FEDERAL RESERVE SYSTEM

[Docket No. R–0807]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA37

Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions

AGENCY: Department of the Treasury; Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly have adopted a final rule that requires enhanced recordkeeping related to certain wire transfers (which include funds transfers and transmittals of funds) by financial institutions. The final rule takes into consideration the public comments received on the notice of proposed rulemaking. Each domestic financial institution involved in a wire transfer must collect and retain certain information, depending upon the type of financial institution, its role in the particular wire transfer, the amount of the wire transfer, and the relationship of the parties to the transaction with the financial institution.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Treasury: A. Carlos Correa, Assistant Director, Rules and Regulations Section, (202) 622–0400; or Roger Weiner, Deputy Director, (202) 622–0400; or Peter Djinis, Director, (202) 622–0400, Office of Financial Enforcement; Stephen R. Kroll, Legal Counsel, (703) 905–3534; or Nina A. Nichols, Attorney-Advisor, (703) 905–3598, FinCEN.

Board: Louise L. Roseman, Associate Director, (202) 452–2789; Gayle Brett, Manager, Fedwire, (202) 452–2934; or Darrell Mak, Financial Services Analyst, (202) 452–3223, Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, (202) 452–3625; or Elaine Boutilier, Senior Counsel, (202) 452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: The statute generally referred to as the Bank Secrecy Act (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5329) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN. The Bank Secrecy Act was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550), which authorizes the Treasury and the Board to prescribe regulations to require maintenance of records regarding domestic and international funds transfers. The Treasury and the Board are required to promulgate jointly, after consultation with state banking supervisors, recordkeeping and reporting requirements for international wire transfers by depository institutions and certain nonbank financial institutions. In issuing this final rule, the Treasury and the Board have considered its usefulness in criminal, tax, or regulatory investigations or proceedings and its effect on the cost and efficiency of the payments system. The Treasury and the Board are authorized to promulgate regulations for domestic transfers by depository institutions. The Treasury, but not the Board, is authorized to promulgate recordkeeping and reporting requirements for domestic wire transfers by nonbank financial institutions.

In August 1993, the Treasury and the Board jointly issued for public comment a proposal to enhance the recordkeeping requirements relating to certain wire transfers by financial institutions (58 FR 46014, August 31, 1993). The proposal was distributed to state banking supervisors. Comments were requested on all aspects of the proposal, including the usefulness of the records covered by the proposed rule for law enforcement purposes and the effects the proposal might have on the cost and efficiency of the payments system.

At the same time, the Treasury issued a companion Notice of Proposed Rulemaking, which would require financial institutions to include in transmittal orders certain information that must be retained under this rule (58 FR 46021, August 31, 1993). While many commenters responded to both proposals via the same correspondence, comments related to the companion proposal are not included in this summary.

The following table identifies the number of commenters by type of organization:

Commercial banking organizations	48
Trade associations	20
Credit unions	12
Broker/dealers	4
Federal Reserve Banks	4
Regulatory agencies	5
Money transmitting providers	4
Savings institutions	2
Clearing house associations	2
Others	7
Total public comments	108

A. Overview

The proposed rule would require each domestic financial institution (as defined in the Bank Secrecy Act regulations) involved in a wire transfer to collect and retain certain information for five years. The amount and type of information would depend upon the type of financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution.

Many commenters expressed general support for the rule and its objective to combat money laundering. A few commenters, primarily smaller financial institutions with low wire transfer volume, indicated that they were already complying with the requirements. The Department of the Justice, the Internal Revenue Service, and the Office of the Chief Postal Inspector supported the proposal, commenting that the availability of greater user information will be a tremendous asset to law enforcement's ability to counteract money laundering activities. These law enforcement agencies suggested that the regulation be strengthened further to assist them in identifying illegal activity. Broker/dealer commenters also expressed general support for the proposed rule. One broker/dealer commented that the proposed regulation was a reasonable and highly effective response to law enforcement needs. Another broker/dealer commented that the rule generally would not be burdensome to its operations.

Some commenters, however, expressed doubts that the proposed rule would deter money laundering. A small number of commenters objected to the proposal altogether, indicating that the rule was overly burdensome, while additional commenters doubted that the benefits of the rule would outweigh the costs. Two commenters believed that law enforcement agencies already were being inundated with enough anti-money laundering information, such as currency transaction reports, and they did not believe the additional information required by the rule would provide sufficient benefit to warrant

collection. A few commenters suggested that money launderers simply would find alternative methods to circumvent the recordkeeping requirements, diluting the rule's effectiveness.

Three of the four nonbank providers of money transmitting services that commented strongly opposed the proposed requirements. One commenter stated that the Treasury and the Board must consider the fundamentally different nature of nonbank financial institution operations before adopting a final rule. These commenters indicated that the burden on nonbank financial institutions would clearly and substantially outweigh the reasonably anticipated benefit to law enforcement.

Other commenters indicated that it was difficult to assess the burden of the proposal because certain requirements, such as retrievability, were not clearly defined. Many commenters suggested that more types of transactions be exempted from the rule.

Based on the comments received, the Treasury and the Board have modified the proposed rule to reduce the burden associated with the rule, while maintaining the usefulness of the rule to law enforcement agencies. The final rule exempts wire transfers below $3,000, thereby reducing the burden of collecting, maintaining, and retrieving wire transfer records. This exemption should particularly benefit nonbank providers of money transmitting services, which typically handle smaller-value transfers. Other modifications to the rule limit instances where verification is required. In addition, the final rule clarifies the verification and retrievability requirements. As a result of these changes, the Treasury and the Board believe that the benefit of having the information available to law enforcement agencies outweighs the burden associated with the final rule. Although the final rule cannot prevent money launderers from using wire transfers for illegal purposes, the Treasury and the Board believe that the rule will help trace the proceeds of illegal activity and identify the participants in money laundering schemes.

