Item	Qualifying installment obligations	Cash and other property
G note[1]	230,000	10,000
Total	700,000	300,000

[1] Face amount $240,000.

(vi) Assume that A's adjusted tax basis in the stock of P is $100,000. Under the installment method, A's selling price and the contract price are both $1 million, the gross profit is $900,000 (selling price of $1 million less adjusted tax basis of $100,000), and the gross profit ratio is 90 percent (gross profit of $900,000 divided by the contract price of $1 million). Accordingly, in 1998, A reports gain of $270,000 (90 percent of $300,000 payment in cash and other property). A's adjusted tax basis in each of the qualifying installment obligations is an amount equal to 10 percent of the obligation's respective face amount. A's adjusted tax basis in the F note, a nonqualifying installment obligation, is $100,000, i.e., the fair market value of the note when received by A. A's adjusted tax basis in the G note, a mixed obligation, is $33,000 (10 percent of the $230,000 qualifying installment obligation portion of the note, plus the $10,000 nonqualifying portion of the note).

(vii) In respect to the $100,000 payment received from G in 1999, $10,000 is treated as the recovery of the adjusted tax basis of the nonqualifying portion of the G installment obligation and $9,000 (10 percent of $90,000) is treated as the recovery of the adjusted tax basis of the portion of the note that is a qualifying installment obligation. The remaining $81,000 (90 percent of $90,000) is reported as gain from the sale of A's stock.

(5) *Installment obligations attributable to sales of certain property*—(i) *In general.* An installment obligation acquired by a liquidating corporation, to the extent attributable to the sale of property described in paragraph (c)(5)(ii) of this section, is not a qualifying obligation if the corporation is formed or availed of for a principal purpose of avoiding section 453(b)(2)(A) (relating to dealer dispositions), section 453(i) (relating to sales of property subject to recapture), or section 453(k) (relating to dispositions under a revolving credit plan and sales of stock or securities traded on an established securities market) through the use of a party bearing a relationship, either directly or indirectly, described in section 267(b) to any shareholder of the corporation.

(ii) *Covered property.* Property is described in this paragraph (c)(5)(ii) if, within 12 months before or after the adoption of the plan of liquidation, the property was owned by any shareholder and—

(A) The shareholder regularly sold or otherwise disposed of personal property of the same type on the installment plan or the property is real property that the shareholder held for sale to customers in the ordinary course of a trade or business (provided the property is not described in section 453(l) (2)(relating to certain exceptions to the definition of dealer dispositions));

(B) The sale of the property by the shareholder would result in recapture income (within the meaning of section 453(i)(2)), but only if the amount of recapture is equal to or greater than 50 percent of the property's fair market value on the date of the sale by the corporation;

(C) The property is stock or securities that are traded on an established securities market; or

(D) The sale of the property by the shareholder would have been under a revolving credit plan.

(iii) *Safe harbor.* Paragraph (c)(5)(i) of this section will not apply to the liquidation of a corporation if, on the date the plan of complete liquidation is adopted and thereafter, less than 15 percent of the fair market value of the corporation's assets is attributable to property described in paragraph (c)(5)(ii) of this section.

(iv) *Example.* The provisions of this paragraph (c)(5) are illustrated by the following example:

Example. Ten percent of the fair market value of the assets of T is attributable to stock and securities traded on an established securities market. T owns no other assets described in paragraph (c)(5)(ii) of this section. T, after adopting a plan of complete liquidation, sells all of its stock and securities holdings to C corporation in exchange for an installment obligation bearing adequate stated interest, sells all of its other assets to B corporation for cash, and distributes the cash and installment obligation to its sole shareholder, A, in a complete liquidation that satisfies section 453(h)(1)(A). Because the C installment obligation arose from a sale of publicly traded stock and securities, T cannot report the gain on the sale under the installment method pursuant to section 453(k)(2). In the hands of A, however, the C installment obligation is treated as having arisen out of a sale of the stock of T corporation. In addition, the general rule of paragraph (c)(5)(i) of this section does not apply, even if a principal purpose of the liquidation was the avoidance of section 453(k)(2), because the fair market value of the publicly traded stock and securities is less than 15 percent of the total fair market value of T's assets. Accordingly, section 453(k)(2) does not apply to A, and A may use the installment method to report the gain recognized on the payments it receives in respect to the obligation.

