merely revises existing requirements imposed on States to reflect the statutory requirements of a new grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures: We have determined that this action is ''significant'' under Executive Order 12866 and under the Department of Transportation Regulatory Policies and Procedures because it is likely to result in significant economic impacts. A Final Economic Assessment (FEA) was prepared for the interim final rule and for a companion interim final rule that established the procedures for allocating funds under the grant program authorized by 23 U.S.C. 157. A copy of the FEA, describing the economic effects in detail, was placed in the docket for public inspection.

Following is a summary of the cost and benefit information for this rule. The total annual cost of conducting surveys following the procedures of this rule (if each State conducted one) is estimated to be $1.9 million. However, since many States have regularly conducted surveys prior to the promulgation of this rule, the actual survey costs attributable to this rule are estimated to be significantly less (consult the FEA for more detail). A State may be eligible for an allocation of funds during each of fiscal years 2000 through 2003 if it conducts a survey of seat belt use during each of calendar years 1998 through 2001, in accordance with the procedures under this rule. Allocations available to the States total $92,000,000 for fiscal year 2000, $102,000,000 for fiscal year 2001, and $112,000,000 for each of fiscal years 2002 and 2003. An allocation totaling $82,000,000 is available for fiscal year 1999, but that allocation is dependent on criteria other than the survey procedures required under this rule. Depending on the results of State surveys, some funds may remain unallocated, and will be allocated under other procedures that are unrelated to this action.

Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks): This rule is not subject to Executive Order 13045 because it does not concern an environmental, health, or safety risk that may have a disproportionate effect on children.

Regulatory Flexibility Act: In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have evaluated the effects of this action on small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 157 program, and they are not small entities.

Paperwork Reduction Act: This action, which describes surveys that States must conduct and submit to the agency in order to be considered for an allocation of funds under 23 U.S.C. 157, is considered to be an information collection requirement, as that term is defined by OMB. This information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The requirement has been approved through February 2, 2002; OMB Control No. 2127–0597.

National Environmental Policy Act: We have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

Unfunded Mandates Reform Act: The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold.

List of Subjects in 23 CFR Part 1340

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, the interim final rule adding 23 CFR part 1340, which was published at 63 FR 46389 on September 1, 1998, is adopted as a final rule with the following changes:

1. The authority citation for part 1340 continues to read as follows:

Authority: 23 U.S.C. 157; delegation of authority at 49 CFR 1.50.

2. In section 1340.4, paragraph (c) is revised to read as follows:

§ 1340.4 Population, demographic, and time/day requirements.

* * * * *

(c) Time of day and day of week. All daylight hours for all days of the week must be eligible for inclusion in the sample. Observation sites must be randomly assigned to the selected day-of-week/time-of-day time slots. If observation sites are grouped to reduce data collection burdens, a random process must be used to make the first assignment of a site within a group to an observational time period. Thereafter, assignment of other sites within the group to time periods may be made in a manner that promotes administrative efficiency and timely completion of the survey.

Issued on: March 8, 2000.

Rosalyn G. Millman,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 00–6134 Filed 3–13–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA20

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

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 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 amendments constitute a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering strategy of the Department of the Treasury.

DATES: *Effective Date:* April 13, 2000.

Applicability Date: See § 103.20(f) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director (Regulatory Policy), FinCEN,

(703) 905–3930; Eileen C. Mayer, Special Assistant to the Director and MSB Project Manager, FinCEN, (202) 354–6400; 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. Money Services Businesses Under the Bank Secrecy Act

The issuance of the final rule completes the second rulemaking, begun on May 21, 1997, relating to the application of the Bank Secrecy Act to money services businesses. *See* generally 62 FR 27890—27909 (the ''MSB Rulemakings''). In conducting the MSB Rulemakings, FinCEN and the Department of the Treasury have followed the mandate of Congress in the Money Laundering Suppression Act, Title IV of the Reigle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550, and have more generally responded to the need to update and more carefully to tailor the application of the Bank Secrecy Act to a significant part of the financial sector in the United States.[1]

The term ''money services business'' refers to five distinct 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 1997 study performed for FinCEN by Coopers & Lybrand LLP (now a part of PriceWaterhouseCoopers LLP), they comprised at the date of the study approximately 158,000[2] outlets or selling locations, and provided 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 fewer than ten 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.[3]

A far larger group of (on average) far smaller enterprises competes with the large firms in the first group, 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.[4]

Money services businesses primarily serve individuals and have grown to provide a set of financial products 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.