The Treasury and the Board will monitor experience under this final rule to assess its usefulness to law enforcement and its effect on the cost and efficiency on the payments system. Within 36 months of the effective date, the Treasury and the Board will review the effectiveness of this final rule and will consider making any appropriate modifications.

B. Section-by-Section Analysis

Section 103.11 Meaning of Terms

The proposed rule added new definitions to the existing definitions in the Treasury rules. A number of these new definitions applicable to banks were identical to the terms used in Uniform Commercial Code Article 4A (UCC 4A) (*e.g.*, originator, originator's bank, payment order, and others). In addition, the proposed rule added a number of new definitions applicable to transactions by nonbank financial institutions. These definitions were intended to parallel the equivalent definitions in UCC 4A (*e.g.*, transmittor, transmittor's financial institution, transmittal order, and others). In order to preserve as much uniformity as possible, some changes have been made to certain proposed definitions to conform them more closely to the UCC 4A definitions. Several definitions (*e.g.* accept, execution date, payment date) are defined so as to make their usage also appropriate for transactions involving nonbank financial institutions; otherwise, they are similar, but not always equivalent in practice, to the UCC 4A definitions. For example, under the final rule's definition of accept, when a beneficiary's bank receives a transmittal order for a recipient that is the customer of a nonbank financial institution holding an account at the beneficiary's bank, the beneficiary's bank would accept the transmittal order by executing a corresponding transmittal order to the nonbank financial institution, rather than by crediting the account of the nonbank financial institution, which would constitute acceptance under UCC 4A. The definition of intermediary financial institution was revised to include an intermediary bank. The definitions of transmittor, transmittor's financial institution, recipient, and recipient's financial institution also were revised to clarify the scope of these definitions for transmittals of funds involving both a bank and nonbank financial institution.

The Official Comment to UCC 4A is helpful in understanding many of the definitions adopted in the final rule. Terms used in this rule that are not defined have the meaning given them in the UCC, unless otherwise indicated.

One bank asked whether the term payment order includes drawdowns. Under the UCC 4A–104 Official Comment, this determination depends generally on whether the drawdown is a credit transfer.[1]

Another commenter asked whether a payment order includes a transaction where Bank A instructs its correspondent, Bank B, to debit Bank A's account with Bank B and pay a beneficiary that holds an account with Bank B. This instruction meets the definition of payment order in § 103.11(y) and under UCC 4A–103. In this funds transfer, Bank B is the beneficiary's bank and Bank A is either an intermediary bank or an originator's bank, depending on the circumstances, and must keep the appropriate records of the payment order.

Another commenter described a situation where a depositor orders his account closed by telephone and instructs the bank to remit the balance with a cashier's check mailed to the depositor; the commenter asked whether this transaction is a funds transfer under the regulation. This transaction is not a funds transfer because it is not a series of transactions under UCC 4A–104(a); rather, it is one transaction, a withdrawal of funds from the bank by a cashier's check.

Several credit union commenters objected to the inclusion of credit unions in the definition of bank and stated that credit unions should be considered nonbank financial institutions. The longstanding definition of bank in the Treasury's existing Bank Secrecy Act regulations (31 CFR 103.11(b))[2] includes credit unions. The definition of bank has not been changed in the final rule.

Several commenters requested clarification of the meaning of the terms originator and beneficiary. In particular, these commenters asked who the originator and beneficiary would be in instances where either a corporation or a bank's trust department sends or receives a funds transfer. When an employee sends a payment order to the originator's bank as agent for a corporation, the corporation, and not the employee, is the originator. When a

[1] Under the Official Comment, a drawdown transfer is a funds transfer if the person transferring the funds either instructs Bank A to transfer funds from its account at Bank A to its account at Bank B or if Bank A has an agreement with the person whereby Bank A is authorized to follow instructions of Bank B, as agent of the person, to transfer funds from the person's account at Bank A to Bank B. In both instances, the transfer is a *credit* transfer because the instruction goes from the person (although in one case via Bank B as agent) to Bank A to send the funds to Bank B. A funds transfer under UCC 4A must be a credit transfer. If there is no agreement between the person and Bank A that Bank B act as agent for the person, then a request or instruction from Bank B to Bank A to transfer funds from the person's account at Bank A to Bank B would be a *debit* transfer and would not be a funds transfer under UCC 4A or the final regulation.

[2] The citation for the definition of bank will become 31 CFR 103.11(c) when this rule becomes effective.

bank's trust department makes a funds transfer as trustee for one or more trust accounts, the bank is the originator. If, however, the bank's trust department makes the funds transfer on the specific instructions of a trust account holder, then the account holder is the originator because it is the sender of the first payment order to the bank. In both cases, the bank is the originator's bank.

Two commenters requested that a definition be added for the term executing, which is used in the definition of the term accept. Both commenters suggested adoption of the UCC 4A–301 definition of executed. Certain definitions from UCC 4A are included in the regulation for reference. Other terms, such as execute, that are not defined specifically in the regulation, but are defined in relevant provisions of the UCC, will have the meaning given them in the UCC, unless otherwise indicated.

One commenter requested that the term domestic bank be defined. The terms domestic and bank are defined in § 103.11. Under these definitions, a domestic bank is one that is located within the United States and would include branches and agencies of foreign banks located and conducting business within the United States.[3] A domestic financial institution is one that is located in the United States. No separate definition of domestic bank has been added to the regulation.