(d) *Liquidating distributions received in more than one taxable year.* [Reserved]

(e) *Effective date.* This section is applicable for distributions of qualifying installment obligations made on or after the date final regulations are filed with the Federal Register.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–1522 Filed 1–21–97; 8:45 am]

BILLING CODE 4830–01–P

31 CFR Part 103

RIN 1506–AA15

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting of Cross-Border Transportation of Certain Monetary Instruments

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to include instruments drawn by foreign banks on accounts in the United States within the definition of monetary instruments for purposes of the requirement under those regulations to report the physical transportation of currency or monetary instruments in an aggregate amount exceeding $10,000 into or out of the United States.

DATES: Written comments must be received on or before April 22, 1997.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182–2536, *Attention*: NPRM—Foreign Bank Drafts. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Request for Comments on Specific Subjects.''

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 Financial Crimes Enforcement Network (''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: Roger G. Weiner, Assistant Director (Compliance and Enforcement), Office

of Regulatory Policy and Enforcement, FinCEN, at (202) 622–0400, or Stephen R. Kroll, Legal Counsel, FinCEN, at (703) 905–3534.

SUPPLEMENTARY INFORMATION:

Introduction

The Department of the Treasury (''Treasury'') proposes to expand the definition of ''monetary instrument'' for purposes of the Bank Secrecy Act rules. The expansion, contained in a proposed new paragraph (u)(1)(vi) of 31 CFR 103.11, would treat as a monetary instrument any bank draft, bank or cashier's check or similar instrument drawn by a bank operating outside of the United States on an account of that bank at a financial institution in the United States. The change in the definition of ''monetary instrument'' would apply for purposes of 31 CFR 103.23 and other provisions of Part 103 that implement the provisions of 31 U.S.C. 5316 (Reports on exporting and importing monetary instruments). The proposed rule reflects the authority contained in 31 U.S.C. 5312(a)(3)(C), which was added to the Bank Secrecy Act by section 405(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).

Background

The statute popularly known as 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 the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting of the transportation of currency or monetary instruments into or out of the United States at any one time in aggregate amounts exceeding $10,000 (and of the receipt of currency or monetary instruments in that amount transported into the United States) 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 103.23, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5316. Reports required by 31 CFR 103.23 are made on United States Customs Service Form 4790 (Report of International Transportation of Currency or Monetary Instruments); the form is commonly called a ''CMIR'' and the reporting requirement is sometimes referred to below as the ''CMIR reporting requirement.''

As indicated, the CMIR reporting requirement applies to transportation not just of currency but also of certain non-currency monetary instruments. The statutory boundaries of the monetary instrument definition are set by 31 U.S.C. 5312(a)(3). Prior to enactment of the Money Laundering Suppression Act, paragraph (a)(3) provided that:

> 'monetary instruments' means—
> (A) United States coins and currency; and
> (B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material.

Implementing rules reflecting the statutory language defined the term ''monetary instrument'' to include traveler's checks in any form; all negotiable instruments in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete instruments; and securities or stock in bearer form (or, again, otherwise in such form that title thereto passes upon delivery). *See* 31 CFR 103.11(u)(1) (ii)–(iv).

Section 405 of the Money Laundering Suppression Act added a third category to the definition of monetary instrument in 31 U.S.C. 5312(a)(3), specifically for purposes of the CMIR reporting requirement. Under the new language, the definition could include:

> (C) as the Secretary of the Treasury shall provide by regulation for purposes of section 5316 [the CMIR reporting requirement], checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

Enactment of the new, potentially extremely broad, authority reflected Congressional concern that the effect of the CMIR reporting requirement was being vitiated, and money laundering fostered, by the increasing flow into the United States of drafts (often called ''foreign bank drafts'') drawn by banks outside the United States on dollar accounts of those banks at financial institutions in the United States. Although the foreign bank drafts were not in bearer form, and hence not subject to the CMIR reporting requirements under the existing terms of the rules, the drafts were the practical equivalent of currency or bearer instruments. The Conference Report on the Money Laundering Suppression Act explains:

> The Conferees' concern about these instruments stems from reports by Treasury that they are frequently used in money laundering schemes. . . . These drafts are U.S. dollar-denominated checks drawn by the foreign bank on its own account at a U.S. bank and sold to customers like cashier's checks.

See H.R. Rep. 130–652 (the ''Conference Report''), 103d Cong., 2nd Sess. 189 (August 2, 1994). As the Conferees Noted, section 405 of the Money Laundering Suppression Act reflected descriptions of the problem and the need for corrective legislation to meet it, presented by the Assistant Secretary of the Treasury (Enforcement), the Director of FinCEN, and the United States Customs Service. *See* Conference Report, *supra,* at 189–190.[1]

The resultant legislation was drawn broadly, to permit the Secretary of the Treasury as much flexibility as was necessary to deal with the use of non-bearer instruments to move the proceeds of crime into or out of the United States. The present notice of proposed rulemaking thus implements only so much of the permitted authority as the Department of the Treasury believes is required to deal with the issue that sparked the legislation: the sale outside the United States of bank drafts drawn on U.S. dollar accounts within the United States.

