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Office of Thrift Supervision

Department of the Treasury

and Inspector General, Office of Inspector General, Office of Thrift Supervision, and Consumer Protection

1700 G Street, N.W., Washington, DC 20552 • (202) 906-7984

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January 28, 2005

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS**FROM:**

Scott M. Albinson

SUBJECT:

FinCEN Interpretive Guidance—Unitary Filing of Suspicious Activity and OFAC Blocking Reports

FinCEN has revised its prior guidance to eliminate the need to file duplicate reports in cases where a financial institution identifies a verified match with individuals or entities designated by the Treasury's Office of Foreign Assets Control (OFAC). OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC requires financial institutions to block and file reports on accounts, payments, or transfers in which an OFAC-designated country, entity, or individual has any interest.

Under FinCEN's recently issued Interpretive Release No. 2004-02, dated December 23, 2004 (copy attached), FinCEN considers its rules requiring the filing of a suspicious activity report (SAR) to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's Reporting, Penalties, and Procedures Regulations. OFAC will then provide the information to FinCEN for inclusion in the SAR reporting database, where it will be made available to law enforcement.

The filing of a blocking report with OFAC, however, will not satisfy your obligation to identify and report suspicious activity beyond the fact of an OFAC match. You should file a SAR even if you have filed a blocking report with OFAC, if the facts and circumstances surrounding the OFAC match are independently suspicious and are otherwise required to be reported under existing FinCEN regulations.

If you have any questions about this guidance or any other BSA/USA PATRIOT Act related issue, please contact your OTS regional office. You may also call our USA PATRIOT Act phone line at (202) 906-6012, or consult our BSA/Patriot Act web resource page found at <http://www.ots.treas.gov>.

Attachment

Dated: December 14, 2004.

Leslye M. Fraser,

*Director, Office of Regulations and Policy,
Center for Food Safety and Applied Nutrition.*

[FR Doc. 04-28043 Filed 12-22-04; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

Interpretive Release No. 2004-02— Unitary Filing of Suspicious Activity and Blocking Reports

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Department of the Treasury.

ACTION: Final rule; interpretive release.

SUMMARY: This FinCEN interpretive guidance clarifies that reports filed with the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) of blocked transactions with Specially Designated Global Terrorists, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Trafficker Kingpins, and Specially Designated Narcotics Traffickers will be deemed by FinCEN to fulfill the requirement to file suspicious activity reports on such transactions for purposes of FinCEN’s suspicious activity reporting rules. However, the filing of a blocking report with OFAC will not be deemed to satisfy a financial institution’s obligation to file a suspicious activity report if the transactions would be reportable under FinCEN’s suspicious activity reporting rules even if there were no OFAC match. Moreover, to the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information.

DATES: This final rule is effective December 23, 2004. The **DATES** section of the rule published on December 14, 2004, at 69 FR 74439 is corrected to read as follows:

DATES: Appendix C is added to part 103 effective December 14, 2004; however, Release 2004-01 is not effective until June 13, 2005.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, 1-800-949-2732, Financial Crimes Enforcement Network.

SUPPLEMENTARY INFORMATION: FinCEN is publishing this interpretation to clarify that the filing of required blocking reports with OFAC on transactions

involving an individual or entity designated as a Specially Designated Global Terrorist, Specially Designated Terrorist, Foreign Terrorist Organization, Specially Designated Narcotics Trafficker Kingpin, or Specially Designated Narcotics Trafficker shall be deemed to satisfy the requirement, under existing and any forthcoming suspicious activity reporting regulations, that financial institutions file suspicious activity reports based on the fact of such a match.

List of Subjects in 31 CFR Part 103

Authority delegations (government agencies), Banks, Banking, Currency, Investigations, Reporting and recordkeeping requirements.

Department of the Treasury

1 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 312, 313, 314, 319, 326, 352. Pub. L. 107-56, 115 Stat. 307, 21 U.S.C. 1786(q).