As proposed in § 103.33(f), nonbank financial institutions must collect, verify and retain a record of the originator's identity, because these institutions likely would send or receive transmittals of funds for persons with no account relationship, and therefore, no existing records. Many commenters, both banks and nonbank financial institutions, noted that there are several types of ongoing customer relationships, other than those persons that have a deposit account or loan with a bank, or have an account with a financial institution that is a broker or dealer in securities, that would result in the financial institution having the desired information about the customer in its customer record files. By acknowledging these relationships, the requirements to verify information on noncustomers could be minimized.

[3] 31 CFR § 103.11(s), which will become 31 CFR § 103.11(nn) when this rule becomes effective, defines United States to include the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States.

The final rule limits the verification requirements to originators/transmittors and beneficiaries/recipients that are not established customers. An established customer is defined as a person with an account with a financial institution or a person with respect to which the financial institution has obtained and maintains on file the name and address, as well as the customer's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information. Such relationships with banks may include, but are not limited to, deposit accounts, loan agreements, trust accounts, custody accounts, and mutual fund accounts. Such relationships with nonbank financial institutions may include, but are not limited to, accounts with broker/dealers and ongoing contractual relationships between providers of money transmitting services and business customers.

Two commenters requested that a definition of copy be included in the rule to clarify that new electronic technology, such as optical disk storage, is allowed. The rule has been modified to explicitly allow retention of an electronic record, which would include electronic data storage methods.

Two commenters requested that all automated teller machine (ATM) and point-of-sale (POS) transactions be exempted from the rule. One bank noted that ATMs are used increasingly for legitimate business transactions that are not governed by the Electronic Fund Transfer Act. Unless a financial institution could exclude all ATM transactions from the recordkeeping requirements, it would be necessary for the institution to develop new systems and procedures to ensure compliance. The final rule excludes from the definitions of funds transfer and transmittal of funds all transfers governed by the Electronic Fund Transfer Act, as well as any other funds transfers that are made through an automated clearinghouse, ATM, or POS system. The question of the treatment, under the Bank Secrecy Act, of transfers governed by the Electronic Fund Transfer Act will be studied by the Treasury.

Section 103.33. Records to be made and retained by financial institutions.

The proposed recordkeeping requirements varied depending on the type of financial institution, its role in the particular funds transfer, and the relationship of the parties to the transaction with the financial institution. As proposed, the rule was structured into three separate sections to apply to banks, nonbank financial institutions, and broker/dealers. The proposed rule assumed that nonbank financial institutions other than broker/dealers would not have customers with account relationships and thus required these institutions to verify and retain a record of the identity of all their customers. Many commenters, however, indicated that nonbank financial institutions do have established customers for which identification information is maintained on file; thus, there is no need to reverify the information. The final rule recognizes that many nonbank financial institutions have established customers; therefore, the recordkeeping requirements for nonbank financial institutions and broker/dealers, contained in proposed sections (f) and (g), have been combined in the final rule.

The requirements imposed by § 103.33(e) for banks and § 103.33(f) for nonbank financial institutions in the final rule are similar. The section-by-section analysis in this notice, which uses the terminology associated with funds transfers through banks, also is applicable to transmittals of funds through nonbank financial institutions, except where specifically noted.

Section 103.33(e)(1) and Section 103.33(f)(1).

Recordkeeping Requirements—The proposed rule required that originator's banks retain, for each payment order accepted, the originator's name and address, the amount, date, payment instructions received with the payment order, beneficiary bank identification, and, if received with the payment order, the beneficiary's name and address or the beneficiary's account number. Intermediary banks and beneficiary's banks would be required to retain a copy of each payment order they accept.

Dollar Threshold—Many commenters recommended that a threshold be established to exclude funds transfers under a certain dollar amount from the requirements. Commenters noted that a dollar threshold would greatly reduce the burden of complying with the regulation by decreasing the number of records retained, thereby minimizing the storage and retrievability burden, and by decreasing the number of funds transfers where identification must be verified. Many commenters recommended a $10,000 threshold, which is the threshold for Currency Transaction Reports. The next most-frequently suggested threshold was $3,000, which is the threshold for

recording purchases with currency of certain monetary instruments, such as bank drafts and cashier's checks. A few commenters recommended a $1,000 threshold. One bank noted that a small-dollar exemption would particularly benefit its noncustomer beneficiaries, who typically are tourists whose wallets and identification documents have been either lost or stolen, and who arrange to have a few hundred dollars wired to them from relatives or friends.

One nonbank provider of money transmitting services, noting that a small-dollar threshold would reduce the burden and cost to comply with the regulation, estimates that 99.96 percent of its transactions are for amounts below $10,000, while 98.0 percent of its transactions are for less than $3,000, and 95.0 percent are for less than $1,000. The Federal Reserve Banks recently conducted a one-day survey of Fedwire funds transfers and found that 22 percent of transactions for that sample day were for amounts less than $3,000, while 36 percent of the transactions were for amounts less than $10,000.

To reduce the burden of the proposal, the final rule does not apply to funds transfers of less than $3,000. This exemption will reduce the burden of retaining records for small-dollar transactions and of verifying the identity of noncustomer originators and beneficiaries, reducing the costs to comply with the final rule.

The Department of Justice commented that no threshold, or a threshold lower than $3,000, should be imposed. It believes that a dollar threshold would provide persons wishing to circumvent the rule the opportunity to do so by sending multiple small-dollar funds transfers. The Treasury and the Board believe that it is desirable to have a logical relationship between the threshold for the funds transfer recordkeeping requirements and the other thresholds established in the Bank Secrecy Act regulations. In situations where a person sends multiple small-dollar funds transfers to avoid the rule, it is expected that the bank would notify law enforcement appropriately.

