

bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included on the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

* * * * *

Form 5 Annual Statement of Changes in Beneficial Ownership of Securities

* * * * *

3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year).

4. If Amendment, Date Original Filed (Month/Day/Year).

* * * * *

Table II—Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

* * * * *

9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4).

10. Ownership Form of Derivative Securities: Direct (D) or Indirect (I) (Instr. 4).

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 6th day of April, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04-8232 Filed 4-9-04; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

Imposition of Special Measures Against Burma

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

ACTION: Final rule.

SUMMARY: On November 18, 2003, the Secretary of the Treasury (Secretary) designated Burma as a jurisdiction of primary money laundering concern, and proposed a special measure that certain U.S. financial institutions would be required to take concerning Burma, pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. FinCEN is issuing this final rule to require certain U.S. financial institutions to take the proposed special measure regarding Burma.

DATES: Effective date: May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, (FinCEN), (202) 354-6400 or the Office of Chief Counsel (FinCEN), (703) 905-3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary has designated Burma as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107-56) (the Act). To protect the U.S. financial system against the money laundering risk posed by Burma, FinCEN is imposing a special measure authorized by section 5318A(b)(5). The special measure imposed under this section will generally prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-

through accounts in the United States for, or on behalf of, Burmese banking institutions, unless (as explained below) operation of those accounts is not prohibited by Executive Order 13310 of July 28, 2003, and the Burma-related activities of such accounts are solely to effect transactions that are exempt from, or licensed pursuant to, Executive Order 13310. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used by the foreign bank to provide financial services to a Burmese banking institution indirectly.

Additionally, by separate notice, FinCEN is announcing concurrently the imposition of the fifth special measure against two Burmese banking institutions, Myanmar Mayflower Bank and Asia Wealth Bank. This special measure prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank, notwithstanding any exemption from, or license issued pursuant to, Executive Order 13310.

I. Background

A. Section 311 of the USA PATRIOT Act

On October 26, 2001, the President signed the Act into law. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA) (codified in subchapter II of chapter 53 of title 31, United States Code) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act (Section 311) added section 5318A to the BSA, granting the Secretary authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) to be of "primary money laundering concern," and to require U.S. financial institutions to take certain "special measures" against the primary money laundering concern.

Section 311 identifies factors to consider as well as agencies and departments to consult before the Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting specific special measures against the designee.

Taken as a whole, Section 311 provides Treasury with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing

concerns. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can obtain more information about the concerned jurisdictions, institutions, transactions, and accounts; more effectively monitor the respective institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

1. Imposition of Special Measures

If the Secretary determines that a foreign jurisdiction is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.¹

The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate agencies and other interested parties² and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden

¹ Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

² Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General and the Secretary of State if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions maintaining correspondent account relationships with the designated jurisdiction.

associated with compliance, for financial institutions organized or licensed in the United States;

- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and
- The effect of the action on United States national security and foreign policy.

2. Procedures for Imposing Special Measures

In this final rule, the Secretary, through FinCEN, is requiring certain U.S. financial institutions to take the fifth special measure (31 U.S.C. 5318A(b)(5)) regarding Burma. This special measure may only be imposed through the issuance of a regulation.

B. Burma

Burma (also known as Myanmar) has no effective anti-money laundering controls in place. As a result, in June 2001 Burma was designated as a Non-Cooperative Country or Territory (NCCT) by the Financial Action Task Force (FATF)³ for its lack of basic anti-money laundering provisions and weak oversight of the banking sector. Following the designation by the FATF, in April 2002, FinCEN issued an advisory to U.S. financial institutions to give enhanced scrutiny to all transactions originating in or routed to or through Burma, or involving entities organized or domiciled, or persons maintaining accounts, in Burma. Deficiencies identified by FATF and the FinCEN advisory included:

- Burma lacks a basic set of anti-money laundering laws and regulations.
- Money laundering is not a criminal offense for crimes other than drug trafficking in Burma.
- The Burmese Central Bank has no anti-money laundering regulations for financial institutions.
- Banks licensed by Burma are not legally required to obtain or maintain identification information about their customers.
- Banks licensed by Burma are not required to maintain transaction records of customer accounts.

• Burma does not require financial institutions to report suspicious transactions.

• Burma has significant obstacles to international co-cooperation by judicial authorities.