■ 2. Part 103 is amended by adding a new Interpretive Release at the end of Appendix C to read as follows:

APPENDIX C TO PART 103— INTERPRETIVE RULES

* * * * *

Release No. 2004-02

This FinCEN interpretive guidance clarifies that reports filed with the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) of blocked transactions with Specially Designated Global Terrorists, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Trafficker Kingpins, and Specially Designated Narcotics Traffickers will be deemed by FinCEN to fulfill the requirement to file suspicious activity reports on such transactions for purposes of FinCEN’s suspicious activity reporting rules. However, the filing of a blocking report with OFAC will not be deemed to satisfy a financial institution’s obligation to file a suspicious activity report if the transactions would be reportable under FinCEN’s suspicious activity reporting rules even if there were no OFAC match. Moreover, to the extent that the financial institution is in possession of

information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information.

Background

The Bank Secrecy Act authorizes the Secretary of the Treasury to require financial institutions to report “any suspicious transaction relevant to a possible violation of law or regulation.”¹ Under this authority, FinCEN has issued regulations requiring banks, securities broker-dealers, introducing brokers, casinos, futures commission merchants, and money services businesses, to report suspicious activity that meets a particular dollar threshold.² Each rule includes filing procedures requiring that a suspicious transaction shall be reported by completing a suspicious activity report and filing it with FinCEN in a central location to be determined by FinCEN. Generally, the rules provide a financial institution with thirty days from the date of the initial detection of suspicious activity to file a report, with an additional thirty days if the financial institution is unable to identify a suspect. Reports are filed on forms developed for each industry subject to the reporting requirement.³

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC’s Reporting, Procedures and Penalties Regulations at 31 CFR part 501 require U.S. financial institutions to block and file reports on accounts, payments, or transfers in which an OFAC-designated country, entity, or individual has any interest.⁴ These reports must be filed with OFAC within ten business days of the blocking of the property.⁵

Prior Guidance

Transactions involving an individual or entity designated on OFAC’s list of Specially Designated Nationals and Blocked Persons as a global terrorist, terrorist, terrorist organization, narcotics trafficker, or narcotics kingpin⁶ may be in furtherance of a criminal act, and therefore relevant to a possible violation of law. Thus, blocking reports related to such persons also describe

¹ See 31 U.S.C. 5318(g)(1).

² See 31 CFR 103.17-21. The threshold for most financial institutions is \$5,000; transactions conducted at points of sale for money services businesses have a reporting threshold of \$2,000. See 31 CFR 103.20.

³ See TD F 90-22.47 (depository institutions); TD F 22.56 (money services businesses); FinCEN Form 101 (securities and futures industries); FinCEN Form 102 (casinos and card clubs).

⁴ 31 CFR 501.603.

⁵ 31 CFR 501.603(b)(1)(i).

⁶ The specific designations are as follows: Specially designated terrorist; foreign terrorist organization; specially designated global terrorist; specially designated narcotics trafficker; specially designated narcotics trafficker kingpin. See 31 CFR parts 595, 597, 598 and the Foreign Narcotics Kingpin Act, 21 U.S.C. 1901-08, 8 U.S.C. 1182. These categories of designations are subject solely to blocking requirements.

potentially suspicious activity. In the November 2003 edition of its "SAR Activity Review,"⁷ FinCEN instructed financial institutions to file suspicious activity reports on verified matches of persons designated by OFAC. While this guidance ensured that the relevant information would be available to law enforcement, it also resulted in financial institutions being required to make two separate filings with the Department of the Treasury—one with OFAC pursuant to its Reporting, Procedures and Penalties Regulations, and one with FinCEN pursuant to its suspicious activity reporting rules.

Revised Guidance

FinCEN is hereby revising its prior guidance to eliminate the need for duplicative reporting in cases where a financial institution identifies a verified match with individuals or entities designated by OFAC. As of the date of publication of this interpretation, FinCEN will deem its rules requiring the filing of suspicious activity reports to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's Reporting, Penalties and Procedures Regulations. OFAC will then provide the information to FinCEN for inclusion in the suspicious activity reporting database where it will be made available to law enforcement. This construction of the suspicious activity reporting rules will serve the public interest by enabling FinCEN to obtain and provide potentially important information about terrorists and major drug traffickers to law enforcement on an expedited basis without imposing duplicative reporting burdens on the regulated industry.