The Treasury intends to issue for comment proposed regulations that would require banks to establish anti-money laundering measures, including reporting of suspicious transactions and ''know your customer'' policies and programs. In light of these anticipated amendments to the Bank Secrecy Act regulations, the Treasury and the Board believe that a $3,000 threshold will not hinder the usefulness of the rule to law enforcement. The Treasury and the Board will monitor the experience of the industry and law enforcement with the $3,000 threshold, and will consider modifying this threshold in the future if it is determined that transactions are being structured in order to evade the recordkeeping requirements. As part of its analysis of the continued appropriateness of this final rule, the Treasury also will monitor the effectiveness of banks' ''know your customer'' and suspicious transaction reporting programs as applied to funds transfers, once these rules take effect.

Beneficiary Information—The Department of Justice, Office of Chief Postal Inspector, and Internal Revenue Service expressed concern that the proposed rule did not require beneficiary information to be collected and retained by the originator's bank if the information is not received with the payment order. They indicated that the absence of beneficiary information at this stage of the funds transfer process would limit significantly the utility of the funds transfer records to law enforcement.

In virtually all cases, the originator provides, as part of the payment order it sends to the originator's bank, the identity of the beneficiary. Typically, the originator provides the beneficiary's name and address, or the beneficiary's account number, or some other specific identifier of the beneficiary. Examples of a specific identifier include the beneficiary's Clearing House Interbank Payments System (CHIPS) universal identifier, its Dun and Bradstreet D-U-N-S identifier, its stock exchange identifier, or, in some instances where the beneficiary's address is not known, the beneficiary's name. The originator provides this information with the payment order to ensure that the beneficiary receives the proceeds of the funds transfer on a timely basis. Given that the identification of the beneficiary may be provided by means other than name and address or account number, the Treasury and the Board have modified the proposed recordkeeping requirement to allow for identification by other specific identifier of the beneficiary.

Although some identification of the beneficiary is included in virtually all payment orders, the Treasury and the Board have retained the requirement that the originator's bank retain such items of identification of the beneficiary as are received with the payment order. In cases where the originator provides the payment order to the originator's bank through an electronic connection, the originator's bank generally cannot ensure that the originator has provided, as part of its payment order, the beneficiary information specified in the rule. In these situations, the originator's bank generally does not manually review the payment order prior to execution of the order. The originator's bank is encouraged not only to require its customers to provide beneficiary information but also to perform an edit to ensure that information is contained in the beneficiary's field. It cannot determine in an automated manner, however, whether the information contained provides a meaningful identification of the beneficiary. In addition, there may be limited cases (*e.g.*, transfers in response to drawdown requests) where the originator may not provide beneficiary information as part of its payment order to the originator's bank.

The Treasury and the Board believe that some originator's banks would have to make substantial operating changes to ensure compliance with the rule if they were required to collect and retain information on the beneficiary for all payment orders they accept. Moreover, the Treasury and the Board believe that requiring originator's banks to retain beneficiary information as is received with the payment order will not unduly impede law enforcement efforts. Beneficiary information generally will be provided by the originator with the payment order and therefore retained by the originator's bank. In those very few cases where this information is not provided by the originator, it generally can be obtained from the records of the beneficiary bank.

The final rule requires that the originator's bank retain as many of the means of identification of the beneficiary (*e.g.*, name and address, account number, other specific identifier) as are received with the payment order. Originator's banks are encouraged to request that originators provide complete beneficiary information when possible.[4] The Treasury and the Board understand that some banks, particularly those that send payment orders electronically, may rely on the records of the payment orders they execute, supplemented by the originator name and address information in their customer information file, to meet the recordkeeping requirements of this rule for established customers. Because the current Fedwire funds transfer format may not have sufficient space to include all means provided by the originator of

[4] The Federal Financial Institutions Examination Council adopted a policy encouraging all financial institutions to include, to the extent practical, the name, address, and account number of the originator and beneficiary in the payment order text, including payment orders sent through Fedwire, CHIPS, and S.W.I.F.T.

identifying the beneficiary, the final rule provides an exception to the requirement that the bank retain as many means of identifying the beneficiary as provided by the originator, until completion of the bank's conversion to the expanded Fedwire format. For nonbank financial institutions, this temporary exception is limited to domestic brokers and dealers in securities, because the Treasury and the Board believe that only this category of nonbank financial institution is likely to send electronically transmittals of funds that ultimately are effected through Fedwire. (See elsewhere in today's **Federal Register** for the Board's notice of its adoption of an expanded Fedwire funds transfer format.)

As noted earlier, the Treasury and the Board will monitor experience of law enforcement and the industry under this rule. If the Treasury and the Board determine that law enforcement efforts are hindered materially due to lack of beneficiary information in the records retained under this rule, the Treasury and the Board will consider mandating that beneficiary information be retained for all payment orders. In addition, the suspicious transaction reporting and anti-money laundering policy and program rules due to be issued for comment by the Treasury in 1995 should reduce materially any wrongdoing stemming from the fact that an originator's bank is not explicitly required by this rule to obtain beneficiary information.

Other Questions—Another commenter asked whether the payment amount to be retained in a bank's records under this rule must be denominated in U.S. dollars or whether it could be denominated in a foreign currency. The payment amount retained under the rule should be the amount as denominated in the payment order. The recordkeeping rule applies to transfers in foreign denominations above the equivalent of $3,000. Banks should determine the U.S. dollar equivalent of the transfer based on the spot exchange rate at the time of the transfer to determine whether a foreign-denominated transfer exceeds the $3,000 threshold.