In June 2002, Burma responded to this international pressure by enacting an

³ For further information on the FATF, see <http://www.fatf-gafi.org>.

anti-money laundering law that purportedly addresses some of these deficiencies. However, in the absence of implementing regulations, the Burmese anti-money laundering law could not be regarded as effectively remedying any of the identified deficiencies. Due to Burma's lack of progress, the FATF called upon its member jurisdictions to impose additional countermeasures on Burma as of November 3, 2003. On December 5, 2003, Burma issued regulations to implement this law. However, the regulations do not set threshold amounts or time limits. The regulations also do not address the need for a mutual assistance law. Indeed, the 2003 International Narcotics Control Strategy Report, issued in March 2004, states that Burma must still implement and enforce the December 2003 regulations and address their deficiencies. In addition, Burma must provide adequate resources for supervision of the financial sector and end policies that make it easy for drug money to enter the legitimate economy.⁴

The United States continues to recognize that Burma is a haven for international drug trafficking. On January 31, 2003, the President also signed Presidential Determination No. 2003–14, identifying Burma as a major illicit drug producing and/or drug transiting country pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228) and as a country that has failed demonstrably during the previous twelve months to adhere to its obligations under international counter-narcotics agreements and take the measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended (FAA). In addition, this past year Burma continued to be named as a major money laundering country. A major money laundering country is defined by statute as one "whose financial institutions engage in currency transactions including significant amounts of proceeds from international narcotics trafficking." FAA section 481(e)(7).

C. Economic Sanctions

On July 28, 2003, the President signed both the Burmese Freedom and Democracy Act of 2003 and Executive Order 13310, imposing economic

⁴ The 2003 International Narcotics Control Strategy Report, released by the Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State, was issued March 1, 2004. Part II of the report covers money laundering and financial crimes. The portion of the report dealing with Burma can be found at <http://www.state.gov/g/inrls/nrcrpt/2003/vol2/html/29920.htm>.

sanctions on Burma. These sanctions generally include: (1) A ban on the exportation or reexportation, directly or indirectly, of financial services to Burma; (2) the blocking of property and interests in property of the State Peace and Development Council of Burma and three state-owned foreign trade banks that are in the United States or in the possession or control of U.S. persons; and (3) a ban on the importation of Burmese goods into the United States. The new sanctions have frozen hundreds of thousands of dollars of assets and have disrupted an already weak economy, especially in the important garment sector where many firms have closed or moved outside of Burma.

Executive Order 13310 prohibits broadly the provision of financial services to Burma from the United States or by a U.S. person, subject to limited exceptions.⁵ Since the President signed the Order, however, Treasury has issued several licenses to permit transactions with Burma for certain specified purposes. For example, Treasury issued licenses authorizing transactions for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund, and non-commercial personal remittances of up to \$300 per household per quarter. The exemptions and licenses reflect the judgment of the United States that certain transactions are necessary and appropriate, even within the framework of this sanctions regime.

D. The Section 311 Special Measures

The imposition of Section 311 special measures reinforces the existing restrictions on transactions with Burma that are outlined above. Although they are similar in their effect, the Section 311 special measures differ in certain respects and serve distinct policy goals. First, the Section 311 special measures are potentially broader than the existing sanctions in at least one respect—they apply to all foreign branches of Burmese banking institutions. Second, the purposes served by the Section 311 action differ markedly from the purposes of the economic sanctions described above. This action under Section 311 is premised on the Secretary's determination that Burma poses an unacceptable risk of money laundering and other financial crimes, due to its failure to implement an

effective anti-money laundering regime. The goals of this action include protecting the U.S. financial system and encouraging Burma to make the necessary changes to its anti-money laundering regime. The existing sanctions pursuant to Executive Order 13310, on the other hand, were imposed for different reasons, in particular to take additional steps with respect to the government of Burma's continued repression of the democratic opposition.

These underlying purposes for the designation of Burma fuel another intended consequence, namely, to encourage other jurisdictions and financial institutions to take similar steps to cut off Burma from the international financial system due to the unacceptable risk of money laundering. In addition to stemming the flow of illicit funds from Burma into the United States, the act of naming Burma publicly and formally denying it access to the U.S. financial system is an important statement to the rest of the world about the need for caution in financial dealings with Burma and the need for reform.

Next, this action fulfills an important role of the United States in supporting the multilateral effort to encourage Burma to implement effective anti-money laundering controls. The FATF has called on all members to impose additional countermeasures as a result of Burma's failure to address its money laundering deficiencies. The assessment of Section 311 special measures, premised squarely on the absence of money laundering controls, fulfills this obligation in a way that the existing sanctions cannot.

Finally, the Section 311 special measures incorporate the exemptions from, and licenses issued pursuant to, Executive Order 13310. Thus, U.S. financial institutions may maintain otherwise prohibited correspondent account relationships so long as the maintenance of such accounts is not prohibited by E.O. 13310 and provided that the only transactions conducted on behalf of Burmese banking institutions are those that are otherwise permissible under the existing sanctions regime. The policy of allowing certain transactions under the Executive Order should not be undermined by Section 311 special measures. However, Burma has been designated under Section 311 of the Act due to inadequate anti-money laundering controls, and the fact that the overarching purpose for a transaction is permissible under the Executive Order does not itself reduce the risk of money laundering. Therefore, while the exemptions and licenses are incorporated into the Section 311

special measures, U.S. financial institutions processing such transactions must still conduct enhanced scrutiny to guard against the flow of illicit proceeds.