Accordingly, a financial institution that files a blocking report with OFAC due to the involvement in a transaction or account of a person designated as a Specially Designated Global Terrorist, a Specially Designated Terrorist, a Foreign Terrorist Organization, a Specially Designated Narcotics Trafficker Kingpin, or a Specially Designated Narcotics Trafficker, shall be deemed to have simultaneously filed a suspicious activity report on the fact of the match with FinCEN, in satisfaction of the requirements of the applicable suspicious activity reporting rule. This interpretation does not affect a financial institution's obligation to identify and report suspicious activity beyond the fact of the OFAC match. To the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information. This interpretation also does not affect a financial institution's obligation to file a suspicious activity report even if it has filed a blocking report with OFAC, to the extent that the facts and circumstances surrounding the OFAC match are independently suspicious—and are otherwise required to be reported under existing FinCEN regulations. In those cases, the OFAC blocking report would not satisfy a financial institution's suspicious activity report filing obligation.

Further, nothing in this interpretation is intended to preclude a financial institution

from filing a suspicious activity report to disclose additional information concerning the OFAC match,⁸ nor does it preclude a financial institution from filing a suspicious activity report if the financial institution has reason to believe that terrorism or drug trafficking is taking place, even though there is no OFAC match. Finally, this interpretation does not apply to blocking reports filed to report transactions and accounts involving persons owned by, or who are nationals of, countries subject to OFAC-administered sanctions programs. Such transactions should be reported on suspicious activity reports under the suspicious activity reporting rules if, and only, if, the activity itself appears to be suspicious under the criteria established by the suspicious activity reporting rules.

William J. Fox,
Director.

[FR Doc. 04-27739 Filed 12-22-04; 8:45 am]
BILLING CODE 4810-02-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095-AB41

Records Management; Unscheduled Records; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: NARA published in the **Federal Register** of December 15, 2004, a final rule allowing the transfer of unscheduled records to records storage facilities. Inadvertently, a word was deleted from the preamble, changing the meaning of a sentence. This document corrects that deletion.

DATES: This rule is effective January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number (301) 837-3021 or fax number (301) 837-0319.

SUPPLEMENTARY INFORMATION: NARA published a final rule on December 15, 2004, at 69 FR 74976. The second sentence in the **SUPPLEMENTARY INFORMATION** contains an error. This correction inserts the missing word.

In the final rule published at 69 FR 74976, make the following correction. On page 74977, in the first column, insert the word "not" in line 6 so that the line reads "* * * Executive Order 12866 and has not been * * *".

⁸ Such a report would be a voluntary report under the statute and regulations. See 31 U.S.C. 5318(g)(3) (extending safe harbor protection from civil liability to voluntary filings).

Dated: December 17, 2004.

Nancy Y. Allard,

Federal Register Liaison Officer.

[FR Doc. 04-28048 Filed 12-22-04; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05-OAR-2004-MI-0002; FRL-7849-1]

Approval and Promulgation of Implementation Plans: Michigan: Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the plan prepared by Michigan that will limit the emissions of oxides of nitrogen (NO_x) from large stationary sources (*i.e.* power plants, industrial boilers and cement kilns). This plan meets all of the requirements contained in an EPA rule that was published in the **Federal Register** on April 16, 2004. This rule, otherwise known as the NO_x SIP Call Phase I provides for NO_x reductions from sources in 20 States in the eastern half of the country. The effect of this approval is to ensure federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved State Implementation Plan (SIP).

DATES: This "direct final" rule is effective February 22, 2005, unless EPA receives written adverse comment by January 24, 2005. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2004-MI-0002, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://docket.epa.gov/rmepub/>. Regional Material in EDocket (RME), EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-

⁷ Issue 6 (Nov. 2003).