[1] The statement of Brian Bruh, then the Director of FinCEN, referred to at page 189 of the Conference Report, can be found in Serial No. 103–53, ''Anti-Money Laundering Efforts in Texas,'' Field Hearing Before the Committee on Banking, Finance and Urban Affairs of the House of Representatives, 103d Cong., 1st Sess. 110, 115–16 (July 8, 1993). The statement of Ronald K. Noble, then Assistant Secretary of the Treasury (Enforcement), also referred to at page 189 of the Conference Report, can be found in Serial No. 103–79, ''H.R. 3235; The Anti-Money Laundering Act of 1993, Hearing before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance, of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, 103d Cong., 1st Sess. 2, 6 (oral statement), 17 (questions from Chairman Neal) (October 20, 1993) ; Assistant Secretary Noble's prepared statement can be found in Serial No. 103–79, *supra,* at 58, 64–65. *See also,* S. Hrg. 103–574, the Anti-Money Laundering Act of 1993—S. 1664, Hearing before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 103d. Cong., 2d Sess. 2, 4 (oral statement of Assistant Secretary Noble), 35, 37–38 (prepared statement of Assistant Secretary Noble) (March 15, 1994).

Explanation of Provisions

A. Overview

The proposed regulations would expand the definition of monetary instrument, for purposes of the CMIR reporting requirement and related rules, to include official bank checks, cashier's checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such foreign bank in the United States. Such instruments would hence become subject to the CMIR reporting requirements—*i.e.*, reports would be required upon their transportation into or out of the United States in amounts that, by themselves or combined with currency or other instruments treated as monetary instruments for purposes of the reporting requirements, exceeded $10,000.

B. Expanded Definition of ''Monetary Instrument''

The expanded definition of monetary instrument is contained in a proposed new paragraph 31 CFR 103.11(u)(1)(vi).[2] The definition itself is straightforward and relies to the extent possible upon the terms used in paragraph (u)(1)(iii) relating to negotiable instruments in bearer form. Similarly, the new definition does not change the CMIR reporting requirement's procedures or the placement of the filing obligation. Rather, it simply adds instruments drawn by foreign banks[3] on accounts in the United States to the classes of monetary instruments that are to be counted in determining whether a cross-border transportation of monetary instruments exceeding $10,000 has occurred.

C. Exemption for Interbank Collection and Reconciliation Process

The Conference Report states that Congress intended that the expanded definition of monetary instrument should be implemented in such a way as to ''avoid unnecessary burdens on routine financial transactions of foreign financial institutions,'' and specifically notes that:

> An exemption should be prescribed with regard to CMIRs when the monetary instruments cross the border as part of the interbank collection and reconciliation process.

Conference Report, *supra*, at 190. However, it is unclear whether any change in the relevant rules is necessary to accomplish that result, in light of the exemptions from the CMIR reporting requirement already contained in 31 CFR 103.23(c). Treasury intends to implement the new requirements consistently with the Congressional intent, and comments are thus specifically requested below upon whether additional language is required to avoid, or where that is impossible, to minimize burden, by virtue of the expanded definition of monetary instrument, upon either the interbank collection and reconciliation process or other aspects of routine financial transactions of foreign banks.

D. Coverage or Exemption of Instruments From Particular Nations

Congress was aware, in considering the Money Laundering Suppression Act, that an expanded definition of monetary instrument for purposes of the CMIR reporting requirements would affect certain nations more than others. However, in light of the general obligations of the United States with respect to the trade in financial services, and in recognition of the continued ingenuity and flexibility of those who seek to launder the proceeds of crime, the authorizing legislation was general in scope. Congress noted only that:

> The Conferees * * * believe that Treasury, in adopting regulations under this section, should consider whether a foreign country is participating in the Financial Action Task Force (FATF), has implemented the FATF's recommendations for combatting money laundering, and has appropriate currency recordkeeping or reporting requirements.

Conference Report, *Id.* Comments are specifically requested below on the best way to incorporate these considerations.

E. Request for Comments on Specific Subjects

FinCEN specifically seeks comment on the following questions:

1. Are additional changes necessary to prevent the imposition of burden on routine transactions of foreign banks as a result of the expanded definition of monetary instrument proposed in this document?

