Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Northeast Diary Compact Commission proposes to extend and to amend generally the current Compact Over-order Price Regulation, 7 CFR Chapter XIII, for the period January 1 through December 31, 1998. The current price regulation is in effect through December 31, 1997, applying to all Class I, fluid milk route distributions in the territorial region of the six New England states. The price regulation establishes a floor price of $16.94, which represents the monthly Federal Milk Market Order #1 Class I, Zone 1, price and the resulting compact ''over-order'' amount. The Commission submits the terms and substance of the Final rule which established the current price regulation as its proposed rule for purposes of public review and comment. (See 62 FR 29626, May 30, 1997.) A public hearing to take testimony and receive documentary evidence relevant to extending and amending generally the Compact Over-order Price Regulation will be held.

DATES: Written comments and exhibits may be submitted until 5:00 pm, October 8, 1997. The hearing will be held on September 24, 1997 at 10:00 a.m.

ADDRESSES: Send comments to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601. The hearing will be held at the Bektash Shrine Club Hall, 189 Pembroke Road, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission (the ''Commission'') was established under authority of the Northeast Interstate Diary Compact (the ''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–247; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7156. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized the implementation of the Compact.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission conducted an informal rulemaking proceeding to decide whether to adopt a Compact Over-order Price Regulation. See 62 FR 23032 (Apr. 28, 1997) (proposed rule). The Commission subsequently adopted a Compact Over-order Price Regulation effective July 1, 1997. See 62 FR 29696 (May 30, 1997). Pursuant to Section 12 and 13 of the Compact, the Commission conducted a producer referendum, which was approved. See 62 FR 29646 (May 30, 1997).

Pursuant to Article V, Section 11, the Commission is proposing to extend and amend generally the current Compact Over-order Price Regulation for a one year period beyond its current effective date of December 31, 1997. The current Compact Over-order Price Regulation is codified at 7 CFR §§ 1300 through 1308.1 The Commission submits the terms and substance of the final rule which established the current price regulation as its proposed rule for purposes of public review and comments. (See 62 FR 29626, May 30, 1997.)

II. Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing on:

Wednesday, September 24, 1997 at 10:00 am at the Bektash Shrine Club Hall, 189 Pembroke Road, Concord, New Hampshire.

III. Request for Written Comments

Pursuant to Article VI(D) of the Commission's Bylaws, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments and exhibits to the Commission. Comments and exhibits may be submitted at any time until 5:00 pm, October 8, 1997. Comments and exhibits will be made part of the record of the rulemaking proceeding if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 pm, October 8, 1997 deadline but the original copies must then be sent by ordinary mail.

Comments and exhibits should be sent to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601, (802) 229–2028 (fax).

For more information, contact a New England state department of agriculture or the Compact Commission offices—(802) 229–1941.

Dated September 2, 1997.

By authority of the Commission.

For the Commission.

Daniel Smith,

Executive Director.

[FR Doc. 97–23575 Filed 9–5–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA12

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—Exemptions From the Requirement to Report Transactions in Currency—Phase II

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is (i) proposing rules to further reform and

simplify the process by which banks may exempt transactions of retail and other businesses from the requirement to report transactions in currency in excess of $10,000, and (ii) restating generally, to reflect such changes, the text of the Bank Secrecy Act rule requiring the reporting by financial institutions of transactions in currency. The proposed changes would constitute a further step to achieve the reduction set by the Money Laundering Suppression Act of 1994 in the number of currency transaction reports required to be filed annually by depository institutions, as part of a continuing program to reduce unnecessary burdens imposed upon financial institutions by the Bank Secrecy Act and increase the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before December 8, 1997.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182.

Attention: NPRM—CTR Exemptions, Phase II. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption in the body of the text, ''Attention: NPRM—CTR Exemptions, Phase II.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the FinCEN reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3819; Charles Klingman, Financial Institutions Policy Specialist, FinCEN, (703) 905–3602; Stephen R. Kroll, Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, and Albert R. Zarate, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document contains a proposed rule that would amend 31 CFR 103.22 to (i) reform and simplify the process by which depository institutions [1] may exempt transactions involving retail and other businesses from the requirement to report transactions in currency in excess of $10,000, and (ii) restate generally, to reflect the proposed changes to the administrative exemption system, the general requirement for financial institutions to report transactions in currency. The proposed changes are designed to implement the terms of 31 U.S.C. 5313(e) (and related provisions of 31 U.S.C. 5313 (f) and (g)), which were added to the Bank Secrecy Act by section 402(a) of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994).

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Pub. L. 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 reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coins and currency transactions.

Four new provisions (31 U.S.C. 5313 (d) through (g)) concerning exemptions were added to 31 U.S.C. 5313 by the Money Laundering Suppression Act. 31 U.S.C. 5313(d) provides that the Secretary of the Treasury shall exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and four categories of bank customer. The requirements of that subsection are reflected in the terms of 31 CFR 103.22(h), which became effective, as an interim rule (the ''Interim Rule''), with respect to transactions in currency after April 30, 1996, *see* 61 FR 18204 (April 24, 1996), and is being published as a final rule elsewhere in today's edition of the **Federal Register**. [2]

31 U.S.C. 5313(e) authorizes the Secretary of the Treasury to exempt a depository institution from the requirement to report transactions in currency between a depository institution and a qualified business customer of the institution. Subsection (e)(2) defines a ''qualified business customer'' as a business which

> (A) Maintains a transaction account (as defined in section 19(b)(1)(C) of the Act) at the depository institution;
>
> (B) Frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and
>
> (C) Meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

Subsection (e)(3) provides that the Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under subsection (e)(1).