II. Imposition of Special Measures

As a result of the designation of Burma as a jurisdiction of primary money laundering concern, and based upon consultations⁶ and the consideration of all relevant factors, the Secretary has determined that grounds exist for the imposition of the special measures authorized by section 5318A(b)(5). Thus, the final rule prohibits covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent or payable-through account for, or on behalf of, a Burmese banking institution. This prohibition extends to any correspondent or payable-through account maintained in the United States for any foreign bank if the account is used by the foreign bank to provide banking services indirectly to a Burmese banking institution. Financial institutions covered by this rule that obtain knowledge that this is occurring are required to ensure that any such account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship in the manner set forth in this rulemaking. Other than with respect to Myanmar Mayflower Bank and Asia Wealth Bank, the rule does, however, allow U.S. financial institutions to maintain correspondent accounts otherwise prohibited by this rule if such accounts are permitted to be maintained pursuant to Executive Order 13310 and the Burma-related activity of those accounts is solely for the purpose of conducting transactions that are exempt from, or authorized by regulation, order, directive, or license issued pursuant to, Executive Order 13310.

In imposing this special measure, the Secretary has considered the following pursuant to section 5318A(a)(4)(b):

1. Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against Burma Generally

In June 2001, the FATF designated Burma as an NCCT, resulting in FATF members issuing advisories to their financial sectors recommending enhanced scrutiny of transactions involving Burma. In April 2002 FinCEN issued an advisory notifying U.S.

⁵ For example, the prohibition does not extend to transactions relating to certain contracts entered into prior to May 21, 1997. See Executive Order 13310, section 13.

⁶ For purposes of this action, the required consultation with the Federal functional regulators was performed at the staff level.

financial institutions that they should accord enhanced scrutiny with respect to transactions and accounts involving Burma. In October 2003, FATF called upon its 33 members to take additional countermeasures with respect to Burma as of November 3, 2003. Imposition of the fifth special measure on Burma is consistent with this call for additional countermeasures and forms part of an international effort to protect the financial system. Based on informal discussions and the past practices of the FATF membership, the majority of FATF members are expected to take countermeasures, including all of the Group of Seven countries. The countermeasures imposed by such FATF members will likely include imposition of additional reporting requirements, issuance of additional advisories, shifting the burden for reporting obligations, and/or restrictions on the licensing of Burmese financial institutions.

2. Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

U.S. financial institutions are already prohibited from providing financial services to Burma, unless such services are exempted or licensed. The imposition of the fifth special measure potentially imposes a broader prohibition than currently exists, because it precludes maintaining correspondent accounts for foreign branches of Burmese banking institutions. However, on balance, it is unlikely that the imposition of the fifth special measure will create any significant additional costs or place U.S. financial institutions at a competitive disadvantage. In fact, Treasury's action is intended to encourage other jurisdictions and financial institutions to take similar steps to cut off Burma from the international financial system, which will further minimize any potential competitive disadvantage for U.S. financial institutions.

Moreover, the final rule does not itself require U.S. financial institutions to perform additional due diligence on their existing foreign bank correspondent account customers beyond what is already required under existing regulations.

3. The Proposed Action or the Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving the Jurisdiction

Given the preexisting sanctions on Burma, it is unlikely that these new measures or the timing of the new measures will have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities of Burma.

4. The Proposed Action Would Enhance the National Security of the United States and is Consistent With, and in Furtherance of, United States Foreign Policy

The imposition of this countermeasure on Burma is consistent with an overall foreign policy strategy to enhance our national security through comprehensive economic and political sanctions against Burma.

III. Notice of Proposed Rulemaking and Comments

FinCEN published a notice of proposed rulemaking on November 25, 2003,⁷ that would require certain U.S. financial institutions to take the fifth special measure regarding Burma. The comment period for that notice closed on December 26, 2003. FinCEN received no comment letters on the proposed rule. The final rule is identical to that found in the November 2003 notice, except that the term "foreign financial institution" has been replaced by "foreign banking institution," with a corresponding change in the term's definition, to conform with the language of Section 5318A(b)(5).

IV. Section-by-Section Analysis

A. Overview

This final rule is intended to deny Burmese banking institutions access to the U.S. financial system through correspondent accounts, which includes payable-through accounts. The rule prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent accounts in the United States for, or on behalf of, a Burmese banking institution. If a U.S. financial institution covered by this rule learns that a correspondent account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to a Burmese banking institution, the U.S. institution must

ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. As explained below, the rule does not itself require U.S. financial institutions to perform additional due diligence on foreign bank customers.