One commenter requested an explanation of payment instructions that are required to be retained by the originator's bank. This commenter questioned whether payment instructions included instructions received orally (in person or over the telephone), or by letter, facsimile, or electronic terminal. Any payment instructions given by the originator, either oral or written, must be retained if received with the payment order. The originator's bank may retain either written documentation or an audio recording of the originator's oral instructions. Such payment instructions may include the purpose of the funds transfer, directions to the beneficiary's bank regarding how to notify the beneficiary of the receipt of funds (*e.g.*, advise by phone), or other information.

Section 103.33(e)(2), (e)(3), and (e)(5) and Section 103.33(f)(2), (f)(3), and (f)(5)

Additional Requirements for Persons Other Than Established Customers—The proposed rule required banks to verify the name and address of the originator, if the originator does not have a deposit or loan account, and to retain a record of the verified information, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as a record of the originator's social security number, alien identification number, or employer identification number. Some commenters, primarily nonbank financial institutions acting for non-account holders, argued that the proposed verification requirement would be very burdensome to their operations. Many commenters expressed concern with the requirement to verify the name and address, and to record the identification number of an originator or beneficiary that is not an account holder. A few commenters noted that they may be forced to refrain from doing business with non-account holders, due to the burden of the rule's verification requirements. A few commenters asked whether the verification requirement relates to the person placing the order or the originator.

By limiting the verification requirement to originators and beneficiaries that are not established customers and by excluding funds transfers under $3,000 from the rule, the number of instances where verification is required has been reduced substantially, with a commensurate reduction in compliance burden. The final rule requires that if a payment order is from an originator other than an established customer and is made in person, the originator's bank shall verify the identity of the person placing the payment order. If the person does not identify another party on whose behalf the funds transfer is being made, then the person is considered the originator.

If it accepts the payment order, the originator's bank shall obtain and retain a record of the person's name and address, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as the taxpayer identification number or, if none, alien identification number or passport number and country of issuance. If the originator's bank knows that the person placing the payment order is not the originator, it shall obtain and retain a record of the originator's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order. In cases where an agent or representative of the originator places the payment order and does not know the originator's identification number or in cases where the originator or the person placing the payment order does not have such a number, the originator's bank must note in the record the lack thereof.

Two commenters questioned whether the rule requires an originator's bank to obtain and verify the originator's identity if the originator's payment order is made via phone, fax, electronic link, or mail. In situations where the originator is not present to provide the required information, there is no opportunity to verify it. Under the final rule, if the payment order is not made in person, the originator's bank is not required to verify the identity of the person or to retain information pertaining to an identification document used for verification, but is required to retain a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the funds transfer.

For payment of the proceeds of a funds transfer in person by a beneficiary's bank to a beneficiary that does not have a deposit or loan account, the proposal required that a beneficiary's bank obtain and retain a record of the beneficiary's name and address, and social security number, alien identification number, or employer identification number, or note in the record the lack of such number. Several commenters, however, noted that if the proceeds of a funds transfer are mailed to the beneficiary, there is no opportunity to obtain the beneficiary's identification number.

In the final rule, if the proceeds are delivered in person to a beneficiary other than an established customer or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain information similar to that required to be retained by originator's banks for originators that are not established customers. If the proceeds are delivered to the beneficiary other than in person, the final rule requires the beneficiary's bank to retain a copy of the check or other instrument

used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

The proposed rule required that an originator's bank verify the name and address of originators and beneficiaries that are not account holders by examination of a document that contained such information. A few commenters questioned whether they had a duty to determine the authenticity of the identification document provided by the person and used for verification. One commenter questioned what constituted adequate verification. Another commenter questioned what it should do if a non-account holder provides identification that appears to be falsified. Several commenters recommended that passports be allowed as acceptable identification, even though they do not include addresses.

The final rule has been clarified to require that the identity of an originator or beneficiary that is not an established customer be verified by examination of a document, preferably one that contains the person's name, address, and photograph. For aliens and nonresidents, the final rule has been amended to allow banks to rely on a passport or other official document evidencing nationality or residence. Banks should exercise care in accordance with applicable law and regulations to ensure that the identification presented is not falsified.

Section 103.33(e)(4) and Section 103.33(f)(4)

Retrievability Requirements—The proposal stated that banks must be able to access funds transfer records readily by name or account number of the originator or beneficiary, as the case may be, and may do so through reference to some other record maintained by the bank. Many commenters requested clarification of the term ''readily retrievable'' and asked how much time would be allowed to provide funds transfer records.

The Treasury and the Board acknowledge that the term ''readily'' is ambiguous and have eliminated it from the regulation. The existing standards set forth in 31 CFR 103.38(d) will be used to assess whether a bank has complied with the rule with respect to reporting records of funds transfers in response to a request by a law enforcement agency. Under this standard, the expected timeliness of retrievability will vary by request. Generally, records should be accessible within a reasonable period of time, considering the quantity of records requested, the nature and age of the record, the amount and type of information provided by the law enforcement agency making the request, as well as the particular bank's volume and capacity to retrieve the records. Usually, law enforcement agents will provide the approximate transaction dates of the funds transfer records requested. In some situations, law enforcement agencies may prefer to receive the requested information as it becomes available, rather than wait until the entire search is completed. Law enforcement agencies should provide banks with the agencies' desired method of providing the information.

The final rule does not require that funds transfer records be retained at the location where the payment order is accepted or at another particular location of the bank subject to the recordkeeping requirements. Funds transfer records may be retained, for example, at the bank's processing location for funds transfers. A bank should ensure that its funds transfer records are retained at a location that enables them to be accessible within a reasonable period of time.