The publication of this final rule, concerning the reporting of suspicious transactions by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks, follows the publication, on August 20, 1999, of a final rule, 64 FR 45438–45453, that (i) contained a set of revised definitions of various financial services businesses (and, in the case of stored value, added a new definition of a product whose issuers, sellers, or redeemers would be so treated) and grouped those definitions under the heading ''money services businesses'' as part of the Bank Secrecy Act regulatory definition of ''financial institutions,'' (*see* new 31 CFR 103.11(c)(7), (n)(3), (uu), and (vv)), and (ii) adopted rules to implement the Bank Secrecy Act mandate, 31 U.S.C. 5330, that certain money services businesses register with the Department of the Treasury (*see* new 31 CFR 103.41).

Against this background, the reporting of suspicious transactions forms a second part of a coordinated approach to deal with abuse of money services businesses by criminals and to strengthen the application of general Bank Secrecy Act rules to this part of the nation's payments system. Thus, it may be helpful to recap briefly the terms of the final rule relating to the definition and registration of money services businesses under the Bank Secrecy Act, before turning specifically to suspicious transaction reporting under the terms of the final rule contained in this document.

A money services business includes, for purposes of the Bank Secrecy Act regulations, each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemer of traveler's checks, money orders, or stored value;
- Money transmitter;[5] and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).[6]

Generally, each money services business (other than the U.S. Postal

[1] 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).

[2] 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, for example, public transportation systems.

[3] 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 then accounted for $10 billion. Check cashing was the least concentrated of the business sectors; the two largest non-bank check cashing businesses made up approximately 20 per cent of the market, with a large number of competitors.

[4] Members of the second group may include, for example, travel agencies, courier services, convenience stores, and grocery or liquor stores.

[5] As set forth at 31 CFR 103.11(uu)(5), 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 the bona fide sale of securities) will generally not cause a person to be a money transmitter for purposes of the Bank Secrecy Act and its implementing regulations.

[6] Under the rule, persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than $1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the Bank Secrecy Act.

Service, a federal, state, or local government agency, an issuer, seller, or redeemer of stored value, or a person that is a money services business solely because it is an agent of another money services business) must register with the Department of the Treasury by December 31, 2001, and maintain a current list of its agents for examination beginning January 1, 2002.[7] As indicated, agents of money services businesses generally are not required separately to register or keep a list of their own (sub) agents, to the extent that they engage in money services business activities solely as agents of others.

Thus, the registration requirements are to be implemented over an almost two and one half year period, beginning on August 20, 1999. The suspicious transaction reporting obligations created by this rule do not become effective, as noted below, until the initial registration period is complete, that is, on January 1, 2002.

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

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

The National Money Laundering Strategy for 1999 (the ''1999 Strategy'') [8] commits the Department of the Treasury to ''assur[ing] that all types of financial institutions are subject to effective Bank Secrecy Act requirements,'' and, to that end, to extending the requirement to report suspicious transactions to money services businesses.[9] (Related action items are (i) the issuance by the Department of the Treasury of a final rule for the reporting of suspicious activity by casinos, and (ii) work by the Department of the Treasury with the Securities and Exchange Commission to propose rules for the reporting of suspicious activity by brokers and dealers in securities.) [10] As explained in the Strategy:

> The attention given to the prevention of money laundering through banks reflects the central role of banking institutions in the global payments system and the global economy. But non-bank financial institutions require attention as well. Money launderers will move their operations to institutions in which their chances of successful evasion of enforcement and regulatory efforts is the highest. Moreover, it is unfair to impose costs arising from counter-money laundering requirements only on some institutions competing to service customers' financial needs.[11]

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering (''FATF'') is that:

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

Financial Action Task Force Annual Report (June 28, 1996), [12] Annex 1 (Recommendation 15).[13] The recommendation applies equally to money services businesses as to banks.

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

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

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord*, *the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[14] All of these documents also recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services, as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report*, *supra*, Annex 1 (Recommendation 8).

III. Statutory Provisions

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

The provisions of 31 U.S.C. 5318(g) [15] deal with the reporting of suspicious

[7] The information to be included in the agent list is set forth in 31 CFR 103.41(d)(2).

[8] The 1999 Strategy is the first in a series of five annual reports called for by the Money Laundering and Financial Crimes Strategy Act of 1998, Pub. L. 105–310 (October 30, 1998), codified at 31 U.S.C. 5340 *et seq*. Each annual report is to be submitted to Congress by the President, working through the Secretary of the Treasury in consultation with the Attorney General.

[9] 1999 Strategy, Goal 2 (''Enhancing Regulatory and Cooperative Public-Private Efforts to Prevent Money Laundering''), Objective 2, at 35.

[10] *Id.*

[11] *Id.* at 35–36.

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

[13] The language adopted in 1996 revised FATF Recommendation 15 which, as adopted in 1990, had stated that financial institutions should be either ''*permitted or* required'' to make such reports. (Emphasis supplied.)

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

[15] That subsection was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-

Continued

transactions by financial institutions subject to the Bank Secrecy Act and with the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

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

Subsection (g)(2) provides further:

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

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

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

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [16] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' *Id.,* at subsection (g)(4)(B).