The rule does allow U.S. financial institutions to maintain otherwise prohibited correspondent accounts to the extent they are permitted pursuant to Executive Order 13310 and the Burma-related activities of those accounts are for the purpose of conducting transactions that are exempt from, or licensed pursuant to, Executive Order 13310.

B. Definitions

Correspondent account. Section 103.186(a)(1) of the rule's definition of correspondent account is the definition contained in 31 CFR 103.175(d), which defines the term to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts. In the case of securities broker-dealers, futures commission merchants and introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign bank to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions. FinCEN is using the same definition for purposes of the rule as that established in the final rule implementing Sections 313 and 319(b) of the Act⁸ with one notable exception: The term also applies to such accounts maintained by futures commission merchants and introducing brokers and mutual funds.

Covered financial institution. Section 103.186(a)(2) of the rule defines covered financial institution to mean all of the following: any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or

⁷ 68 FR 66299 (November 25, 2003).

⁸ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.175 (d)(1)).

required to register with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5)) that is registered, or required to register, with the SEC pursuant to that Act.

Burmese banking institution. Section 103.186(a)(3) of the final rule defines a Burmese banking institution to include all foreign banks chartered or licensed by Burma. The definition of foreign bank is that contained in 31 CFR 103.11(o). Foreign branches and offices of Burmese banking institutions are included in this definition. However, subsidiaries are not at this time. Also, the Central Bank of Burma is not a Burmese banking institution.

C. Requirements for Covered Financial Institutions

1. Prohibition on Correspondent Accounts

Section 103.186(b)(1) of the final rule prohibits generally all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, a Burmese banking institution. The prohibition requires all covered financial institutions to review their account records to determine that they maintain no accounts directly for, or on behalf of, a Burmese banking institution. This prohibition is subject to the exception contained in section 103.186(b)(4), described below.

2. Prohibition on Indirect Correspondent Accounts

Under section 103.186(b)(2) of the final rule, if a covered financial institution obtains knowledge that a correspondent or payable-through account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to a Burmese banking institution, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. In contrast to the obligation placed on covered financial institutions to identify correspondent accounts maintained directly for, or on behalf of, a Burmese banking institution in section 103.186(b)(1), this section

does not itself impose an independent obligation on covered financial institutions to review or investigate correspondent accounts they maintain for foreign banks to ascertain whether a foreign bank is using the account to provide services to a Burmese banking institution. Instead, if covered financial institutions become aware, through due diligence that is otherwise appropriate or required under existing anti-money laundering obligations, that a foreign bank is using its correspondent account to provide banking services indirectly to a Burmese banking institution, then the covered financial institutions must ensure that the account is no longer used for such purposes.

Additionally, when a covered financial institution becomes aware that a foreign bank customer is using the U.S. correspondent account to provide services to a Burmese banking institution indirectly, the covered financial institution may afford that foreign bank customer a reasonable opportunity to take corrective action prior to terminating the U.S. correspondent account. Should the foreign bank customer refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account in accordance with this regulation. FinCEN has also incorporated the requirement of termination within a reasonable period of time and the reinstatement of a terminated correspondent account found in the final regulation implementing Sections 313 and 319(b) of the Act.⁹

This provision is likewise subject to the exception contained in section 103.186(b)(3), described below.

3. Exception

Section 103.186(b)(3) provides for an exception to the prohibition on both direct and indirect correspondent account relationships of the final rule. U.S. financial institutions covered by the final rule may maintain a correspondent account relationship otherwise prohibited by this rule if the maintenance of such an account is permitted pursuant to Executive Order 13310 and if the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted in, or otherwise authorized by regulation, order, directive, or license issue

pursuant to, Executive Order 13310. As described previously in section I(C), certain transactions with Burma are exempt from the prohibitions of Executive Order 13310 or have been authorized through the licensing process. The general licenses (*i.e.*, those of general applicability) or other authorizations issued will be set forth in 31 CFR part 537, and are available on the Web site of Treasury's Office of Foreign Assets Control, <http://www.treas.gov/offices/eotffc/ofac/sanctions/sanctguide-burma.html>. To ensure that those authorized activities are available as a practical matter, U.S. correspondent accounts permitted to operate pursuant to Executive Order 13310 may be used to effect those permitted transactions.

4. Reporting and Recordkeeping Not Required

Section 103.186(b)(3) of the final rule states that it does not impose any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation.

V. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, financial institutions covered by this final rulemaking are already prohibited under existing sanctions from maintaining correspondent accounts for Burmese banking institutions. Given the comprehensive sanctions regime, FinCEN believes that few foreign correspondent bank customers of small U.S. financial institutions covered by the rulemaking will themselves maintain correspondent accounts for Burmese banking institutions.

VI. Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

⁹ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).