2. Does commercial practice provide a basis for distinguishing between instruments drawn by foreign banks on dollar accounts in the United States and instruments drawn on such accounts by financial services providers outside the United States that are not banks?

3. Are changes to the language of 31 CFR 103.23(c) necessary to exempt from the CMIR reporting requirements the transportation of the proposed new class of monetary instrument in the course of the interbank reconciliation and clearance process?

4. Are other changes to the exemptions in 31 CFR 103.23(c) necessary to prevent unnecessary interference with commercial activities?

5. What steps can and should be taken at this time, consistent with the obligations of the United States generally, to differentiate among particular nations in the application of the CMIR reporting requirements to the proposed new class of monetary instrument?

6. What steps should be taken to publicize the new reporting requirement in advance of its effective date?

In seeking guidance on these and other issues raised by this notice of proposed rulemaking, FinCEN is interested in hearing from all parties potentially affected by the proposed rule.

Treasury is continuing to consider the need for modernization of the CMIR reporting requirements generally. Comments are requested on this matter as well.

Submission of Comments

Comments on all aspects of the proposed regulation are welcome and will be considered if submitted in writing prior to April 22, 1997. An original and four copies of any comments 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 proposed in this notice of proposed rulemaking will become effective 90 days following publication in the Federal Register of the final rule to which this notice of proposed rulemaking relates.

Special Analyses

It has been determined that this notice of proposed rulemaking (i) is not subject to the ''budgetary impact statement'' requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this proposed rule, if adopted as a final rule, will have an annual effect on the economy of $100 million or more. Nor will it, if so adopted, affect adversely in a material

[2] No language in the monetary instrument definition is being deleted; the word ''and'' that separates current paragraphs (u)(1) (iv) and (v) of 103.11 is simply being moved to reflect the addition of a new paragraph (u)(1)(vi).

[3] ''Foreign bank'' is already a defined term in the Bank Secrecy Act regulations. *See* 31 CFR 103.11(o).

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. The proposed rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues.

A ''description of the reasons why action by the agency is being considered'' and a ''succinct statement of the objectives of, and legal basis for, the proposed rule''—all as required by 5 U.S.C. 553(b)—are found elsewhere in this preamble.

Paperwork Reduction Act

FinCEN hereby presents the following information concerning the retention of information on currency and monetary instruments, in accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, to assist those persons wishing to comment on the proposed information retention requirement.

Title: Report of International Transportation of Currency or Monetary Instruments.

Form Number: U.S. Customs Service Form 4790.

OMB Number: 1506–0005.

Description of Respondents: All persons.

Estimated Number of Respondents: 250,000.

Frequency: As required.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = approximately 54,167 hours; recordkeeping burden estimate = 8,333 hours. Estimated combined total of 62,500 hours per year.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost of compliance with the proposed recordkeeping rule is estimated to be approximately $1,250,000.

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 to further the purposes of the Bank Secrecy Act, including whether the information retained 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 retained; and (d) ways to minimize the burden of the collection of information on the affected industry, including through the use of automated storage and retrieval techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995, *supra,* requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the retention 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 retention of the information covered by the requirement.

The information collection in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. Comments on the proposed collection may be directed to FinCEN, Office of Regulatory Policy and Enforcement, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182–2536, Attn: Paperwork Reduction Act, and to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for the Treasury Department. Responses to this request for comments from FinCEN 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

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

Proposed Amendments to the Regulations

Accordingly, 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 103.11 is amended by:

a. Removing the word ''and'' at the end of paragraph (u)(1)(iv);

b. Removing the period and adding ''; and'' at the end of paragraph (u)(1)(v); and

c. Adding new paragraph (u)(1)(vi).

The addition reads as follows:

§ 103.11 Meaning of terms.

* * * * *

(u) * * *

(1) * * *

(vi) For purposes of § 103.23 and other provisions of this part implementing 31 U.S.C. 5316, official bank checks, cashier's checks, drafts, and similar instruments issued or made out by a foreign bank on an account in the name of, or maintained on behalf of, such foreign bank in the United States.

* * * * *

Dated: January 15, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–1403 Filed 1–21–97; 8:45 am]

BILLING CODE 4820–03–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157–0022b; FRL–5677–1]

Clean Air Act Approval and Promulgation of Emission Reduction Credit Banking Provisions; Implementation Plan for California State Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules submitted by the State of California on behalf of the Mojave Desert Air Quality Management District (MDAQMD or the District) for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) with regard to emission reduction credit (ERC) banking for new source review (NSR).

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act. In the Final Rules section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second public comment period on this