IV. Notice of Proposed Rulemaking

As indicated above, the final rule contained in this document is based on the notice of proposed rulemaking published, at 62 FR 27900—27909 (May 21, 1997) (the ''Notice''), as the second of the MSB Rulemakings. The Notice proposed to require money services businesses including money transmitters, businesses issuing, selling, or redeeming money orders, and businesses issuing, selling, or redeeming traveler's checks, to report suspicious transactions to the Department of the Treasury.

FinCEN held five public meetings in the summer of 1997 to provide interested parties with the opportunity to present their views with respect to the potential effects of the MSB Rulemakings, as well as to provide FinCEN with additional information and feedback useful in preparing final rules based on the MSB Rulemakings.[17] Transcripts of these meetings were then made available by FinCEN to requesting parties.

The comment period for the three MSB Rulemakings was originally due to end on August 19, 1997. The comment period was extended to September 30, 1997, by a notice, 62 FR 40779, published on July 30, 1997.

FinCEN received a total of 82 comment letters on the three notices of proposed rulemaking; 34 dealt in whole or in part with issues raised by the Notice. Of these, 12 were submitted by money services businesses and their affiliates, 5 by banks or bank holding companies, 8 by financial institution trade associations, 4 by law firms, 3 by agencies of the United States government, 1 by a credit union, and 1 by a private individual.

V. Summary of Comments and Revisions

A. Introduction

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

- The dollar threshold for reporting suspicious transactions has generally been raised from $500 to $2,000;
- The dollar threshold for reporting has been raised from $500 to $5,000 for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been previously sold or processed;
- The examples of particular potentially suspicious transactions have been removed from the text of the rule, and a discussion of examples of potentially suspicious transactions will be contained in a ''Guidance Document'' relating to suspicious transaction reporting by money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks that will be published in the near future;
- The language relating to the allocation of responsibility for reporting among various persons involved in the sale and completion of a money transmission or the sale and collection of a money order or traveler's check, has been revised; and
- Language has been added to clarify that only one report should be filed with respect to a reportable transaction, in order to avoid double reporting on the same transaction. It should be noted that filing of multiple reports by an issuer and its agent may be necessary if different facts are contained in the two reports.

B. Comments on the Notice—Overview and General Issues

Comments on the Notice concentrated on five matters: (i) the rationale for extending the suspicious activity reporting regime to money services businesses; (ii) the proposed $500 threshold for reporting suspicious transactions; (iii) the inclusion in the text of the rule of examples of potentially reportable transactions; (iv) the allocation of responsibility for reporting—and liability for non-reporting—among various persons involved in the sale and completion of a money transmission or the sale and collection of a money order or traveler's check; and (v) the exemption of certain businesses from the requirement to report suspicious transactions.

1. Application of Suspicious Transaction Reporting Requirement to Money Services Businesses

At least one commenter argued that requiring money services businesses to report suspicious transactions would be unduly burdensome to those businesses and would unjustifiably infringe upon the privacy interests of those persons conducting transactions with such businesses. A number of other commenters, although not challenging the need for suspicious activity reporting *per se,* asked FinCEN to consider carefully the appropriate scope of such reporting.

The importance of suspicious transaction reporting and its extension to all relevant financial institutions are generally discussed above. Money services businesses and other non-bank financial institutions have not in the past been given the same sort of

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Money Laundering Act; it was expanded by section 403 of the Money Laundering Suppression Act, to require designation of a single government recipient for reports of suspicious transactions.

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

[17] The 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. Discussion at the New York and Chicago meetings focused particularly on issues, including suspicious transaction reporting, relating to money transmitters and issuers, sellers, and redeemers of traveler's checks and money orders.

attention in the administration of the Bank Secrecy Act as banks.[18] The concentrated attention given to banks, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including money services businesses, in attempts to launder funds.[19] Some of their efforts have unfortunately been successful.[20]

At the same time, as indicated in the Notice, the implementation of a comprehensive counter-money laundering strategy for money services businesses raises significant issues not present in devising counter-money laundering strategies for banks. These issues arise largely because of unique structural factors affecting money services businesses. First, most money services businesses operate through the medium of independent enterprises that agree to serve as agents for the businesses' products or services; thus the public often does not deal directly with the businesses that issue or back the instruments, or actually perform the services, purchased. Second, and as a corollary, money services businesses permit performance of a specific function—the conversion of money into a money order or traveler's check, or the sending of money to a distant location—but generally, at present, neither offer nor are capable of maintaining continuing account relationships to the same extent as banks. Third, money services businesses are not subject generally to federal regulation and are regulated, in differing degrees, by some, but not all, states. Finally, and perhaps most important, the rules of the Bank Secrecy Act have not previously been tailored to reflect the particular operating realities, problems, and potential for abuse of money services businesses. For all of these reasons, the assumptions that underlay design of a suspicious transaction reporting system for banks do not apply with equal force to the money services businesses with which this final rule deals.