**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. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

■ 2. Subpart I of part 103 is amended by adding § 103.186 under the undesignated centerheading “SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS” to read as follows:

§ 103.186 Special measures against Burma.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Burmese banking institution* means any foreign bank, as that term is defined in § 103.11(o), chartered or licensed by Burma, including branches and offices located outside Burma.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services

indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

Dated: April 2, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 04–8027 Filed 4–9–04; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506–AA63

**Imposition of Special Measures
Against Myanmar Mayflower Bank and
Asia Wealth Bank**

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

ACTION: Final rule.

SUMMARY: On November 18, 2003, the Secretary of the Treasury (Secretary) designated Myanmar Mayflower Bank

(Mayflower Bank) and Asia Wealth Bank, both Burmese banks, as financial institutions of primary money laundering concern, and proposed a special measure certain U.S. financial institutions would be required to take concerning these two banks, pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. FinCEN is issuing this final rule to require certain U.S. financial institutions to take the proposed special measure with respect to these two institutions.

DATES: *Effective date:* May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs (FinCEN), (202) 354–6400 or; the Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll free numbers).

SUPPLEMENTARY INFORMATION: The Secretary has designated Mayflower Bank and Asia Wealth Bank as financial institutions of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107–56) (the Act). To protect the U.S. financial system from the money laundering threat posed by these financial institutions, FinCEN is imposing one of the special measures authorized by section 5318A(b), specifically, the fifth special measure. The fifth special measure prohibits certain U.S. financial institutions from maintaining correspondent or payable-through accounts in the United States for, or on behalf of, Mayflower Bank and Asia Wealth Bank. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used to provide banking services to the two named Burmese banks indirectly.

Additionally, by separate notice and final rule, the Department is imposing the fifth special measure to prohibit certain U.S. financial institutions from maintaining correspondent or payable-through accounts for, or on behalf of, any Burmese banking institution. Notwithstanding any exemption in that notice and final rule applicable to other Burmese financial institutions under Executive Order 13310 of July 28, 2003, the special measure in this notice prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

I. Background

A. Section 311 of the USA PATRIOT Act

On October 26, 2001, the President signed the Act into law. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA) (codified in subchapter II of chapter 53 of title 31, United States Code) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act (Section 311) added section 5318A to the BSA, granting the Secretary authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) as a "primary money laundering concern" and to require U.S. financial institutions to take certain "special measures" against the primary money laundering concern.

Section 311 identifies factors to consider and agencies to consult before the Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the imposition of specific special measures against the designee.

Taken as a whole, Section 311 provides FinCEN with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing concerns. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; more effectively monitor the respective institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

1. Imposition of Special Measures

If the Secretary determines that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.¹

¹ Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain

The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate agencies and other interested parties² and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on United States national security and foreign policy.

2. Procedures for Imposing Special Measures

In this final rule, the Secretary, through FinCEN, is imposing the fifth special measure (31 U.S.C. 5318A(b)(5)) against Mayflower Bank and Asia Wealth Bank. This special measure may only be imposed through the issuance of a regulation.

B. Burma, Myanmar Mayflower Bank, and Asia Wealth Bank

1. The Burmese Anti-Money Laundering Regime

Burma (also known as Myanmar) has no effective anti-money laundering controls in place. As a result, in June 2001 Burma was designated as a Non-Cooperative Country and Territory

correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

² Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General and the Secretary of State, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions maintaining correspondent account relationships with the designated entity.

(NCCT) by the Financial Action Task Force (FATF)³ for its lack of basic anti-money laundering provisions and weak oversight of the banking sector. Following the designation by the FATF, in April 2002, FinCEN issued an advisory to U.S. financial institutions to give enhanced scrutiny to all transactions originating in or routed to or through Burma, or involving entities organized or domiciled, or persons maintaining accounts, in Burma. Deficiencies identified by FATF and the FinCEN advisory included:

- Burma lacks a basic set of anti-money laundering laws or regulations.
- Money laundering is not a criminal offense for crimes other than drug trafficking in Burma.
- The Burmese Central Bank has no anti-money laundering regulations for financial institutions.
- Banks licensed by Burma are not legally required to obtain or maintain identification information about their customers.
- Banks licensed by Burma are not required to maintain transaction records of customer accounts.
- Burma does not require financial institutions to report suspicious transactions.
- Burma has significant obstacles to international co-cooperation by judicial authorities.

In June 2002, Burma responded to this international pressure by enacting an anti-money laundering law that purportedly addresses some of these deficiencies. Because of the lack of implementing regulations, the Burmese anti-money laundering law could not be regarded as effectively remedying any of the identified deficiencies. Due to Burma's continuing lack of progress, the FATF called upon its member jurisdictions to impose countermeasures on Burma as of November 3, 2003. On December 5, 2003, Burma issued regulations to implement this law. However, the regulations do not set threshold amounts or time limits. The regulations also do not address the need for a mutual assistance law. The 2003 International Narcotics Control Strategy Report, issued in March 2004, states that Burma must still implement and enforce the December 2003 regulations and address their deficiencies. In addition, Burma must provide adequate resources for supervision of the financial sector and end policies that make it easy for drug money to enter the legitimate economy.⁴

³ For further information on the FATF go to www.fatf-gafi.org.