Subsection (e)(4)(A) provides that the Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection. Under subsection (e)(4)(B), those guidelines may include a description of the type of businesses for which no exemption will be granted under this subsection.

Subsection (e)(5) provides that the Secretary of the Treasury shall prescribe regulations requiring each depository institution to

> (A) Review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and
>
> (B) Upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

Subsection (e)(6) states that during the two-year period beginning on the date of enactment of the Money Laundering Suppression Act, the discretionary

[1] As explained below, the text of the rule itself uses the term ''bank,'' which, as defined in 31 CFR 103.11(c), includes both banks and other classes of depository institutions.

[2] Although the Interim Rule is today being amended and reissued as a final rule, it is referred to in this document as the Interim Rule for ease of reference.

exemption rules shall be applied by the Secretary of the Treasury on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection. Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either 31 U.S.C. 5313(d) or (e) and provides for the coordination of any exemption with other Bank Secrecy Act provisions, especially those relating to the reporting of suspicious transactions. New subsection (g) defines ''depository institution'' for purposes of the new exemption provisions.

Section 402(b) of the Money Laundering Suppression Act states simply that in administering the new statutory exemption provisions:

> the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 * * * by at least 30 percent of the number filed during the year preceding [September 23, 1994,] the date of enactment of [the Money Laundering Suppression Act].

B. Shortcomings of the Administrative Exemption System

The enactment of 31 U.S.C. 5313 (d) through (g) reflects a Congressional intention to ''reform * * * the procedures for exempting transactions between depository institutions and their customers.'' *See* H.R. Rep. 103–652, 103d Cong., 2d Sess. 186 (August 2, 1994). The administrative exemption procedures at which the statutory changes are directed are found in 31 CFR 103.22 (b)(2) and (c) through (f); those procedures have not succeeded in eliminating the reporting of routine currency transactions by businesses.

Several reasons have been given for this lack of success. The first is the retention by banks of liability for making incorrect exemption determinations. The second is the complexity of the administrative exemption procedures (which require banks, for example, to assign dollar limits to each exemption based on the amounts of currency projected to be needed for the customary conduct of the exempt customer's lawful business, and which increase the risk of liability for the bank). Finally, advances in technology have made it less costly for some banks to report all currency transactions rather than to incur the administrative costs (and risks) of exempting customers and then administering the terms of particular exemptions properly.

The problems created by the administrative exemption system also include that system's failure to provide the Treasury with information needed for thoughtful administration of the Bank Secrecy Act. Although banks are required to maintain a centralized list of exempt customers and to make that list available upon request, *see* 31 CFR 103.22 (f) and (g), there is no way short of a bank-by-bank request for lists (with the time and cost such a request would entail both for banks and government) for Treasury to learn the extent to which routine transactions are effectively screened out of the system or (for that matter) the extent to which exemptions have been granted in situations in which they are not justified.

In crafting the 1994 statutory provisions relating to mandatory and discretionary exemptions, Congress sought to alter the burden of liability and uncertainty that the administrative exemption system created. The statutory provisions embraced several categories of transactions that were either already partially exempt or plainly eligible for exemption under the administrative exemption system.[3]

C. Objectives of Proposed Changes

The changes proposed in this document represent the next step in the use of section 402 of the Money Laundering Suppression Act to transform the Bank Secrecy Act provisions relating to currency transaction reporting. The goal of FinCEN's work in this area, like the Congress' goal in shaping the Money Laundering Suppression Act provisions on exemptions, is to reduce the cost of compliance with, and to further a fundamental restructuring of, the Bank Secrecy Act. The restructuring emphasizes cost-effective collection of only that information that is likely to benefit law enforcement and regulatory authorities. *See* 61 FR 18205.

Because this notice builds upon the provisions of the Interim Rule, its scope and intention must be considered against the background of the Interim Rule, whose terms are now found in 31 CFR 103.22(h). That rule creates a streamlined exemption procedure eliminating from reporting transactions in currency between banks and (i) other banks operating in the United States; (ii) government departments and agencies, and entities that exercise governmental authority; (iii) companies listed on certain national stock exchanges; and (iv) certain subsidiaries of those listed companies. As FinCEN explained when the Interim Rule was published, the currency transactions of bank customers in those categories are either required to be exempt from reporting by statute, were already effectively exempt from reporting under the terms of 31 CFR 103 or, in the case of listed companies and certain of their subsidiaries, are enterprises whose routine currency transaction reports are of little or no value to law enforcement officials.

The task of this second stage reform of the exemption system is to provide a similar blanket relief, to the extent possible, to those categories of business enterprise of all sizes that cannot easily be described in a single phrase and that are not subject to the sorts of regulatory and market place oversight that shape the environment of public companies. In accomplishing that task, FinCEN has attempted to pare down the existing exemption system, while still providing federal authorities with the tools to monitor and prevent abuse of the reformed exemption system.