There can be little doubt that a properly framed suspicious transaction reporting system will produce, as the Bank Secrecy Act requires, reports that possess a ''high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.'' But Treasury recognizes that the compliance difficulties, and in some cases criminality, encountered in dealing with certain businesses in New York and elsewhere [21] cannot uncritically be taken as indicative of conditions throughout the industry. Balancing the costs and benefits of suspicious transaction reporting requires a realistic assessment of the condition of the industry as a whole and the risks of abuse of the products and services offered by the industry. The significant upward revision in the reporting thresholds contained in this rule, as well as other changes made to this rule and the rule relating to the definition and registration of MSBs published in August 1999 (discussed above) in response to comments on the MSB Rulemakings reflect the Department of the Treasury's judgment as to an appropriate balance.

The balance of the usefulness of reported information against the appropriate privacy interests of customers of money services businesses raises a second set of important concerns. The Treasury is keenly aware of the need to balance legitimate privacy concerns against the government's responsibility to combat aggressively the laundering of the proceeds of serious criminal activity. Several facts are noteworthy in this regard. First, both the statute authorizing the suspicious transaction reporting rule, and the rule itself (like its counterpart for banks), make clear that reported information is to be held and used by law enforcement and regulatory officials solely for permitted investigative and supervisory purposes and may not be shared with any person for any other reason. The levels of security and protection given to reported information and the secure computer systems in which it is held should serve to reassure the public. It is also relevant that the transaction reporting levels of $2,000 and $5,000 (up from a uniform $500 in the Notice) should exclude a substantial (if not overwhelming) majority of legitimate money services business transactions from the scope of suspicious transaction reporting altogether.

2. Dollar Threshold for Reporting

FinCEN received several comments concerning the establishment of the proper dollar threshold for reporting suspicious transactions. While at least one commenter suggested that FinCEN not establish any dollar threshold (assumedly to convey the message to the regulated industry that a transaction should be reported if it is at all indicative of a violation of law, regardless of the dollar amount involved), the majority of the commenters on this subject argued that the proposed $500 threshold was too low and urged that it be raised substantially. Several commenters argued that setting the threshold for reporting suspicious transactions at $500 would unduly burden the industry given the volume of perfectly legal transactions conducted at or near this dollar amount and would necessarily—given the volume of transactions involved—produce over-reporting. For example, some commenters pointed out that many people, particularly those in large metropolitan areas, frequently purchase money orders, well in excess of $500 on the same day, so that they can pay their monthly rent and utility bills.

In response to these comments, the final rule generally increases the dollar threshold for reporting suspicious transactions to $2,000. The increase in the reporting threshold to an amount four times the amount originally proposed should help alleviate the concern that the proposed $500 threshold would cause far too many legitimate transactions to be reported. The $2,000 threshold is set below the existing $3,000 identification and

[18] This document uses the term ''bank'' rather than ''depository institution.'' As defined in 31 CFR 103.11(c), the term ''bank'' includes both commercial banks and other classes of depository institutions.

[19] In crafting the Annunzio-Wylie Anti-Money Laundering and Money Laundering Suppression Acts to provide the Department of the Treasury with additional enforcement tools, the Congress expressed its view that such businesses are ''largely unregulated''—at least with respect to counter-money laundering issues—and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful activity. *See* section 408(a) of the Money Laundering Suppression Act (findings concerning ''registration of money transmitting businesses to promote effective law enforcement'').

[20] The Notice was issued against the back-drop of continuing enforcement operations directed at money transmitters in the New York City metropolitan area, based in part on geographic targeting orders (''GTOs''), issued under the Bank Secrecy Act. The GTOs required enhanced reporting and recordkeeping affecting remittances to Colombia and, later, the Dominican Republic. (The Dominican Republic GTO applied to money transmitters in Puerto Rico as well as to those in the New York metropolitan area). Those targeting orders and subsequent criminal enforcement activity have resulted in three of the covered remitters surrendering their licenses to the New York State Banking Department. One of these three remitters has been indicted for Title 31 violations. Two other remitters have ceased remitting funds to Colombia altogether. Another remitter has had its license revoked by the New York State Banking Department after pleading guilty to money laundering charges. Several years earlier, a Postal Inspection Service investigation of money orders in the late 1980s and early 1990s revealed a widespread money laundering scheme that resulted in the 1992 guilty plea of two individuals, and the 1993 forfeiture of approximately $2.1 million. *See* 62 FR 27903.

[21] *See* n. 20, *supra.*

recordkeeping requirements with respect to the purchase of money orders and traveler's checks, as well as the existing $3,000 recordkeeping requirement with respect to funds transfers conducted through money transmitters;[22] consequently, the $2,000 threshold brings within the scope of the reporting obligation those transactions that may appear to be structured to evade these other Bank Secrecy Act requirements.

