DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA85

Financial Crimes Enforcement Network; Provision of Banking Services to Money Services Businesses

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are issuing this advance notice of proposed rulemaking ("Advance Notice") as a part of our ongoing effort to address, in the context of the Bank Secrecy Act, the issue of access to banking services by money services businesses. Both the banking industry and the money services business industry have expressed concerns with regard to the impact of Bank Secrecy Act regulations on the ability of money services businesses to open and maintain accounts and obtain other banking services at banks and other depository institutions. Due to the concerns about the effect of regulatory requirements on the provision of banking services to money services businesses, we, through the Non-bank Financial Institutions and the Examinations subcommittees of the Bank Secrecy Act Advisory Group, held a fact-finding meeting on March 8, 2005, to hear directly from banks, other depository institutions, and money services businesses concerning the challenges that they face on this issue.

Subsequent to the fact-finding meeting, we took a number of steps to address the concerns raised by these industries, including working together with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the "Federal Banking Agencies") to issue guidance, which was incorporated into the June 2005 Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual. We understand that many banks and other depository institutions (collectively, "banking institutions") remain wary of dealing with money services businesses, and that money services businesses continue to experience difficulties in obtaining and maintaining bank accounts and other banking services.

This Advance Notice solicits updated facts and recommendations regarding the extent to which ongoing concerns are based in the Bank Secrecy Act, and regarding what additional guidance or regulatory action under the Bank Secrecy Act, if any, would be appropriate to address these concerns.

DATES: Written comments may be submitted on or before May 9, 2006.

ADDRESSES: You may submit comments, identified by RIN 1506-AA85, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regcomments@fincen.treas.gov.* Include RIN 1506-AA85 in the subject line of the message.
- *Mail:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-AA85 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fincen.gov,* including any personal information provided. Comments may be inspected at the Financial Crimes Enforcement Network between 10 a.m. and 4 p.m. in the reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephone at (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network at (800) 949–2732 (toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Bank Secrecy Act authorizes the Secretary of the Treasury to issue regulations requiring all financial institutions (as defined therein) to maintain records or file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory investigations, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, or to implement counter-money laundering programs and compliance procedures. The Secretary's authority to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network. The Bank Secrecy Act defines currency exchangers; issuers, redeemers, or cashiers of travelers' checks, checks, money orders, or similar instruments; the United States Postal Service; and persons involved in the transmission of funds (collectively, "money services businesses") as financial institutions for purposes of the Act.[1] Regulations issued by the Financial Crimes Enforcement Network further define the universe of money services businesses.[2]

Like other financial institutions under the Bank Secrecy Act, money services businesses are required to: establish written anti-money laundering programs pursuant to section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107–56 (the PATRIOT Act);[3] file Currency Transaction Reports[4] and Suspicious Activity Reports (for certain money services businesses);[5] maintain certain records with regard to customers who purchase monetary instruments with cash;[6] maintain certain records with regard to currency dealing or exchange;[7] and record and retain certain information about funds transfers and include certain information in the transmittals of orders for such funds transfers.[8] Money services businesses also are required to register with the Department of the Treasury[9] and are examined for Bank Secrecy Act compliance by the Internal Revenue Service.[10]

In response to concerns expressed by both money services businesses and banking institutions, on March 8, 2005, we, through the Non-bank Financial Institutions and the Examinations subcommittees of the Bank Secrecy Act Advisory Group, held a fact-finding meeting on the following issues: (1) Specific challenges and issues encountered by money services businesses in obtaining banking services; (2) specific challenges and issues encountered by banking institutions seeking to provide banking services to money services businesses; (3) the understanding at that time by banking institutions of the various activities undertaken by money services businesses and how they may present different levels of risk; and (4) the

[1] 31 U.S.C. 5312(a)(2)(J), (K), (R), and (V).
[2] 31 CFR 103.11(uu).
[3] 67 FR 21114 (Apr. 29, 2002); 31 CFR 103.125.
[4] 31 CFR 103.22.
[5] 65 FR 13683 (Mar. 14, 2000); 31 CFR 103.20.
[6] 31 CFR 103.29.
[7] 31 CFR 103.37.
[8] 31 CFR 103.33(f)–(g).
[9] 64 FR 45438 (Aug. 20, 1999); 31 CFR 103.41.
[10] 31 CFR 103.56(b)(8).

understanding at that time by banking institutions of what they were required to do to comply with regulatory obligations in providing banking services to money services businesses.