III. Specific Provisions

A. Overview

Eliminating the administrative exemption system in section 103.22 requires the deletion of the bulk of that section, paragraphs (b)–(g). Because that is so, and because the structure and many of the rules of section 103.22(h) also apply to the proposed reformed exemption system for other customers, the proposed rule completely restates section 103.22 so that its terms may be presented clearly. With two exceptions—the treatment of the Postal Service and the treatment of recordkeeping facilities of a financial institution[4]—the restatement does not involve any change to, or an intention to open for comment, the terms of section 103.22 that do not relate to exemptions from the requirement to report transactions in currency. Certain provisions that have not been changed

[3] Thus, as noted below, transactions in currency between domestic banks are already exempt from reporting, *see* 31 CFR 103.22(b)(1)(ii), and ''[d]eposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities'' are one of the categories of transactions specifically described as eligible for exemption by banks. *See* 31 CFR 103.22(b)(2)(iii).

[4] Language has been added in proposed new paragraph (b), explicitly stating that the general obligation to report transactions in currency in excess of $10,000 does not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products from the Postal Service. Language also has been added in proposed new paragraph (c), providing that a financial institution includes all of its domestic branch offices, and any recordkeeping facility for those offices, for purposes of the requirement to report transactions in currency.

have been moved for housekeeping purposes.

As discussed in more detail below, the changes proposed to be made by the rule are:

- Deletion of present paragraphs (b)–(g) of section 103.22;
- Redesignation of paragraph (h) of section 103.22 (the Interim Rule) as proposed new paragraph (d) in section 103.22;
- Addition of two new classes of ''exempt persons,'' namely, non-listed businesses and payroll customers, in proposed new paragraphs (d)(2)(vi) and (vii) of section 103.22;
- Addition of designation and annual filing rules for the exemption of non-listed companies and payroll customers, in proposed new paragraphs (d)(3)(iii) and (d)(4)(ii) of section 103.22;
- Addition of operating rules governing the exemption of non-listed businesses and payroll customers, in proposed new paragraphs (d)(5)(v)–(ix) of section 103.22; and
- Certain conforming changes to the structure of proposed new paragraph (d) (old section 103.22(h)).

For convenience, the proposed redistribution of the provisions of present section 103.22 may be summarized as follows:

DISTRIBUTION TABLE

Present 103.22	Proposed 103.22
No provision	103.22(a).
103.22(a)(1):	
Sentences 1–2	103.22(b)(1).
Sentences 3–4	103.22(c)(2).
103.22(a)(2)(i)–(ii)	103.22(b)(2).
103.22(a)(2)(iii)	103.22(c)(3).
103.22(a)(3)	Deleted in part; 103.22(c)(2).
103.22(a)(4)	103.22(c)(1).
103.22(b)	Deleted, except 103.22(b)(1)(iii) and 103.22(b)(2)(iv).
103.22(b)(1)(iii)	103.22(d)(1).
103.22(b)(2)(iv)	103.22(d)(2)(vii).
103.22(c)	Deleted.
103.22(d)	Deleted.
103.22(e)	Deleted.
103.22(f)	Deleted.
103.22(g)	Deleted.
103.22(h)(1)[5]	103.22(d)(1).
103.22(h)(2) (i)–(iii)	103.22(d)(2) (i)–(iii).
103.22(h)(2) (iv), (vi)	103.22(d)(2)(iv).
103.22(h)(2)(v)	103.22(d)(2)(v).
No provision	103.22(d)(2)(vi).
No provision	103.22(d)(2)(vii).
103.22(h)(3) (i)–(ii)	103.22(d)(3)(i).
103.22(h)(3)(iii)	103.22(d)(3)(ii).
103.22(h)(3)(iv)	103.22(d)(3)(i).
No provision	103.22(d)(3)(iii).
No provision	103.22(d)(4) (i)–(ii).
103.22(h)(4) (i)–(iv)	103.22(d)(5) (i)–(iv).
103.22(h)(4)(v)	103.22(d)(5)(x).
No provision	103.22(d)(5) (v)–(ix).
103.22(h)(5)	103.22(d)(6).
103.22(h)(6)(i)	103.22(d)(7)(i).
103.22(h)(6)(ii)	103.22(d)(7)(iii).
103.22(h)(6)(iii)	103.22(d)(7)(iv).
No provision	103.22(d)(7)(ii).
103.22(h)(7)	103.22(d)(8).
103.22(h)(8)	103.22(d)(9).
103.22(h)(9)	Deleted.

B. 103.22(a) General

Paragraph (a) describes generally the scope and organization of proposed restated section 103.22. The reporting obligations of financial institutions are restated in proposed paragraph (b). The rules covering aggregation for reporting purposes—i.e., rules relating to multiple branches of financial institutions and multiple transactions conducted by their customers—previously found in the third and fourth sentences of section 103.22(a)(1) and section 103.22(a)(4), are restated in proposed paragraph (c). The rules governing exemption by banks of transactions with certain customers, as noted, now appear in a single paragraph (d).

C. 103.22(b) Filing Obligations

Proposed paragraph (b) contains the blanket statement of the obligation of financial institutions to report transactions in currency in excess of $10,000. As is the case in the present rule, a separate statement is made of the obligations of casinos.