Several commenters questioned whether the retrievability standard would apply to funds transfers executed prior to the rule's effective date. The retrievability standard would apply only to funds transfers made on or after the effective date. The Treasury and the Board note, however, that establishing a specific retrievability standard under this rule does not preclude banks' responsibilities to comply with a properly executed subpoena or search warrant, regardless of whether the transfer was executed before or after the effective date of the rule. Banks must provide information with respect to funds transfers made before the final rule's effective date in accordance with the Right to Financial Privacy Act (12 USC 3401, et seq.) and the Electronic Communications Privacy Act (18 USC 2701, et seq.).

Many commenters believed that the proposed rule would require an automated retrieval system to comply with the retrievability requirement. Although an automated retrieval system is not required by the rule, a bank may wish to consider implementing an automated system, depending on the demand for funds transfer records and its current means of keeping the records (several commenters indicated that funds transfer records are sorted by date and, in some cases, by bank branch). Based on the volume of law enforcement requests, a bank should weigh the costs of implementing an automated system versus the costs of searching manual records.

A bank may access funds transfer records through reference to some other existing record. If a law enforcement agency provides an account number, the bank could reference its statement file for that account number to determine funds transfer transaction reference numbers and dates. Using this information, the bank could then retrieve the funds transfer records by either manual or automated retrieval. If a law enforcement agency provided a bank with a customer name, the bank could reference its customer information file to determine the customer's account number prior to accessing its statement file.

Some commenters indicated that they should be allowed to choose whether their records would be retrievable by name, account number, or both. These commenters requested that the regulation be clarified to state that the bank has the flexibility to establish the specific retrievability method. As noted, banks have the flexibility to maintain their funds transfer records to be retrievable by name, account number, reference number, or other data element, so long as they have the capability to retrieve the transfer records if the law enforcement agency does not provide that particular data element in its request. Despite the establishment of a retrievability standard under the rule, banks still would be obligated to comply with any properly executed subpoena or search warrant. Because law enforcement agencies may have access to only one identifier (*e.g.*, name or account number) during the course of an investigation, banks are likely to receive requests containing either piece of information, regardless of how the bank has chosen to maintain its records. Thus, no changes have been made to the final rule to allow banks to specify the method of retrievability.

A few commenters noted that account numbers tend to change due to mergers and questioned whether they would be required to retrieve information based on the old or new account number. Commenters also said that they retain, as part of their funds transfer records, the account number at the time of the transaction, which may not be the current account number. The funds transfer records should be retrievable using the account number at the time of the transaction, as it is likely that law enforcement agency requests may come from tracing a transfer containing that account number. In situations where an established customer's address has changed, the institution may provide either the customer's current address or

the address at the time of the transaction. For example, if the bank retains the address information as part of its funds transfer records, it would retain the address at the time the funds transfer was processed. If the bank retains this information as part of its customer information file, it would retain the current address. For originators and beneficiaries other than established customers, however, the bank would retain the person's address at the time of the transaction, which is the only address that has been documented.

Several commenters, including commercial banks and credit unions, also mentioned that retrieving information by a secondary account holder's name would be more difficult than retrieving by a primary account holder's name in the case of a joint account. Customer information files typically are indexed on the primary account holder's name only. Commenters indicated that a search by a secondary account holder's name probably would require a manual search of the records. In order to comply with subpoenas and search warrants submitted by law enforcement agencies that request information by name, banks should have the capability to retrieve payment order records by secondary account holder name as well as by the name of the primary account holder. Banks that find it difficult to search by secondary account holder name for joint accounts may wish to consider the volume of law enforcement requests when making decisions about whether to make automation changes to facilitate searches by secondary account holder name or to rely on manual searches to satisfy these requests.

Many commenters noted that retrieving transactions by the name of an originator or beneficiary other than an account holder would be impractical, since a manual search of the bank's records would be required. One bank estimated that a search by a non-account holder's name would require three full days of manual searching for each day of funds transfer activity, and that the results of manual searches might not be very reliable. Banks may wish to consider implementing a separate recordkeeping system—either manual files or an automated database—containing only information related to payment orders for originators or beneficiaries that are not established customers, in order to search more easily for these transactions. If a bank has more than one customer with the same name, the bank may request more specific information from the law enforcement agency to determine the exact individual desired. In situations where a law enforcement agency provides a bank with a customer's account number only, then the bank may search based on the account number only.

Section 103.33(e)(6) and Section 103.33(f)(6)

Exceptions—The proposed recordkeeping requirements exempted certain transfers based on the parties to the transfer. Several commenters requested that more transfers be exempted. Two commenters recommended that transfers involving public utilities, corporations listed on major stock exchanges, and businesses exempted from Currency Transaction Reporting be exempted under the rule. The Treasury and the Board believe that excluding such a broad category of entities would diminish the usefulness of the regulation; therefore, these entities are not exempted in the final rule.

To eliminate the redundancy in the proposed list of exemptions and to provide consistent treatment for wholly-owned domestic subsidiaries of domestic banks and domestic brokers or dealers in securities, the final rule has been revised to exempt transfers where the originator and beneficiary are any of the following: (1) A domestic bank; (2) a wholly-owned domestic subsidiary of a domestic bank; (3) a domestic broker or dealer in securities; (4) a wholly-owned domestic subsidiary of a domestic broker or dealer in securities; (5) the United States; (6) a state or local government; (7) a federal, state or local government agency or instrumentality. Funds transfers where both the originator and beneficiary are the same person and the originator's bank and the beneficiary's bank are the same domestic bank, as well as transmittals of funds where both the transmittor and recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same domestic broker or dealer in securities, also are exempted. These revisions expand the proposed exemptions to include transfers between a wholly-owned subsidiary of any domestic bank or broker or dealer in securities and any other exempted entity.