⁴ The 2003 International Narcotics Control Strategy Report, released by the Bureau for

The United States continues to recognize that Burma is a haven for international drug trafficking. On January 31, 2003, the President also signed Presidential Determination No. 2003-14, identifying Burma as a major illicit drug producing and/or drug transiting country pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107-228), and as a country that has failed demonstrably during the previous twelve months to adhere to its obligations under international counter-narcotics agreements and take the measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended (FAA). In addition, this past year Burma continued to be named as a major money laundering country. A major money laundering country is defined by statute as one "whose financial institutions engage in currency transactions including significant amounts of proceeds from international narcotics trafficking." FAA section 481(e)(7).

2. Mayflower Bank and Asia Wealth Bank

Mayflower Bank was incorporated in 1996 as a full-service commercial bank in Rangoon, Burma. The bank maintains 25 branches and has 1,153 employees. The Banker's Almanac and Dun and Bradstreet reports indicate that Mayflower Bank was incorporated in 1994. According to the 2003 Europa World Yearbook, the chairman of Mayflower Bank is Kyaw Win. The 1996-1997 Worldwide Correspondents Guide indicates that Mayflower Bank claims to have correspondent accounts in major cities, but advises readers to contact the bank for more information. The current issue of Thomson Bank Directory states that current financial figures for the bank are not available.

Asia Wealth Bank started its banking operation in 1995 and is one of the largest private banks in Burma, offering a wide variety of banking services. In August 2000, Asia Wealth Bank held 52 percent of the market share in fixed deposits of Burmese banks (over U.S. \$23 billion). At the end of March 2001, it had 39 branches with a total of 3,200 employees (in December 2002, Dun and Bradstreet indicated only 2,200 employees). According to the 2003 Europa World Yearbook, Win Maung is

the Chairman and Aik Htun is the Vice-Chair.

Presently Burma is reported to have only ten local private banks, and Mayflower Bank and Asia Wealth Bank are two of the five largest. There are also five state-run (*i.e.*, public) banks in Burma.⁵ Other reports indicate that there may be as many as 20 private banks, but confirm that Mayflower Bank and Asia Wealth Bank are two of the leading banks.⁶

The Secretary designated Mayflower Bank and Asia Wealth Bank, both located in Burma, as primary money laundering concerns due to a number of factors, including: (1) They are licensed in Burma, a jurisdiction with inadequate anti-money laundering controls; (2) individuals owning and controlling both banks are linked to drug trafficking and money laundering, including using the banks for such purposes; and (3) the individuals who own and control the banks are linked to the United Wa State Army (UWSA), an organization involved in narcotics trafficking, and designated as significant narcotics traffickers under the Foreign Narcotics Kingpin Designation Act,⁷ and, in the case of the Asia Wealth Bank, the owners are linked to organized crime.

C. Economic Sanctions

On July 28, 2003, the President signed both the Burmese Freedom and Democracy Act of 2003 and Executive Order 13310, imposing economic sanctions on Burma. These sanctions generally include: (1) A ban on the exportation or reexportation, directly or indirectly, of financial services to Burma; (2) the blocking of property and interests in property of the State Peace and Development Council of Burma and three state-owned foreign trade banks that are in the United States or in the possession or control of U.S. persons; and (3) a ban on the importation of Burmese goods into the United States. These sanctions build on an investment ban imposed under Executive Order 13047 issued pursuant to the International Emergency Economic Powers Act (IEEPA) on May 20, 1997, and a recently expanded visa ban in place since October 1996. The new sanctions have frozen hundreds of thousands of dollars of assets and have disrupted an already weak economy, especially in the important garment sector where many firms have closed or moved outside of Burma.

Executive Order 13310 prohibits broadly the provision of financial services to Burma from the United States or by a U.S. person, subject to limited exceptions.⁸ Since the President signed the Order, however, Treasury has issued several licenses to permit transactions with Burma for certain specified purposes. For example, Treasury issued licenses authorizing transactions for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund, and non-commercial personal remittances of up to \$300 per household per quarter. The exemptions and licenses reflect the judgment of the United States that certain transactions are necessary and appropriate, even within the framework of this sanctions regime.