The only change in reporting obligations that appears in proposed paragraph (b) relates to the Postal Service. The proposed paragraph makes it clear that the general obligation to report transactions in currency in excess of $10,000 does not apply to payments or transfers made solely in connection

[5] All references to paragraph (h) of section 103.22 are to the final rule that appears elsewhere in today's edition of the **Federal Register**.

with the purchase of postage or philatelic products from the Postal Service; the change reflects a proposed amendment to the treatment of the Postal Service, for purposes of the Bank Secrecy Act, that was published as part of a set of proposed rules relating to money services businesses (''MSBs) on May 21, 1997. *See* 62 FR 27890.

Comments are specifically requested on the interplay between the ineligible businesses listed in proposed paragraph (d)(5)(viii) and the proposed definitions of MSBs set forth in the proposed rules that were published in the **Federal Register** on May 21, 1997. FinCEN recognizes that the application of the two sets of proposed rules (exemptions and MSBs) may present special difficulties in the case of, for example, grocery stores that also sell money services products. FinCEN, therefore, would welcome suggestions regarding ways of preventing the application of the proposed definition of money services businesses to a portion of those grocery stores' business activities from disqualifying such stores from consideration as exempt persons for non-money services businesses activities. FinCEN also would welcome comments on ways to shorten the list of ineligible businesses, given the money services businesses registration and the annual aggregate currency reporting requirement.

D. 103.22(c) Aggregation

Proposed new paragraph (c) restates the reporting rules applicable to multiple branches of financial institutions and multiple transactions of their customers. Those rules now appear in paragraphs (a)(1) and (a)(4) of section 103.22. As an analogue to a change, discussed below, that will permit affiliated banks to make a single designation of each exempt person, one change is proposed to the rules relating to aggregation. That change would add language to make it clear that for purposes of the currency transaction reporting requirements, a financial institution includes not only all domestic branch offices, but also any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic branch offices.

E. 103.22(d) Transactions of Exempt Persons

1. General

As noted above, proposed paragraph (d) of section 103.22 is a restatement and further amendment of the exemption system provided in paragraph (h) of section 103.22. That paragraph was drafted not only to provide the first stage of regulatory relief contemplated by the Money Laundering Suppression Act amendments to 31 U.S.C. 5313, but also to provide a structure into which the terms of the second stage of relief would conveniently fit.

2. New Classes of Exempt Person

Proposed paragraphs (d)(2) (vi) and (vii) introduce two new classes of exempt persons, ''non-listed businesses'' and ''payroll customers.''

Non-listed businesses. The definition of non-listed business is an attempt to summarize, in a single sentence, all commercial enterprises with a recurring need to deal with currency that are not listed companies or their subsidiaries. Thus, every enterprise that might have been eligible for either a ''unilateral'' or ''special'' exemption under the superseded exemption system (and that is not already treated as an exempt person by the Interim Rule) will now become eligible for exemption under the terms of the new rule, by banks themselves, if such person has been a bank customer for 12 months. There will be no provision for applications to the Detroit Computing Center or elsewhere for authority to recognize an exemption for a particular customer. Transactions by certain customers, listed in proposed paragraph (d)(5)(viii), remain ineligible for exemption.

Proposed paragraph (d)(2)(vi)(A) requires that any business must have been a bank customer for 12 months before it is eligible for exemption as a non-listed business. That period is 10 months longer than the present 60 day minimum period specified in the administrative practice that has grown up around section 103.22(b) (2) and (d). The difference is justified, in FinCEN's view, by the elimination of virtually all of the other requirements of the present system.

The limitations on the scope of the non-listed business definition, contained in proposed new paragraphs (d)(2)(vi)(B)–(C), are straightforward. They confine permissible exemptions to bank customers with transaction account relationships with the exempting bank and recurring use of currency, as required by 31 U.S.C. 5313(e)(2).

Payroll Customer. The definition of payroll customer reflects, for the most part, the terms of present paragraph 103.22(b)(2)(iv), and tracks the format proposed above when defining a non-listed business. Proposed paragraph (d)(2)(vii)(A) requires that any person must have been a bank customer for at least 12 months before it is eligible for exemption as a payroll customer. Proposed new paragraphs (d)(2)(vii)(B)–(C) further confine permissible exemptions to bank customers who regularly withdraw more than $10,000 to pay their United States employees in currency and are United States residents.

3. Special Requirements for Exemption of Non-Listed Businesses and Payroll Customers.

There are three special requirements for the recognition of the exemption of non-listed businesses and payroll customers as exempt persons:

- Filing of an ''Designation of Exempt Person'' form (as in the case of all other classes of exempt persons);
- Inclusion on the designation form of a projection of the exempt person's annual currency needs; and
- An annual filing confirming continuation of the exempt person's status as such, listing the aggregate currency deposited and withdrawn by the person during the year in question and any changes of which the bank knows (or should know on the basis of its records) in the ownership or control of the exempt person.