C. Other Issues

Compliance Costs—Many commenters provided estimates on the cost to implement the requirements of the proposed rule as well as an estimate on the annual ongoing costs to collect the required information. The cost estimates varied widely. A few smaller credit unions indicated that they already were complying with the proposed requirements and therefore expected no additional implementation or maintenance costs as a result of the proposal. Larger commercial banks and credit unions, however, estimated their implementation costs at $15,000 to $879,000, and their maintenance costs as high as $350,000 per year. Two nonbank providers of money transmitting services expected that compliance would be very costly. One money transmittor estimated $946,000 of implementation costs and $2 million of annual maintenance costs. Another provider of money transmitting services estimated $3.3 million of implementation costs, which includes increased transaction time, additional hardware/software, and training costs. The same provider of money transmitting services, however, estimated that with a $3,000 exemption threshold, its implementation cost would fall to $710,000.

Implementing a $3,000 threshold and limiting the verification requirements and supplemental recordkeeping requirements to transfers involving originators or beneficiaries that are not established customers will significantly reduce the burden and cost for banks to comply with the rule. The burden for nonbank financial institutions, particularly providers of money transmitting services, decreases dramatically under the final rule, as the majority of transmittals of funds they accept are for amounts of less than $3,000.

Retention Period—Records required under the Bank Secrecy Act, including funds transfer records, must be retained for five years. A securities industry association, however, commented that Securities and Exchange Commission (SEC) retention regulations, which apply to broker/dealers, may differ from the five-year period depending upon the specific document containing the required information. The association recommended that the rule be amended to allow broker/dealers to comply with existing SEC rules, which would eliminate the need to modify existing retention practices and the administrative difficulties of maintaining inconsistent retention schedules. The Internal Revenue Service recommended that records be maintained for ten years, to ensure information related to audits would be available for its use.

SEC regulations require registered broker/dealers subject to Treasury's Bank Secrecy Act requirements to preserve their records according to 31 CFR Part 103, if such retention periods

are longer than those required by the SEC (17 CFR 240.17a–8). Therefore, the retention period remains unchanged for broker/dealers. Under this final rule, the five-year retention period applies only to records of funds transfers made on or after the rule's effective date.

The Treasury and the Board believe that a uniform retention period should apply to all records that must be retained under the Bank Secrecy Act regulations, and therefore, a longer retention period should not be required for funds transfer records than for records of other financial transactions. The Treasury and the Board are concerned that expansion of the Bank Secrecy Act record retention requirement from five to ten years may increase materially the cost of compliance for financial institutions, but will monitor the adequacy of the record retention requirement.

Effective Date—Many commenters expressed concern regarding the effective date, particularly given the need for banks to make operational and procedural changes to comply with the rule's retrievability and verification requirements. These commenters indicated that the proposed December 31, 1993 effective date was unrealistic given that the final rule had yet to be published with only weeks remaining until the deadline. They indicated that changes to existing manual and automated procedures to comply with the rule would require a significant preparation time.

Most commenters requested that the effective date be six to 12 months after publication of the final rule. Several commenters suggested that the implementation date be delayed to coincide with the effective date of the Treasury's companion Travel Rule. These commenters indicated that a single implementation date for both rules would prevent having to make changes twice to internal procedures and computer systems.

A few commenters recommended that the effective date be delayed until the new Fedwire format is adopted. As noted above, recognizing that originator's banks may strive to satisfy the recordkeeping requirements of this rule primarily through retention of records of the payment orders they execute, and that the current Fedwire format may not have sufficient space to include all means provided by the originator of identifying the beneficiary, the final rule provides an exception to the requirement that the bank retain as many means of identifying the beneficiary as provided by the originator for Fedwire transfers, until the bank's conversion to the expanded Fedwire format is complete. With this limited exception, the expanded format is not necessary to comply with this rule, and delaying implementation of the recordkeeping rule until after a new format is implemented would delay realizing the benefits of this rule.

In response to the concerns raised by commenters, on December 22, 1993, the Treasury announced a delay in the adoption of the final rule to permit the Treasury to consider the rule as part of its ongoing comprehensive review of the Treasury's anti-money laundering enforcement policies, programs, and regulations. The Treasury and the Board recognize that adequate lead time is necessary to allow banks time to change procedures and/or install systems to comply with the final rule. Therefore, the rule will become effective on January 1, 1996, at which time the Treasury's companion Travel Rule also will become effective. [See the Treasury's notice elsewhere in today's **Federal Register** adopting the final Travel Rule.]

D. Paperwork Reduction Act

The collection of information required by the final rule has been submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1505–0063.

The collection of information in this regulation is authorized by 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5328. The likely recordkeepers are financial institutions that perform transmittals of funds.

Estimated number of respondents and/or recordkeepers: 60,000.

Estimated total annual recordkeeping burden: 1 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 16.3 hours.

Estimated annual frequency of responses: Upon request.

The estimated average annual burden hours have decreased significantly from those included in the August 1993 proposal. The decrease is due to the significant reduction in the number of transmittals of funds subject to the recordkeeping requirements as a result of the establishment of the $3,000 threshold, and due to the reduction of circumstances in which additional recordkeeping and verification requirements for noncustomers would apply.

E. Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) A succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The requirements in this rule will apply to all financial institutions subject to the Bank Secrecy Act, regardless of size. An exemption for small entities would not be appropriate because it would permit money laundering operations to evade the recordkeeping process by using small financial institutions. This would diminish significantly the usefulness of these records for criminal, tax, or regulatory investigations.