We received written statements from 60 banking institutions, money services businesses, and trade associations prior to the meeting, and 43 such entities made oral statements at the meeting. Many money services businesses addressed the fact that banking institutions were closing money services businesses' demand deposit accounts on the grounds that the accounts were owned by money services businesses, rather than on the basis of some specific concern with the accounts. Money services businesses further commented on the fact that, in order to be licensed by many state governments, a money services business has to submit to a rigorous review, including providing financial statements and internal audit reports and permitting background checks of the owners and managers. Further, they noted that the licensing process requires annual training, current Bank Secrecy Act compliance programs, and the submission of a surety bond. They also stated that money services businesses provide a valuable service that many banking institutions are not fulfilling in catering to immigrant communities, and that, if the money services business industry is not able to obtain banking services, immigrant communities might suffer and might be compelled to use informal and unregulated money transfer systems that the government cannot supervise.

Written and oral statements from banking institutions discussed, among other things, the expense and difficulty of identifying and monitoring money services businesses and the increased regulatory and reputational risk involved in serving the money services business community. They also expressed concern about the perceived lack of regulatory guidance in this area, the disparate interpretations of the applicable regulations, and the inconsistent application of regulatory requirements by the Federal Banking Agencies and their examiners. Banking institutions also noted that it was their perception that some money services businesses, even those that were licensed by a state and were appropriately registered with the Financial Crimes Enforcement Network, were not sufficiently familiar with the Bank Secrecy Act and its requirements, and, furthermore, that many small money services businesses did not have the resources with which to adequately comply with Bank Secrecy Act regulations.

Subsequent to the fact-finding meeting, on March 8, 2005, we issued the following statement:

> The Financial Crimes Enforcement Network has long recognized that the money services business industry provides valuable financial services, especially to groups and individuals that may not have ready access to the formal banking sector. Moreover, we believe it is imperative that money services businesses remain within the formal financial sector, and not be driven underground. Accordingly, the Financial Crimes Enforcement Network is committed to ensuring their continued access to banking services. At the same time, we believe it essential that the money services business industry maintain the same level of transparency, and implement the full range of anti-money laundering controls, as banking institutions.[11]

On March 30, 2005, together with the Federal Banking Agencies, we issued a Joint Statement to address expectations regarding banking institutions' obligations under the Bank Secrecy Act with respect to money services businesses.[12] The Joint Statement acknowledged that the money services business industry "provides valuable financial services, especially to individuals who may not have ready access to the formal banking sector" and that it is important that money services businesses "that comply with the requirements of the Bank Secrecy Act and applicable state laws remain within the formal financial sector, subject to appropriate anti-money laundering controls." The statement also noted that "it is essential that the M[oney] S[ervices] B[usiness] industry maintain the same level of transparency, including the implementation of a full range of anti-money laundering controls as required by law, as do banking organizations." The statement went on to emphasize that the "Bank Secrecy Act does not require, and neither [the Financial Crimes Enforcement Network] nor the Federal Banking Agencies expect, banking institutions to serve as the *de facto* regulator of the money services business industry. Banking organizations that open or maintain accounts for money services businesses should apply the requirements of the Bank Secrecy Act on a risk-assessed basis, as they do for all customers, taking into account the products and services offered and the individual circumstances."

On April 26, 2005, together with the Federal Banking Agencies, we issued more detailed joint guidance to the banking industry.[13] The intent of the guidance to the banking industry was "to clarify further the requirements of the Bank Secrecy Act" and to set "forth the minimum steps that banking organizations should take when providing banking services to money services businesses." The guidance set forth the basic information that a banking institution should obtain from a money services business when preparing to open an account, including the money services business' types of products and services, its locations and markets served, the anticipated account activity, and the purpose of the account. The guidance also explained the concept of a risk assessment that should be performed by a banking institution when evaluating whether or not to establish or maintain an account relationship with a money services business. Further, the guidance set forth a checklist of various risk factors with which to analyze and differentiate the various kinds of money services businesses, and discussed the nature of enhanced due diligence that banking institutions might perform on money services business customers that are identified as higher risk, and the circumstances under which such enhanced due diligence might be needed.

On the same date, we issued an Advisory containing guidance to the money services business industry on obtaining and maintaining banking services.[14] The guidance to the money services business industry was designed to "identify and explain to money services businesses the types of information and documentation they are expected to have and to provide to banking organizations" under the Bank Secrecy Act. The guidance to money services businesses set forth a checklist with which to organize and explain the types of products and services offered by a given money services business, its locations and markets, its anticipated account activity, and the purpose of the

[11] Statement from the Financial Crimes Enforcement Network, *http://www.fincen.gov*. (Mar. 8, 2005).