Before briefly discussing the latter two requirements, it is appropriate to note what the proposed rule would eliminate from the administrative exemption system. There would no longer be any cash limits or ''permitted ranges'' for exempt transactions; a customer that is exempt is, simply, exempt for all purposes, with respect to the currency transaction reporting requirement (although not with respect to the suspicious transaction reporting or other Bank Secrecy Act requirements). There is also no longer any requirement for submission and signature of exemption statements, or for a mandatory exemption list. (The operating rules of paragraph (d)(5), noted below, make further changes in the exemption system in areas for which banks have long requested relief.)

The purpose of the extensive changes made to the exemption system by the proposed rule—following upon the changes already made to that system by the Interim Rule—is to make it as simple and cost-effective as possible for banks to eliminate the burdens of currency transaction reporting for legitimate customers. Any simplified system can potentially be manipulated by criminals seeking to hide the movement of illegally-obtained currency, despite the best efforts of conscientious bank officials. The proposed requirement that banks initially estimate, and then report annually, the gross totals of currency

transactions of exempted non-listed customers is designed simply to prevent such unlawful manipulation of the greatly liberalized and simplified exemption system.[6] Even under that simplified system, banks would remain subject to the suspicious activity reporting requirements of 31 CFR 103.21, as well as similar reporting requirements imposed by federal bank supervisory agencies. *See also* 12 CFR 21.11 (Office of the Comptroller of the Currency); 12 CFR 208.20 (Federal Reserve System); 12 CFR 353.3 (Federal Deposit Insurance Corporation); 12 CFR 563.180 (Office of Thrift Supervision); 12 CFR 748.1 (National Credit Union Division). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions of its exempted customers, may trigger the obligation of a bank to file a suspicious activity report.

The need for some ''counterweight'' in the liberalized system was raised forcefully with FinCEN by federal law enforcement officials during formulation of the proposed rule. Enforcement officials are concerned that necessary easing of the burdens of unnecessary currency transaction reporting not have the unintended effect of opening up avenues for more efficient money laundering. Such avenues could exist if the new rules made it possible for criminals to siphon illegally-obtained currency into the daily currency deposits of small businesses in amounts that would not individually attract attention but that in the aggregate produce a steady flow of laundered funds into the banking system.[7] The possibility becomes more serious in the case of businesses that maintain accounts at multiple banks, no one of which has a complete picture of the business's currency transaction history or banking needs.

That the administrative exemption system's attempt to prevent criminals from hiding within the folds of the exemption system has proved both ineffective and burdensome does not eliminate the need to build cost-effective barriers to abuse into the liberalized system. A simple annual reporting rule has many benefits in this regard.

At the same time, FinCEN is aware that a requirement for cumulation and annual reporting of gross currency transactions may go beyond the data processing capabilities of some bank systems. More important, it is aware of the need to reach a thoughtful balance between liberalization and anti-abuse provisions if the changed exemption system is to accomplish its paramount objective of providing a cost-effective way to eliminate unnecessary filings from the currency transactions reporting system. Thus, it invites suggestions about alternate ways to structure anti-manipulation provisions. In that connection, commenters are asked to consider the following alternatives:

1. *Annual Reporting in Ranges of Value.* There is no requirement that annual cumulative currency transaction totals be absolutely precise. It would be sufficient if the annual reporting, and initial correlative estimation of business cash needs, be made in ranges, and the rule could so state. Thus, for example, totals might simply be reported in $25,000, $50,000, or even $100,000 increments in order to accomplish the purposes of cumulation. Such a change would eliminate the concern and cost of pinpoint recordkeeping in this instance.

2. *Reporting of Running Totals, rather than Annual Cumulation.* Running totals might be reported on other than an annual basis, so that government computers could perform the necessary cumulation. A bank that normally deleted in currency ledgers at the end of each calendar quarter, for example, might then electronically transfer the necessary data to FinCEN without having to build a new system, or new storage capacity to accommodate annual recordkeeping.

3. *Limited Annual Reporting.* Cumulation requirements might be limited to businesses of certain sizes or types.

In considering approaches other than cumulative currency transaction totals, commenters should be aware that a primary purpose of the proposed rule's anti-manipulation provisions is to limit the amount of judgment banks must make about the meaning of variations in a customer's currency transaction totals. While significant spikes or variations in simple total volume could well implicate the suspicious transaction reporting rules in appropriate cases, the anti-abuse purpose of the cumulative reporting requirement (or any substitute that might be adopted) is to create a buttress or second line of support for the bank's own efforts and to avoid placing all of the pressure for preventing abuses of the currency transaction reporting exemptions on bank officials themselves.

The success of the proposed liberalization of the currency transaction reporting exemption rules in practice will depend in part upon the receptiveness to the new procedures taken by federal bank examiners. FinCEN is planning a program to familiarize examiners with both the letter and the spirit of the new rules, and it would appreciate comments on the sorts of issues that should be raised with examiners during the course of that program.