Other commenters suggested that FinCEN establish a higher threshold for reporting suspicious transactions cleared or processed by issuers of traveler's checks or money orders. According to these commenters, the work, for example, of sorting and identifying sequential purchases is extensive and tedious, and compliance staffs would be faced with a burdensome obligation to comb records for small scale activity of this nature.

In response to these comments, the final rule establishes a $5,000 reporting threshold for issuers of money orders or traveler's checks to the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been previously sold or processed. Thus, for example, an issuer of money orders would be subject to a $5,000 reporting threshold with respect to transactions required to be reported that are identified at the clearance or processing stage. The $5,000 threshold is the same that applies to the nation's banks.

The final rule does not include a similar threshold increase for money transmissions. There are several reasons. First, money transmissions flow directly from selling agent to the offeror of the transmission service, and information about the transaction reaches the offeror before the transmission is completed; by way of contrast, patterns in which a particular money order or traveler's check may be involved will often not become apparent until after negotiation is completed (on the basis, for example, of negotiation information or clearance symbols). Second, law enforcement experience with certain segments of the money transmission industry indicates a potential for serious abuse at levels below $3,000 per transaction (in which, unfortunately, certain (relatively) smaller transmitters have been directly involved); given the relationship between transmitters and their agents, and the nature of the product involved, the $2,000 threshold is justified, and appropriate, at this time, for the money transmitter's central facilities, as well as its agents. (Of course, the lower threshold does not alter the fact that no reporting is required until the particular money services business in question ''knows, suspects, or has reason to suspect'' that the conditions for reporting are satisfied.)

3. Examples of Reportable Activity

The text of the Notice contained specific illustrations of the types of transactions that might require special attention and inquiry under the suspicious activity reporting obligations proposed by that document. FinCEN received a number of comments with respect to inclusion of examples of reportable activity in the final rule. Some commenters asked that FinCEN provide more specific examples and guidance in order to help money services businesses identify those transactions of interest to Treasury and avoid liability for failure to file a report in situations in which it is unclear whether a report is warranted. Other commenters argued that the inclusion of examples in the text of the rule itself could be misconstrued by the industry and misapplied by auditors and examiners. To balance the competing interests expressed by the comments—the need for guidance on the one hand and the need to avoid a rigid, automatic approach on the other—the examples do not appear in the text of the final rule, but FinCEN is working with interested parties, separately from the rulemaking itself, to prepare written guidance about particular patterns of suspicious activity of which money services businesses should be aware. As mentioned above, that guidance will be published in the near future.

4. Allocation of Liability for Non-reporting

A money services instrument (a money order or traveler's check) or service (a money transmission) is often offered to the public by a person other than the issuer of the instrument or the person providing the financial service. (The instrument or service may also be offered at branches of the issuer or service provider.) A recurrent theme raised by the comments is the allocation of liability between (or among) the two or more businesses generally involved in completing a money services business transaction.

Generally both the instrument issuer or service provider and the person offering the instrument or service for sale on behalf of such issuer or service provider will be treated as financial institutions for purposes of the Bank Secrecy Act. It has long been clear that an agent of a financial institution is itself a financial institution for purposes of the Bank Secrecy Act, *see* 31 CFR 103.11(n).

Two principles govern the allocation of liability for failure to satisfy the suspicious transaction reporting obligation created by the final rule with respect to a particular transaction or pattern of transactions. The first principle is that each money services business involved is responsible for filing a report with respect to a transaction based on the information reasonably available to it about the transactions it conducts and the customers with whom it deals. In the case of persons dealing directly with the public at the point of sale, that information may be different than that available to central issuer or processing facilities. At the same time, the relevant information, especially on the part of the issuer or processor, involves not only particular transactions but patterns (including overall volume) of transactions at particular points of sale.

The second principle is that the liability of an issuer or service provider for acts of persons at the point of sale of its financial products is based upon general legal principles governing allocation of liability as between principal and agent. As indicated in the final rule published in the **Federal Register** on August 20, 1999, relating to the definition and registration of money services businesses, 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 involved. Congress' use of the term ''agent'' in 31 U.S.C. 5330, indicates a similar understanding on its part.[23] (Of

[22] *See* 31 CFR 103.29 (requiring that financial institutions keep records and verify the identity of purchasers with respect to the cash sale of bank checks or drafts, cashiers checks, money orders, and traveler's checks in amounts between $3,000 and $10,000 inclusive); and 31 CFR 103.33(e) and (f) (requiring financial institutions to maintain records with respect to funds transfers in excess of $3,000).