[12] Joint Statement on Providing Banking Services to Money Services Businesses, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (Mar. 30, 2005).

[13] Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (Apr. 26, 2005).

[14] Financial Crimes Enforcement Network Advisory: Guidance to Money Services Businesses on Obtaining and Maintaining Banking Services (Apr. 26, 2005).

account. The guidance also set forth the circumstances when a banking institution might want or need to perform enhanced due diligence with regard to a money services business account and the nature of such enhanced due diligence.

Together with the Federal Banking Agencies, we have also provided additional support and training to bank examiners with regard to the variety of products and services offered by money services businesses and the range of risks posed. For instance, in June 2005, the Federal Banking Agencies, in consultation with us, developed and issued, through the Federal Financial Institutions Examination Council, uniform Bank Secrecy Act/Anti-Money Laundering examination procedures to be used by all Federal Banking Agency examiners. The new examination procedures include a section focused specifically on non-bank financial institutions, including money services businesses.

Notwithstanding these efforts, providing banking and other financial services to money services businesses continues to be an issue of concern. As a part of our continuing effort to address this matter in the context of the Bank Secrecy Act, issuing this Advance Notice to solicit updated facts and recommendations regarding what additional measures with regard to the Bank Secrecy Act, if any, would be appropriate.

II. Issues for Comment

In issuing this Advance Notice, we solicit comments on the following issues:

1. What requirements have banking institutions imposed on money services businesses to open or maintain account relationships since the issuance of the joint guidance by us and the Federal Banking Agencies in April 2005?

2. Describe any circumstances under which money services businesses have provided or have been willing to provide the information specified in the guidance issued by us to money services businesses in April 2005, concerning their obligations under the Bank Secrecy Act, and yet have had banking institutions decline to open or continue account relationships for the money services businesses.

3. Have Bank Secrecy Act-related grounds been cited for why banking institutions have decided not to open, or have decided not to continue to maintain, account relationships for money services businesses since the issuance of the guidance to money services businesses and to banking institutions in April 2005?

4. Would additional guidance (including, if applicable, clarification of existing guidance) to the banking industry regarding the opening and maintenance of accounts for money services businesses within the Bank Secrecy Act regulatory framework be beneficial? If so, what specifically should such guidance address?

5. Would additional guidance (including, if applicable, clarification of existing guidance) to money services businesses regarding their responsibilities under the Bank Secrecy Act as it pertains to obtaining banking services be beneficial? If so, what specifically should such guidance address?

6. Are there steps that could be taken with regard to regulation and oversight under the Bank Secrecy Act that could operate to reduce perceived risks presented by money services businesses?

7. Since the March, 2005, hearing and the issuance of guidance in April, 2005, to banks and to money services businesses, has there been an overall increase or decrease in the provision of banking services to money services businesses? Please offer any thoughts as to why this has occurred.

III. Conclusion

We are seeking input to assist in our efforts to ensure that money services businesses that comply with the law have reasonable access to banking services and, specifically, to avoid any unintended misinterpretation of Bank Secrecy Act requirements that could adversely affect the issue of the establishment and maintenance of account relationships and other banking services for money services businesses by banking institutions. We welcome comments on all aspects of this Advance Notice and encourage all interested parties to provide their views.

IV. Executive Order 12866

This Advance Notice is not a "significant regulatory action" for purposes of Executive Order 12866. It neither establishes nor proposes any regulatory requirements. Instead, it seeks public comment on a number of issues concerning the establishment and maintenance of account relationships at banking institutions by money services businesses within the Bank Secrecy Act regulatory framework.

Dated: March 3, 2006.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. E6–3373 Filed 3–9–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2004–TX–0006; FRL–8044–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP). This action approves provisions for alternate language public notice for certain preconstruction permits or permit renewals and provisions for preconstruction permit renewals. It approves SIP revisions that Texas submitted to EPA on August 31, 1993; April 29, 1994; August 17, 1994; and July 22, 1998. The revisions that EPA is approving supplement the current requirements for new construction and modifications and are more stringent than the Federal Clean Air Act (CAA or the Act) and EPA regulations. We are approving the revisions under sections 110 and 116 of the Act as improving the existing SIP.

DATES: Written comments must be received on or before April 10, 2006.

ADDRESSES: Comments may be mailed to Mr. David Neleigh, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no significant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant adverse comments are received in response to