4. *New Operating Rules.* Six new operating rules are proposed to be added to further simplify the exemption process.

a. Proposed paragraph (d)(5)(v) requires the bank to aggregate all customer accounts to apply the exemption provisions to that customer. Thus, the bank is obligated, under the proposed rule, to exempt a customer on a bank-wide basis and to count all accounts to determine, for example, whether a customer's cash withdrawals or deposits exceed $10,000. Thus, exemptions will no longer be determined on an account by account basis, but rather on a bank-wide basis. Generally, FinCEN believes that each customer possesses its own Employee Identification Number (''EIN''); thus, this proposed rule does not cover customer accounts with multiple EINs. Comments are welcomed on this topic.

b. Proposed paragraph (d)(5)(vi) will permit affiliated banks to make a single designation of exempt person, that will apply to all accounts at all banks within the affiliated group; annual currency transaction totals, for the moment at least, will still have to be computed on a bank-by-bank basis.

c. Proposed paragraph (d)(5)(vii) will permit sole proprietors to continue to be eligible for exemption, so long as personal and business funds are not commingled in the same accounts. FinCEN invites comments on whether this prohibition against commingling will be burdensome for banks to implement.

d. Proposed paragraph (d)(5)(viii) contains a list of businesses that may not be exempted under the new rules as non-listed companies (although they may qualify for exemption under the more limited payroll customer definition, for the purposes permitted by that definition). A limitation of this kind on the new procedures is explicitly contemplated by the terms of 31 U.S.C. 5313(e)(4)(B); the businesses described are essentially the same as the groups of businesses that are not permitted to be

[6] The customer statement and dollar limitation provisions that the proposed rule would eliminate were designed—however imperfectly—to limit manipulation of the exemption procedures then in force.

[7] Cash intensive money services business—e.g., currency exchanges—have been identified in a number of investigations as affording just such an opportunity for money launderers, a fact that contributes to the exclusion of money services businesses from eligibility for treatment as non-listed businesses eligible for exemption.

granted an exemption under the present system.

The proposed rule is, at present, silent about the treatment of businesses with multiple activities of which one is an activity for which an exemption is barred. FinCEN solicits comments on ways to deal with that issue.

e. Proposed paragraph (d)(5)(ix) defines a transaction account for purposes of proposed paragraph (d) as any account described in section 19(b)(1)(C) of the Act, 12 U.S.C. 461(b)(1)(C). This definition does not include any other accounts not described in 12 U.S.C. 461(b)(1)(C), such as money market accounts. Thus, the definition of a transaction account in the proposed rule is narrower than the definition of the same term that is set forth at 31 CFR 103.11(hh). Proposed paragraph (d)(5)(ix) also provides that a person may be exempt either as a non-listed business or as a payroll customer only to the extent of such person's transaction accounts.

f. Proposed paragraph (d)(5)(x) defines an established depositor for purposes of proposed paragraph (d) of this section as any person that has maintained a transaction account at the bank for at least 12 months. This definition is consistent with proposed paragraph (d)(2)(vi)(A), which requires that a business maintain a transaction account at the bank for at least 12 months before it may be exempted as a non-listed business.

Submission of Comments

An original and four copies of any comment (except those sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Proposed Effective Date

The amendments to 31 CFR Part 103 contained in this notice of proposed rulemaking will become effective 30 days following the publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates.

Executive Order 12866

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

Unfunded Mandates Act of 1995 Statement

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

Regulatory Flexibility Act

FinCEN certifies that this proposed amendment to the regulations implementing the Bank Secrecy Act will not have a significant, adverse financial impact on a substantial number of small depository institutions.

Paperwork Reduction Act

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR Part 1320, the following information concerning the collection of information on Internal Revenue Service Form 4789 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if made effective as proposed, would result in at least a 2 million reduction in the number of currency transaction reports required to be filed annually, and a cost reduction to banks of $16 million. FinCEN believes that these estimated reductions are reasonable, and probably conservative.

Title: Currency Transaction Report.

OMB Number: 1506–0005.

Description of Respondents: All financial institutions, except casinos.

Estimated Number of Respondents: 250,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: 10,000,000 responses. Reporting burden estimate = 3,166,667 hours; recordkeeping burden estimate = 833,333 hours. Estimated combined total of 4,000,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $80,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.22 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if enacted as proposed, would result in a reduction in hours spent complying with exemption requirements of 350,000 hours, and a reduction in cost to banks of $7,500,000. This is a conservative estimate, based on comments and discussions with banking industry representatives of the cost of complying with the administrative exemption system requirements.

Title: Currency transaction reporting exemption recordkeeping (31 CFR 103.22).

OMB Number: 1506–0006.

Description of Respondents: All banks.

Estimated Number of Respondents: 19,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 2 hours per response.

Estimate of Total Annual Burden on Respondents: 25,000. Recordkeeping burden estimate = 50,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Extension.

FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Comments may be submitted to FinCEN, at the address specified at the beginning of this document, *Attention:* Paperwork Reduction Act.

Responses to this request for comments under the Paperwork Reduction Act will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

List of Subjects in 31 CFR Part 103

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

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

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

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

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

2. Section 103.22 is revised to read as follows:

§ 103.22 Reports of Transactions in Currency.

(a) *General.* This section 103.22 sets forth the rules for the reporting by financial institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b). The reporting rules relating to aggregation are stated in paragraph (c). Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d).

(b) *Filing obligations*—(1) *Financial institutions other than casinos.* Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000, except as otherwise provided herein. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) *Casinos.* Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

(A) Purchases of chips, tokens, and plaques;

(B) Front money deposits;

(C) Safekeeping deposits;

(D) Payments on any form of credit, including markers and counter checks;

(E) Bets of currency;

(F) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(G) Purchases of a casino's check; and

(H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Redemptions of chips, tokens, and plaques;

(B) Front money withdrawals;

(C) Safekeeping withdrawals;

(D) Advances on any form of credit, including markers and counter checks;

(E) Payments on bets, including slot jackpots;

(F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;

(G) Cashing of checks or other negotiable instruments;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Reimbursements for customers' travel and entertainment expenses by the casino.