D. The Section 311 Special Measures

The requirements imposed against Mayflower Bank and Asia Wealth Bank pursuant to Section 311 reinforce the existing restrictions on transactions with Burma that are outlined above, and are a necessary addition to the Section 311 special measures FinCEN is imposing on the jurisdiction of Burma. Although they are similar in their effect on these two banks, the Section 311 special measures differ in certain respects and serve distinct policy goals from the economic sanctions imposed pursuant to Executive Order 13310. Most notably, the Section 311 special measure imposed by this notice does not permit U.S. financial institutions to maintain indirect correspondent accounts even to conduct transactions that are exempt from, or licensed pursuant to, Executive Order 13310. The justification for this absolute prohibition lies in the Secretary's determination that Mayflower Bank and Asia Wealth Bank pose an unacceptable risk of money laundering and other financial crimes and are linked to narcotics traffickers. The specific information concerning these two banks justifies their exclusion entirely from the U.S. financial system. This underscores the important policy justification for the Section 311 action—stemming the flow of illicit funds into the U.S. financial system. In contrast, the existing sanctions pursuant to Executive Order 13310 were imposed for different reasons, including, for example, the government of Burma's continued suppression of the democratic opposition.

International Narcotics and Law Enforcement Affairs, U.S. Department of State, was issued March 1, 2004. Part II of the report covers money laundering and financial crimes. The portion of the report dealing with Burma can be found at <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29920.htm>.

⁵ See Official Myanmar Finance Ministry Web site, www.Myanmar.com.

⁶ See Xinhua News Agency, March 8, 2002.

⁷ 21 U.S.C. 1901-1908, 8 U.S.C. 1182.

⁸ For example, the prohibition does not extend to transactions relating to certain contracts entered into prior to May 21, 1997. See Executive Order 13310, section 13.

Moreover, as with the designation of Burma generally, the United States is sending a strong message to other jurisdictions and financial institutions to take similar steps to cut off these two banks from the international financial system due to the unacceptable risk of money laundering.

Finally, while the special measures applicable to all Burmese banking institutions would certainly apply to Mayflower Bank and Asia Wealth Bank, a separate designation is necessary. The special measure FinCEN is applying to all Burmese banking institutions incorporates the licenses and exemptions applicable to the economic sanctions under Executive Order 13310. These exceptions are not appropriate when dealing with Mayflower Bank and Asia Wealth Bank, given their affiliation with narcotics traffickers. Also, by separately designating these two banks, to the extent Burma responds to the international call and begins to implement effective anti-money laundering controls, FinCEN has the flexibility to alter the special measures applicable to all Burmese financial institutions while maintaining the absolute prohibition against these two institutions. The separate designation of Mayflower Bank and Asia Wealth Bank under Section 311 also fulfills another important goal of FinCEN: to name publicly institutions posing risks to the international financial system and encourage all jurisdictions to exclude them.

II. Imposition of Special Measures

As a result of the designation of Mayflower Bank and Asia Wealth Bank as primary money laundering concerns, and based upon consultations and the consideration of all relevant factors,⁹ the Secretary has determined that grounds exist for the imposition of the special measure authorized by section 5318A(b)(5). Thus, this rulemaking prohibits covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent or payable-through account for, or on behalf of, Mayflower Bank or Asia Wealth Bank. This prohibition extends to any correspondent account maintained for any foreign bank if the account is used to provide banking services indirectly to either of these two banks. Financial institutions covered by this rule that obtain knowledge that this is occurring are required to ensure that any such account no longer is used to

provide such services, including, where necessary, terminating the correspondent relationship in the manner set forth in this rulemaking.

In imposing this special measure, the Secretary has considered the following pursuant to section 5318A(a)(4)(b):

1. *Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against Burma Generally*

In June of 2001, the FATF designated Burma as an NCCT, resulting in FATF members issuing advisories to their financial sectors recommending enhanced scrutiny of transactions involving Burma. In April 2002 FinCEN issued an advisory notifying U.S. financial institutions that they should accord enhanced scrutiny with respect to transactions and accounts involving Burma. In October 2003, FATF called upon its 33 members to take additional countermeasures with respect to Burma as of November 3, 2003. Based on informal discussions and the past practices of the FATF membership, the majority of FATF members are expected to take countermeasures, including all of the Group of Seven countries. The countermeasures imposed by such FATF members will likely include imposition of additional reporting requirements, issuance of advisories, shifting the burden for reporting obligations, and/or restrictions on the licensing of Burmese financial institutions. Imposition of the fifth special measure against Mayflower Bank and Asia Wealth Bank (as well as the jurisdiction of Burma) is consistent with this call for additional countermeasures and forms part of an international effort to protect the financial system.

2. *Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, For Financial Institutions Organized or Licensed in the United States*

United States financial institutions are already prohibited from providing financial services to Burma, unless such services are exempted or licensed. The imposition of the fifth special measure potentially imposes a broader prohibition than currently exists for two reasons—it precludes maintaining correspondent accounts for foreign branches of these two banks and the exemptions and licenses do not apply. However, on balance, it is unlikely that the imposition of the fifth special measure will create any significant additional costs or place U.S. financial institutions at a competitive disadvantage with respect to these two

institutions. In fact, FinCEN's action is intended to encourage other jurisdictions and financial institutions to take similar steps to cut off Mayflower Bank and Asia Wealth Bank from the international financial system, which will further minimize any potential competitive disadvantage for U.S. financial institutions.

