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FEDERAL RESERVE SYSTEM
DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA17

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

AGENCY: **Financial Crimes Enforcement Network**, Treasury.

ACTION: Final rule.

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

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

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

EFFECTIVE DATE: May 28, 1996.

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

SUPPLEMENTARY INFORMATION:

I. Background

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

[[Page 14387]]
Annunzio-Wylie, codified at 31 U.S.C. 5318 (g) and (h), authorizes the Secretary to require **financial** institutions to carry out anti-money laundering programs.

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

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

The most significant effect of the difference in the definitions was the treatment of a U.S. **financial** institution that receives a transmittal order from a foreign **financial** institution. Under the definitions in the original joint rule, the foreign **financial** institution sending the transmittal order would be the transmittor and the U.S. **financial** institution would be the transmittor's **financial** institution. The U.S. **financial** institution would be subject to the

travel rule requirements imposed on a transmittor's **financial** institution, and compliance might require significant changes in standard business practices.

II. Proposed Amendments

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

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

III. Comments

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

IV. New Section 103.33(g)(3)

As noted above, there is one further change to the travel rule that was not a part of the proposed rule, new paragraph (g)(3). This change responds to a significant compliance issue that the banking industry did not identify until after the comment period: until all banks convert to the expanded Fedwire format, there will not always be enough space to include in a transmittal order all of the information required by paragraphs (g)(1) (i), (ii), and (vii) and (g)(2) (i), (ii), and (vii).<SUP>1 Banking industry representatives have assured FinCEN that the expanded Fedwire format, scheduled to be adopted industry-wide by January 1, 1998, will allow all information required by paragraph (g) to be sent and received. If the travel rule were finalized as proposed, banks that are in the process of adopting the expanded Fedwire format would have to expend considerable resources to create an interim system to accommodate all of the information required by paragraph 103.33(g)

until January 1, 1998. Accordingly, new paragraph (g)(3) provides that, until it has converted to the new Fedwire format, a **financial** institution will be deemed to be in compliance with paragraph (g), even if some information required to be included on a transmittal order is not so included, provided that, when either requested by a corresponding **financial** institution to assist in retrieval of information in connection with **Bank Secrecy Act** compliance efforts or in response to a law **enforcement** request, or when presented itself with a judicial order, subpoena or administrative summons requesting any information required by paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), or (g)(2)(vii), the **financial** institution retrieves such information within a reasonable time.

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

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

V. Effect on Law **Enforcement**; Ongoing Review

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

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

As stated in the joint and travel rules when they were adopted in January 1995, Treasury will monitor the effectiveness of the rules to

assess their usefulness to law **enforcement** and their effect on the cost and efficiency of the payments system. Within 36 months of May 28, 1996, Treasury will review the effectiveness of the travel rule and will consider making any appropriate modifications.

VI. Executive Order 12866

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

VII. Regulatory Flexibility **Act**

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

VIII. Paperwork Reduction **Act**

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

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

IX. Unfunded Mandates Reform **Act** of 1995

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

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers,

Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law **enforcement**, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

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

PART 103--**FINANCIAL** RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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

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

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

Sec. 103.33 Records to be made and retained by **financial** institutions.

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

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

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

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

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

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

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

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

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

[[Page 14389]]

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

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

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

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Dated: March 26, 1996.

Stanley E. Morris,

Director, **Financial Crimes Enforcement Network**.

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