of 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).

Several commenters asked that the final rule clarify that a money services business is not required to include on its agent list any agent that is a depository institution. The final rule expressly excepts banks from the definition of money services business. Thus, a money services business is not required to include on its agent list any agent that is a depository institution.

Another commenter suggested that only agents in the United States should be included on the agent list. FinCEN agrees that only agents doing business in the United States should be included on the agent list.

Commenters indicated that because of the way they currently maintain information about their agents and the need to devote computer programming resources to the Year 2000 problem in general, they would need more time than allowed by the Notice to prepare the initial list of their agents. The final rule does not require the preparation of the initial agent list to be completed until January 1, 2002. This change should provide sufficient time for money services businesses to prepare their agent lists.

VI. Other Pending Notices of Proposed Rulemaking Concerning Money Services Businesses

The second rule proposed on May 21, 1997 (the ''Proposed SAR Rule''), would require money transmitters, and issuers,

sellers, and redeemers of money orders and traveler's checks to report suspicious transactions to the Department of the Treasury. See 62 FR 27900–27909. Suspicious activity reporting by all classes of financial institutions covered by the Bank Secrecy Act is an essential part of the government's counter-money laundering efforts generally and its efforts to strengthen counter-money laundering controls at money services businesses in particular. The Department of the Treasury is committed to producing the most cost-effective reporting regime, for both law enforcement and the industries involved. To permit effective implementation, suspicious activity reporting by the relevant classes of money services businesses will not begin until the initial registration process is complete.

The Department also believes that it is critical to provide written guidance about what must be reported, at the time the final rule is issued. It intends to work with the money transmission, money order, and traveler's check industries to shape that guidance, independent of the rulemaking itself. That work should be assisted by the information gathered during initial stages of implementation of the registration rule.

The third rule proposed on May 21, 1997 (the ''Proposed Special CTR Rule''), would add a special currency transaction reporting requirement—and related customer verification requirements—for money transmitters involved in the transmission or other transfer of funds to persons outside the United States. See 62 FR 27909–27917. Action on the Proposed Special CTR Rule is being deferred, but it is not being withdrawn at this time.

VII. Executive Order 12866

The Department of the Treasury has determined that this final 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 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

IX. Regulatory Flexibility Act

FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities. FinCEN anticipates that the provisions of the rule generally excluding agents of money services businesses from registration will limit the impact of the rule on small businesses. Further, most of the recordkeeping and reporting requirements that would be imposed by the rule 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 addresses 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 rule 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 amount for which a business will cash a check, which may help (assuming the policy is observed) them determine whether they have exceeded the $1,000 floor in several of the definitions in the rule.

X. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1506–0013. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.41(d). This information is required to be provided pursuant to 31 U.S.C. 5330. This information will be used to locate agents of money services businesses to ensure that they are complying with the provisions of the Bank Secrecy Act. The information will also be used by law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average burden associated with the collection of information in this final rule is 130 hours per recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22187, and to OMB, Attention: Desk Officer for the Department of Treasury, FinCEN, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

List of Subjects in 31 CFR Part 103

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

Amendment

For the reasons set forth above in the preamble, 31 CFR part 103 is 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. Revising paragraph (c)(7),

b. Removing and reserving paragraph (i),

c. Revising paragraph (n)(3),

d. Removing paragraphs (n)(4), (n)(5), and (n)(10),

e. Redesignating paragraphs (n)(6), (n)(7), (n)(8), and (n)(9) as paragraphs (n)(4), (n)(5), (n)(6), and (n)(7) respectively,

f. In newly redesignated paragraphs (n)(5) and (n)(6), removing the period at the end of the paragraph and adding a semicolon in its place,

g. In newly redesignated paragraph (n)(7), removing ''.'' and adding a period in its place, and

h. Adding new paragraphs (uu) and (vv).

The revised and added paragraphs read as follows:

§ 103.11 Meaning of terms.

* * * * *

(c) Bank. * * *

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

* * * * *

(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 in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term ''money services business'' shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(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 $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, or, stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than $1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general.* Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting 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 one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstances; Limitation.* Whether a person ''engages as a business'' in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(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	New subparts and sections subpart E
103.41	103.51
103.42	103.52
103.43	103.53
103.44	103.54
103.45	103.55
103.46	103.56
103.47	103.57
103.48	103.58
103.49	103.59
103.50	103.60
103.51	103.61
103.52	103.62
103.53	103.63
103.54	103.64
Subpart E	Subpart F
103.61	103.71
103.62	103.72
103.63	103.73
103.64	103.74
103.65	103.75
103.66	103.76
103.67	103.77
Subpart F	Subpart G
103.70	103.80
103.71	103.81
103.72	103.82
103.73	103.83
103.74	103.84
103.75	103.85
103.76	103.86
103.77	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 agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see § 103.11(uu), is not required to register under this section, but a money services business that engages in activities described in § 103.11(uu) both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the

supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

(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 (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. 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 may be assigned to the business at a location in the United States 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. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. 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 on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. 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) *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 there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent 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. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. 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 January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. 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). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. 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*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

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

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

(C) The telephone number of the agent;

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

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 103.11(uu);

(F) 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 the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

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

(H) The number of branches or subagents the agent has.

(ii) *Special rules.* Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to

any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of 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).

(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 September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

§ 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.

6. Section 103.37 is amended by adding a new paragraph (c) to read as follows:

§ 103.37 Additional records to be made and retained by currency dealers or exchangers.

* * * * *

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

§ 103.56 [Amended]

7. 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]

8. 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]

9. 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]

10. 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]

11. 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]

12. 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]

13. 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]

14. 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]

15. 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]

16. 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]

17. 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: August 17, 1999.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–0720–AA49

Civilian Health and Medical Program of the Uniformed Service (CHAMPUS); Prosthetic Devices

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements section 702 of the National Defense Authorization Act for fiscal Year 1998 (Pub. L. 105–85), which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The act changes the existing limited provisions for prosthetic devices, expands coverage to include cost sharing of other prostheses, e.g.,