[23] 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 upon 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. *See* 31 U.S.C. 5330(c)(2).

course, in cases in which the products or services are offered at branches of the issuers or providers, the individuals involved are likely servants, rather than non-servant agents, of the issuers or providers.) This understanding, which is embodied in revised paragraph (a)(4) of the final rule, is based on the present state of the law of agency as well as FinCEN's determination that Congress believed that agency principles were the proper starting point for analysis of legal relationships in this area. *See* 31 U.S.C. 5318(g) (including ''agents'' of financial institutions as persons required to report suspicious transactions); *cf.* 31 U.S.C. 5330.

5. Exemption From Obligation To File Suspicious Transaction Reports

At least one commenter suggested that the suspicious transaction reporting requirement contained in the final rule should not apply to money services businesses that are affiliates or subsidiaries of banks or bank holding companies because such businesses are already subject to the suspicious transaction reporting requirements imposed by the Federal Reserve Board on banks and their non-bank affiliates or subsidiaries.[24] *See* 12 CFR 208.62 and 12 CFR 225.4(f).

FinCEN believes that to the extent that non-bank affiliates or subsidiaries of banks or bank holding companies offer the same kinds of services offered by reporting money services businesses, those non-bank affiliates or subsidiaries should be subject to the same suspicious transaction reporting requirement as other money services businesses. Not applying the suspicious transaction reporting regime contained in the final rule to those non-bank affiliates or subsidiaries of banks would ignore the significant differences between banks and money services businesses. *See supra,* discussion at Part V.B.1.[25] The reporting threshold applicable to ''back-office'' functions of issuers of traveler's checks and money orders has been increased from $500 to $5,000, the same reporting threshold as that for depository institutions.

VI. Section-by-Section Analysis

A. 103.11(ii)—Transaction

The final rule amends the definition of ''transaction'' in the Bank Secrecy Act regulations, 31 CFR 103.11(ii), explicitly to include the purchase of any money order and the payment or order for any money remittance or transfer. No similar amendment is necessary in the case of traveler's checks, which are already defined clearly as monetary instruments in that definition.

B. 103.15—Determination by the Secretary

As stated in the Notice, § 103.20 is redesignated as § 103.15 in order to make room in part 103 for the rule and to create space for future changes to the Bank Secrecy Act regulations.

C. 103.18—Reports by Banks of Suspicious Transactions

As stated in the Notice, § 103.21 is redesignated as § 103.18 to make room in subpart B, ''Reports Required to be Made,'' for the suspicious transaction reporting requirement in this final rule.

D. 103.20(a)—General

1. Reporting Money Services Businesses

Paragraph 103.20(a)(1) obligates issuers of traveler's checks or money orders, sellers or redeemers (for monetary value) of traveler's checks or money orders, money transmitters, and the U.S. Postal Service to report suspicious transactions as required by § 103.20. The paragraph also permits, but does not require, the voluntary filing of a report by a money services business, in situations in which mandatory reporting is not required.[26]

2. Standard for Mandatory Reporting

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

Specific examples of reportable suspicious activity have been removed from the text of the rule. However it remains important that each money services business—whether it issues an instrument or performs a transmission function as principal, or whether it is an agent selling an instrument or service on behalf of another—be able to recognize the sorts of transactions that may require additional scrutiny and at the same time understand that not all such transactions are reportable if a reasonable explanation for the circumstances of a particular transaction arises upon such examination. It is a signal characteristic of money launderers that they seek to do for illegitimate purposes what others do for legitimate purposes.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transactions or pattern of transactions in question. Different fact patterns will require different types of judgments. In some cases, the circumstances of the transaction or pattern of transactions may clearly indicate the need to report. For example, an individual's seeking regularly to purchase or redeem instruments in bulk, or to purchase transmissions to multiple overseas locations, all to the same named beneficiary should, in the absence of specific qualifying circumstances, place the money services business on notice that a suspicious transaction is underway. Similarly, the fact that a customer (i) refuses to provide information necessary for the money services business to make reports or keep records required by 31 CFR 103 or other regulations, (ii) provides information that a money services business determines to be false, or (iii) seeks to change or cancel the transaction *after* such person is informed of currency transaction reporting or information verification or

[24] FinCEN also received comments requesting that the requirement to report suspicious transactions not apply to clearing houses with respect to funds transfers and futures commodities merchants. Those businesses have, for the most part, been carved out from the definition of a money services business, *see* 31 CFR 103.11(uu) and 64 FR 45438 at 45451, and are therefore not generally subject to the reporting requirement described in the final rule contained in this document.

[25] *See also* 64 FR 45446 (May 21, 1997), which explains that entities in an affiliated group must be analyzed separately to determine whether each such entity separately falls within the definition of money services business based upon that entity's operation.