(c) *Aggregation*—(1) *Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic branch offices, for purposes of this section's reporting requirements.

(2) *Multiple transactions—general.* In the case of financial institutions other than casinos, for purposes of this section, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day (or in the case of the Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(3) *Multiple transactions—casinos.* In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $ 10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) *Transactions of exempt persons*—(1) *General.* No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(5)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in (d)(6) of this section.)

(2) *Exempt person.* For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any state, or of any political subdivision of any state;

(iii) Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate ''Nasdaq Small-Cap Issues'' heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a bank, of any entity described in paragraph (d)(2)(iv) of this section (a ''listed entity'') that is organized under the laws of the United States or of any state and at least 51 per cent of whose common stock is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations, any other commercial enterprise (for purposes of this paragraph (d), a ''non-listed business''), other than an enterprise specified in paragraph (d)(5)(viii), that

(A) Has maintained a transaction account at the bank for at least 12 months,

(B) Frequently engages in transactions in currency with the bank in excess of $10,000, and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within a State; and

(vii) With respect solely to withdrawals for payroll purposes from existing transaction accounts, any other person (for purposes of this paragraph (d), a ''payroll customer'') who

(A) Has maintained a transaction account at the bank for at least 12 months,

(B) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency, and

(C) Is a United States resident.

(3) *Initial designation of exempt persons.* (i) *General.* A bank must designate each exempt person with whom it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of paragraph (d) of this section. Except where the person sought to be exempted is another bank as described in paragraph (d)(2)(i) of this section, a non-listed business as described in paragraph (d)(2)(vi) of this section, or a payroll customer as described in paragraph (d)(2)(vii) of this section, designation by such bank of such exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked ''Designation of Exempt Person'' and items 2–14 (Part I, Section A) and items 37–49 (Part III) are completed, or by filing any form specifically designated by FinCEN for this purpose. The designation must be made separately by each bank that treats the person in question as an exempt person, except as provided in paragraph (d)(5)(vi) of this section. The designation requirements of this paragraph (d)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of § 103.22(a) under the rules contained in 31 CFR 103.22(b) through (g) (see 31 CFR chapter I revised as of July 1, 1997). A special transitional rule, which extends the time for initial designation for customers that have been previously treated as exempt, is contained in paragraph (d)(7)(ii) of this section.

(ii) *Special rules for banks.* When designating another bank as an exempt person, a bank must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers. In the event that a bank files its current list of domestic bank customers, the bank must make the filing as described in paragraph (d)(3)(i) of this section for each bank that is a new customer and for which an exemption is sought under this paragraph (d).

(iii) *Special rules for non-listed businesses and payroll customers.* When designating a non-listed business or a payroll customer as an exempt person, a bank, in addition to the filing required by paragraph (d)(3)(i) of this section, shall include information, in such form as FinCEN shall determine, about such customer's projected annual currency deposits and withdrawals through all transaction accounts.

(4) *Annual filing with respect to certain exempt persons*—(i) *General.* No annual filing is required for continuation of the treatment as an exempt person of a customer described in paragraphs (d)(2) (i)–(v).

(ii) *Non-listed businesses and payroll customers.* The designation of a non-listed business or a payroll customer as an exempt person must be updated annually, beginning no later than February 28, 1999, and each February 28 thereafter, on such form as FinCEN shall specify. Annual updates must include a statement of the exempt person's annual currency deposits and withdrawals through all transaction accounts for the calendar year next preceding the date on which such filing is required, as well as information about any change in control of the exempt person involved of which the bank knows (or should know on the basis of its records).

(5) *Operating rules for designating exempt persons—(i) General rule.* Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (d)(2) of this section), and to document the basis for its conclusions and its compliance with the terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status.

(ii) *Governmental departments and agencies.* A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of

this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) *Stock exchange listings.* In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission ''Edgar'' System, or on any information contained on an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) *Listed company subsidiaries.* In determining whether a person is described in paragraph (d)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10–K, as filed in each case with the Securities and Exchange Commission.

(v) *Aggregated accounts.* In determining the qualification of a customer as an exempt person, a bank shall treat all transaction accounts of the customer as a single account, except as provided in paragraph (d)(5)(vii) of this section relating to sole proprietorships.

(vi) *Affiliated banks.* The designation required by this paragraph may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply. Projected and annual currency transaction activity must be listed in such affiliated group designation on a bank-by-bank basis.

(vii) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable. However, the exemption permitted by this paragraph applies only to business transactions of the sole proprietorship, not to personal transactions of the proprietor, and the sole proprietorship's accounts may not be aggregated with personal accounts of the proprietor for purposes of this paragraph (d). Thus, no exemption may be granted to an account in which personal and sole proprietorship funds are commingled.

(viii) *Ineligible businesses.* A business engaged in one or more of the following activities may not be treated as a non-listed business for purposes of this paragraph (d): financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind; investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified, prospectively, by FinCEN by written notice published in the **Federal Register**.