The small entities that will be affected by this rule include small banks and nonbank money transmitting businesses. In order to minimize the economic impact on small entities, the rule allows financial institutions that send or receive transmittal orders for established customers to use existing records to satisfy some of the recordkeeping requirements. The rule also exempts transmittals of funds below $3,000, which should particularly benefit nonbank providers of money transmitting services that handle smaller-value transfers. The Treasury and the Board do not believe that the final rule would impose reporting or recordkeeping burdens on small entities that require specialized professional skills not available to them.

F. Conclusion

The Treasury and the Board have adopted a revised version of its proposed rule.

G. Executive Order 12866

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

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

Amendment

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

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

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

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5329.

2. Section 103.11 is amended as follows:

a. By redesignating paragraphs (a), (b), (c) through (h), (i) through (k), (l), (m), (n), (o), (p) through (r), and (s) through (u) as paragraphs (b), (c), (f) through (k), (n) through (p), (t), (u), (z), (ee), (gg) through (ii), and (nn) through (pp), respectively;

b. By removing the words ''For purposes of § 103.29 of this part, deposit'' and adding in their place, ''Deposit'' in newly designated paragraph (j); and

c. By adding new paragraphs (a), (d), (e), (l), (m), (q), (r), (s), (v), (w), (x), (y), (aa), (bb), (cc), (dd), (ff), (jj), (kk), (ll), and (mm).

The additions read as follows:

§ 103.11 Meaning of terms.

* * * * *

(a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

* * * * *

(d) *Beneficiary.* The person to be paid by the beneficiary's bank.

(e) *Beneficiary's bank.* The bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

* * * * *

(l) *Established customer.* A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(m) *Execution date.* The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

* * * * *

(q) *Funds transfer.* The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(r) *Intermediary bank.* A receiving bank other than the originator's bank or the beneficiary's bank.

(s) *Intermediary financial institution.* A receiving financial institution, other than the transmittor's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

* * * * *

(v) *Originator.* The sender of the first payment order in a funds transfer.

(w) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.

(x) *Payment date.* The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(y) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

* * * * *

(aa) *Receiving bank.* The bank to which the sender's instruction is addressed.

(bb) *Receiving financial institution.* The financial institution to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(cc) *Recipient.* The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(dd) *Recipient's financial institution.* The financial institution identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

* * * * *

(ff) *Sender.* The person giving the instruction to the receiving financial institution.

* * * * *

(jj) *Transmittal of funds.* A series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the

transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmittor's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or to cause another financial institution to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(ll) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution other than a bank.

(mm) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution, or the transmittor if the transmittor is a financial institution. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank.

* * * * *

3. Paragraph (b)(2) of § 103.25 is revised to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

* * * * *

(b) * * *

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to § 103.33.

* * * * *

4. Section 103.33 is amended by adding new paragraphs (e) and (f), to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) *Banks.* With respect to a funds transfer in the amount of $3,000 or more by a bank:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, the bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order: [1]

(*1*) The name and address of the beneficiary;

(*2*) The account number of the beneficiary; and

(*3*) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, the bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, the bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) *Originators other than established customers.* In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Beneficiaries other than established customers.* For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) if the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer

[1] For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) if the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability*. The information that an originator's bank must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) *Verification*. Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions*. The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A domestic bank;

(B) A wholly-owned domestic subsidiary of a domestic bank;

(C) A domestic broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a domestic broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same domestic bank.

(f) *Nonbank financial institutions*. With respect to a transmittal of funds in the amount of $3,000 or more by a financial institution other than a bank:

(1) *Recordkeeping requirements*. (i) For each transmittal order that it accepts as a transmittor's financial institution, the financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmittor;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order: [2]

(*1*) The name and address of the recipient;

(*2*) The account number of the recipient; and

(*3*) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, the financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, the financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order, as well as any form completed or signed by the person receiving the proceeds of the transmittal of funds.

(2) *Transmittors other than established customers*. In the case of a transmittal order from a transmittor that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmittor's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmittor's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record the lack thereof. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(ii) If the transmittal order accepted by the transmittor's financial institution is not made in person, the transmittor's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or

[2] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

credit card transaction) for the transmittal of funds. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that a transmittor's financial institution must retain under paragraphs (f)(1)(i) and (f)(2) of this section shall be retrievable by the transmittor's financial institution by reference to the name of the transmittor. If the transmittor is an established customer of the transmittor's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (f)(1)(iii) and (f)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) *Verification.* Where verification is required under paragraphs (f)(2) and (f)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmittor and the recipient are any of the following:

(A) A domestic bank;

(B) A wholly-owned domestic subsidiary of a domestic bank;

(C) A domestic broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a domestic broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmittor and recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same domestic broker or dealer in securities.

In concurrence:

By the Board of Governors of the Federal Reserve System, December 21, 1994.

William W. Wiles,

Secretary of the Board.

By the Department of the Treasury, December 19, 1994.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

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FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0807]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has finalized the enhanced recordkeeping requirements relating to certain wire transfers (which include funds transfers and transmittals of funds) by financial institutions. The final rule takes into consideration the public comments received on the initial notice of proposed rulemaking. These recordkeeping requirements are being promulgated jointly by the Board and the Department of Treasury (Treasury). A companion notice published elsewhere in today's **Federal Register** by the Treasury and the Board (Joint Notice) sets forth the substantive provisions of the recordkeeping requirements and provides an analysis of comments received on the proposal. This notice sets forth the regulation for codification at 12 CFR Part 219, subpart B, which cross-references the substantive provisions set forth in the Joint Notice. Under the Joint Notice, each domestic financial institution involved in either a domestic or international wire transfer must collect and retain certain information. The amount and type of information collected and retained will depend upon the nature of the financial institution, its role in the particular wire transfer, and the relationship of the parties to the transaction with the financial institution.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Associate Director, (202) 452–2789; Gayle Brett, Manager,