[26] Check cashers and currency exchangers are not generally subject to the suspicious transaction reporting requirement contained in this document. Because the operations of those businesses generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services. However, check cashing and currency exchange services are subject to the suspicious activity rules to the extent they redeem either money orders or traveler's checks for currency (U.S. or other) or other monetary or negotiable instruments and hence qualify as redeemers of money orders or traveler's checks, or to the extent that check cashers or currency exchangers also offer money transmission, money orders, or traveler's check products. FinCEN will continue to examine issues relating to the appropriate extension of suspicious transaction reporting to the full range of financial institutions subject to the Bank Secrecy Act.

recordkeeping requirements relevant to the transaction or of the money services business' intent to file a currency transaction report with respect to the transaction, would all indicate that a suspicious activity report should be filed. (Of course, as the rule makes clear, it is unlawful for the money services business to notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.)

At least one commenter questioned whether a customer's suspected status as an undocumented foreign national in the United States would, by itself, require the filing of a suspicious activity report. Paragraph (a)(2)(i) of the rule requires a suspicious activity report to be filed where the reporting money services business suspects or has reason to suspect that the customer's funds are ''derived from illegal activity.'' In light of this language, the commenter requested that FinCEN clarify whether the funds with which a suspected undocumented foreign national conducts a transaction should be deemed as having been derived from illegal activity (*i.e.,* illegal employment in the United States).

If a reporting money services business suspects that one of its customers is an undocumented foreign national, it would be inappropriate to infer, without any additional facts, that any funds possessed by that customer necessarily derive from illegal employment in the United States. For example, the customer may have obtained the funds as a gift. Moreover, even if the money services business knows or suspects that the customer's funds were generated from the customer's employment, employment in the United States as an undocumented foreign national is not necessarily a violation of law.

For these reasons, FinCEN believes that a money services business would not have an obligation to file a suspicious activity report simply because a customer is an undocumented foreign national. This conclusion is consistent with the discussions FinCEN's Office of Chief Counsel has had regarding this matter with its counterpart at the Immigration and Naturalization Service of the U.S. Department of Justice.

3. Dollar Threshold for Reporting

Paragraphs 103.20(a)(2) and (3) establish the applicable dollar thresholds for reporting suspicious transactions. In the Notice, FinCEN proposed a single $500 dollar threshold for reporting suspicious transactions. The final rule adopts two different dollar thresholds, both markedly higher than the proposed $500 threshold.

The first threshold, of $2,000, as set forth in paragraph 103.20(a)(2), would apply generally to each transaction (other than one described in paragraph 103.20(a)(3)) conducted or attempted by, at, or through a money services business or its agent. The second threshold, of $5,000, would apply to transactions identified by issuers of money orders or traveler's checks from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed.

4. Obligation to Report Suspicious Transactions

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by ''any director, officer, employee, or agent of any financial institution.'' The authorization parallels the definition of financial institution itself in 31 U.S.C. 5312(a)(2) and (b), and 31 CFR 103.11(n). The operating realities of money services businesses place special importance on the relationships between the operators of the money services businesses involved and the otherwise unrelated businesses that, in many cases, serve as agents of the former to sell the financial products involved, in the case of money orders or traveler's checks, or that serve, in the case of money remissions, as receivers of the funds to be transmitted. One of those operating realities is that the information of a money services business that deals directly with a customer may differ from that information directly available to an issuer or service provider.

Paragraph (a)(4) places responsibility for reporting a suspicious transaction on each money services business involved in the transaction. As noted above, it is important to recognize that an agent of a money services business is itself a money services business for this purpose (whether or not it is required to register). Thus, an agent of a money transmitter may (indeed, usually will) itself be a money services business for purposes of the reporting rule (although not necessarily for purposes of the registration rule).

At least one commenter asked that FinCEN clarify that multiple suspicious transaction reports need not be filed by both a money services business and its agent with respect to the same reportable transaction. It should be noted that, with respect to reportable transactions conducted by the agent of a money services business, the final rule continues to place a dual obligation to file a suspicious transaction report on both a money services business and its agent as contemplated by 31 U.S.C. 5318(g)(1). However, only one report should be filed with FinCEN to avoid double-reporting on the same transaction. This notion is expressed by new language added to paragraph (a)(4) emphasizing that the dual obligation imposed does not mandate dual filing of reports with respect to the same transaction or pattern of transactions (although the filing of multiple reports may be necessary if different facts are contained in the two reports).

5. Exclusion of Stored Value

As noted in the preamble to the final rule on registration of money services businesses, Treasury believes that a business that issues or facilitates the digital transfer of electronically-stored value [27] is a money services business covered by the Bank Secrecy Act.[28] However, it is not appropriate, given the infancy of the use of stored value products in the United States, to finalize a rule specifically dealing with suspicious transaction reporting by non-banks with respect to stored value products at this time. Thus, paragraph (a)(5) continues to exempt transactions solely involving such products from the operation of the rule at present. Many commenters expressed their agreement with this approach.