(ix) *Transaction account.* A transaction account, for purposes of paragraph (d) of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C). For purposes of paragraphs (d)(2)(vi) and (d)(2)(vii) of this section, a person is an exempt person only to the extent of such person's transaction accounts.

(x) *Documentation.* The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of section 103.38.

(6) *Limitation on exemption.* A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (d)(1) of this section.

(7) *Limitation on liability; transitional rule.* (i) No bank shall be subject to penalty under this subchapter for failure to file a report required by section 103.22(b) with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (d) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction, or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (d) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) If on [INSERT DATE 30 DAYS AFTER THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**] a bank treated a person as an exempt person under the rules contained in 31 CFR 103.22 (b)–(g) (July 1, 1996), the bank must designate that person as an exempt person under paragraph (d)(2) of this section (or cease to treat such person as exempt if such person does not qualify for treatment as an ''exempt person'' under paragraph (d)(2) of this section) not later than the end of the first calendar year beginning after [INSERT DATE 30 DAYS AFTER THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**]. Provided that the bank complies with the preceding sentence, the bank may treat such a customer as exempt from [INSERT DATE 30 DAYS AFTER THE DATE THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**]. The first annual currency report for a customer is not due until the end of the first year beginning after [INSERT DATE 30 DAYS AFTER THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**].

(iii) Absent specific knowledge of any information that would be grounds for revocation as provided in paragraph (d)(9) of this section, a bank is required to verify the status of those entities it has designated as exempt persons only once each year.

(iv) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of

transactions in currency by persons other than exempt persons. A bank that continues for the period permitted by paragraph (d)(7)(ii) of this section to treat a person described in paragraph (d)(2) as exempt from the reporting requirements of section 103.22(a) on a basis other than as provided in this paragraph (d) shall remain subject to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

(8) *Obligation to file suspicious activity reports, etc.* Nothing in this paragraph (d) relieves a bank of the obligation, or alters in any way such bank's obligation, to file a report required by section 103.21 with respect to any transaction, including any transaction in currency, or relieves a bank of any reporting or recordkeeping obligation imposed by this Part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)).

(9) *Revocation.* The status of any person as an exempt person under this paragraph (d) may be revoked by FinCEN by written notice, which may be provided by publication in the **Federal Register** in appropriate situations, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(7)(iii) of this section:

(i) The status of an entity as an exempt person under paragraph (d)(2)(iv) ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) ceases once such subsidiary ceases to have at least 51 per cent of its common stock owned by a listed entity.

* * * * *

Dated: August 27, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–23639 Filed 9–5–97; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zones, Chesapeake Bay, Point Lookout to Cedar Point, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the Navy's proposal to amend the danger zone regulations, which establish an aerial firing range and target areas in the waters of the Chesapeake Bay. The purpose of the proposed amendments is to redesignate the aerial firing range as an aerial and surface firing range and to increase the Navy's use of the range from ''Monday through Saturday, except holidays'' to continuous use. The existing restricted area at the Hannibal Target encompasses a water area with a radius of 600 feet. The proposed change will increase the radius of the restricted area to 1,000 feet, prohibit entry into the area at all times and prohibit the public from climbing on the targets. These proposed changes are necessary to protect the public from hazardous conditions which may exist as a result of the Navy's use of this area. Other editorial amendments are made to reflect changes in the Navy's organization.

DATES: Comments should be submitted by October 8, 1997.

ADDRESSES: Send comments to: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Elinsky at (410) 962–4503 or Mr. Ralph Eppard at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR Part 334.200. The Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland has requested that the Corps amend the danger zone and restricted area regulations by redesignating the existing ''aerial firing range'' as an ''aerial and surface firing range'' and to increase the Navy's use of the range from ''Monday through Saturday, except national holidays'' to continuous use. The Navy also proposed to enlarge the existing restricted area at the Hannibal Target from a water area with a radius of 600 feet to a radius of 1,000 feet, and entry into the area is prohibited at all times. The restricted area is presently closed during daylight hours except to vessels authorized entry by the Navy Command. We are also adding a prohibition on climbing on the targets. These proposed changes are necessary to protect the public from hazardous conditions which may exist as a result of the Navy's use of this area. Enforcement of these regulations is being changed from the Commander of the Naval Air Test Center to the Commanding Officer of the Naval Air Station.

Procedural Requirements

(a) *Review under Executive Order 12866.* This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply.

(b) *Review under the Regulatory Flexibility Act.* This proposed final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have significant economic impact on a substantial number of small businesses (i.e., small businesses and small Government jurisdictions). It has been determined that the amendments to this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, the Corps certifies that this proposal if adopted, will have no significant economic impact on small entities and preparation of a regulatory flexibility analysis is not warranted.

(c) *Review under the National Environmental Policy Act.* An environmental assessment has been prepared for this action. We have concluded that the amendments proposed herein will not have a significant impact to the human environment and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the Baltimore District Office. Please contact Mr. Steve Elinsky at (410) 962–4503 for further information.

(d) *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Government will not be significantly and uniquely affected by this rulemaking.

(e) *Review under the Paperwork Reduction Act.* No additional information or record keeping requirements are imposed by this rulemaking. Accordingly no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.