

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA45

Financial Crimes Enforcement Network; Delegation of Enforcement Authority Regarding the Foreign Bank Account Report Requirements

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is amending the regulations implementing the Bank Secrecy Act to reflect that enforcement authority with respect to the foreign bank account report requirements of 31 CFR part 103 has been delegated from FinCEN to the Commissioner of the Internal Revenue Service (IRS).

DATES: This final rule is effective May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905-3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Background**

The Bank Secrecy Act (BSA), Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311 *et seq.*, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions and other persons to keep records and file reports that have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism, and to enforce any reporting or recordkeeping requirement through various means, including the assessment and collection of civil penalties. Regulations implementing the authority of the BSA appear at 31 CFR part 103. FinCEN, a bureau within the U.S. Department of the Treasury, administers and enforces the BSA and its implementing provisions pursuant to a delegation by the Secretary of the Treasury.

FinCEN recently delegated to the IRS the authority to enforce the FBAR requirements of 31 CFR part 103. Enforcement authority was delegated by means of a Memorandum of Agreement between FinCEN and the IRS, and includes the authority to assess and collect civil penalties for noncompliance with FBAR

requirements. The reasons for delegating enforcement authority were laid out in Treasury/FinCEN's April 2002 report to Congress on the FBAR requirements, which was required to be submitted by

§ 361(b) of the USA PATRIOT Act of 2001, Pub. L. 107-56. Among the reasons cited for the possible delegation of enforcement authority were the nature of the FBAR requirements (*i.e.*, unlike with other BSA reports, the overwhelming majority of FBARs are filed by individual taxpayers, rather than financial institutions) and the greater resources available to the IRS to devote to FBAR compliance. IRS previously had been delegated the authority to investigate possible violations of 31 CFR 103.24. FinCEN is issuing this final rule to amend the relevant BSA regulations to reflect the delegation of FBAR enforcement authority.

II. Administrative Procedure Act

This final rule is being issued without notice and an opportunity for comment because it is a procedural rule, rather than a substantive rule. The delegation of enforcement authority described in this document has no substantive impact on those persons subject to the FBAR reporting and recordkeeping requirements. Rules of agency organization, procedure, or practice are not subject to notice and comment under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). See 5 U.S.C. 553(b)(3)(A).

III. Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this final rule because the rule is not subject to the notice and comment requirements of the Administrative Procedure Act.

IV. Paperwork Reduction Act

This final rule contains no collection of information for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

V. Executive Order 12866

It has been determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law Enforcement, Reporting and recordkeeping requirements.

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 FINANCIAL 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. 5311-5332; title III, secs. 312, 314, 352, Pub. L. 107-56, 115 Stat. 307.

■ 2. Section 103.56 is amended by adding new paragraph (g) to read as follows:

§ 103.56 Enforcement.

* * * * *

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and §§ 103.24 and 103.32 of this part has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. Such authority includes, with respect to 31 U.S.C. 5314 and §§ 103.24 and 103.32 of this part, the authority to: assess and collect civil penalties under 31 U.S.C. 5321 and 31 CFR 103.57; investigate possible civil violations of these provisions (in addition to the authority already provided at paragraph (c)(2)) of this section); employ the summons power of subpart F of part 103; issue administrative rulings under subpart G of part 103; and take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

3. Section 103.72 is amended by revising paragraph (b) to read as follows:

(b) *Internal Revenue Service.* Except with respect to § 103.23 of this part, the Commissioner, the Deputy Commissioner, or a delegate of either official, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this part, the Chief (Criminal Investigation) or a delegate.

Dated: May 8, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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