E. 103.20(b)—Filing Procedures

Paragraph (b) continues to set forth the filing procedures to be followed by money services businesses making reports of suspicious transactions. Within 30 days after a money services business becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report-MSB [29] (''SAR–MSB'') and filing it in a central location, to be determined by FinCEN. The SAR–MSB will resemble the suspicious activity reporting form now used by banks to report suspicious transactions; a draft

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

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

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

form will be made available for comment when ready.

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

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

F. 103.20(c)—Retention of Records

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

G. 103.20(d)—Confidentiality of Reports; Limitation of Liability

Paragraph 103.20(d) continues to incorporate the terms of 31 U.S.C. 5318(g)(2) and (g)(3). Thus, this paragraph specifically prohibits persons filing reports in compliance with the final rule from disclosing, except to law enforcement and regulatory agencies, that a report has been filed or providing any information that would disclose that a report has been prepared or filed. The paragraph also restates the broad protection from liability for making reports of suspicious transactions (whether such reports are required by the final rule or made voluntarily), and for failure to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence. FinCEN received no substantive comments concerning this paragraph.

H. 103.20(e)—Compliance

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

I. 103.20(f)—Effective Date

At least one commenter asked that FinCEN postpone the effective date to allow the industry the necessary time to develop and implement adequate compliance programs. In response, the final rule provides that the new suspicious activity reporting rules are effective for transactions occurring after December 31, 2001.

VII. Executive Order 12866

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

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this 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 regulation will not have a significant economic impact on a substantial number of small entities. The average money order sold is approximately $102, and the average money transmission is approximately $240 within the United States and approximately $320 outside the United States. Both of these amounts are substantially below the general $2,000 threshold that triggers reporting under the rule. Thus, FinCEN believes that the threshold has been set at a level that will avoid a significant economic burden on small entities.

X. Paperwork Reduction Act Notices

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 1506–0015. 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 103.20(c). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal 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 recordkeeping burden associated with the collection of information in this final rule is 20 minutes per recordkeeper (based on the filing an estimated 10,000 forms with an average recordkeeping burden of 20 minutes with respect to each form).

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 22182, and to OMB, Attention: Desk Officer for the Department of Treasury, FinCEN, Office of Information and Regulatory Affairs, Washington, DC 20503.

List of Subjects in 31 CFR Part 103

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

Amendments to the Regulations

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(ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

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

* * * * *

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

§ 103.20 Reports by money services businesses of suspicious transactions.

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

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least $2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

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

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, 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; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

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

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

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

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

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

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

makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) *Effective date.* This section applies to transactions occurring after December 31, 2001.

Dated: March 7, 2000.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 00–5919 Filed 3–8–00; 3:25 pm]

BILLING CODE 4820–03–P

DEPARTMENT OF DEFENSE
DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ87

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1999–2000 academic year should be increased by 4% over the rates payable for the 1998–99 academic year. The regulations dealing with these rates are amended accordingly.

DATES: *Effective Date:* This rule is effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 4% in the 1998–99 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4% increase in the rates payable in the 1999–2000 academic year. The changes to § 21.5820 include adding provisions for adjustments to compensate for rounding, which were not applicable last year because last year the resulting numerical values did not involve rounding. This final rule also makes nonsubstantive changes for the purpose of clarification.

Administrative Procedure Act

The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification. Accordingly, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: March 1, 2000.

Curtis B. Taylor,

Colonel, U.S. Army, Principle Director, (Military Personnel Policy) Department of Defense.

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H is revised to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

2. Section 21.5820 is amended by:

A. In paragraph (b)(1), removing ''1998–99'' and adding, in its place, ''1999–2000''; and by removing ''$3,258'' and adding, in its place, ''$3,388''.

B. In the introductory text of paragraph (b)(2)(ii), removing ''1998–99'' and adding, in its place, ''1999–2000''.

C. In paragraph (b)(2)(ii)(A), removing ''$362'' and adding, in its place, ''$376.44''; and by removing ''$181'' and adding, in its place, ''$188.22''.

D. In paragraph (b)(2)(ii)(B), removing ''$12.07'' and adding, in its place, ''$12.55''; and by removing ''$6.03'' and adding, in its place, ''$6.27''.

E. In the introductory text of paragraph (b)(3)(ii), removing ''1998–99'' and adding, in its place, ''1999–2000''.

F. In paragraph (b)(3)(ii)(A), removing ''$362'' and adding, in its place, ''$376.44''; and by removing ''$181'' and adding, in its place, ''$188.22''.

G. In paragraph (b)(3)(ii)(B), removing ''$12.07'' and adding, in its place, ''$12.55''; and by removing ''$6.03'' and adding, in its place, ''$6.27''.

H. Revising paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C).

I. Adding an authority citation at the end of paragraph (b).