Moreover, the rule does not itself require U.S. financial institutions to perform additional due diligence on their existing foreign bank correspondent account customers beyond what is already required under existing regulations.

3. *The Proposed Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or On Legitimate Business Activities of the Two Banks*

Private banks, such as Mayflower Bank and Asia Wealth Bank, are not permitted to deal in foreign exchange. All foreign currency transfers into Burma are required to be executed by one of three of Burma's state banks. And, as noted previously, it is unlikely that Mayflower Bank or Asia Wealth Bank can conduct any legitimate banking operations at this time. Therefore, this action or timing of the action will affect neither the international payment, clearance, and settlement system nor the potential legitimate banking operations of the two banks.

4. *The Proposed Action Would Enhance the National Security of the United States and Is Consistent With, and In Furtherance Of, United States Foreign Policy*

The imposition of this countermeasure against Mayflower Bank, Asia Wealth Bank, and Burma is part of an overall foreign policy strategy to enhance our national security through comprehensive economic and political sanctions against Burma.

III. Notice of Proposed Rulemaking and Comments

FinCEN published a notice of proposed rulemaking on November 25, 2003,¹⁰ that would impose special measures against Mayflower Bank and Asia Wealth Bank. The comment period for that notice closed on December 26, 2003. FinCEN received no comment letters on the proposed rule. The final rule is identical to that found in the November 2003 notice.

⁹For purposes of this action, the required consultation with the Federal functional regulators was performed at the staff level.

¹⁰68 FR 66305 (November 25, 2003).

IV. Section-by-Section Analysis

A. Overview

This final rule is intended to deny Mayflower Bank and Asia Wealth Bank access to the U.S. financial system through correspondent accounts, which includes payable-through accounts. The rule prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent accounts in the United States for, or on behalf of, Mayflower Bank and Asia Wealth Bank. If a U.S. financial institution covered by this rulemaking learns that a correspondent account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to Mayflower Bank or Asia Wealth Bank, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. As explained below, however, the rule does not itself require U.S. financial institutions to perform additional due diligence on foreign bank customers.

B. Definitions

Correspondent account. Section 103.187(a)(1) of the rule's definition of correspondent account is the definition contained in 31 CFR 103.175(d), which defines the term to mean an account established to receive deposits from, or make payments on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts.

In the case of securities broker-dealers, futures commission merchants and introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign bank to engage in (1) Trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions.

FinCEN is using the same definition for purposes of the final rule as that established in the final rule implementing Sections 313 and 319(b) of the Act¹¹ with the notable exception that the term also applies to such accounts maintained by futures commission merchants and introducing brokers, and mutual funds.

Covered financial institution. Section 103.187(a)(2) of the final rule defines

covered financial institution to mean all of the following: Any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to register with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5)) that is registered, or required to register, with the SEC pursuant to that Act.

Myanmar Mayflower Bank. Section 103.187(a)(3) of the final rule defines Myanmar Mayflower Bank to include all headquarters, branches, and offices operating in Burma or in any jurisdiction. This definition does not include subsidiaries.

Asia Wealth Bank. Section 103.187(a)(4) of the final rule defines Asia Wealth Bank to include all headquarters, branches, and offices operating in Burma or in any jurisdiction. Similarly, this definition does not include subsidiaries.

C. Requirements for Covered Financial Institutions

1. Prohibition on Correspondent Accounts

Section 103.187(b)(1) of the rule prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, Mayflower Bank or Asia Wealth Bank. The prohibition requires all covered financial institutions to review their account records to determine that they maintain no accounts directly for, or on behalf of, either bank.

2. Prohibition on Indirect Correspondent Accounts

Under § 103.187(b)(2) of the rule, if a covered financial institution obtains knowledge that a correspondent or payable-through account that it maintains for a foreign bank is being used by that foreign bank to provide

services indirectly to Mayflower Bank or Asia Wealth Bank, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. In contrast to the obligation placed on covered financial institutions to identify correspondent accounts maintained directly for, or on behalf of, a Burmese financial institution in § 103.187(b)(1), this section does not itself impose an independent obligation on covered financial institutions to review or investigate correspondent accounts they maintain for foreign banks to ascertain whether such foreign banks are using the account to provide services to Mayflower Bank or Asia Wealth Bank. Instead, if covered financial institutions become aware, through due diligence that is otherwise appropriate or required under existing anti-money laundering obligations, that a foreign bank is using its correspondent account to provide banking services indirectly to Mayflower Bank or Asia Wealth Bank, then the covered financial institutions must ensure that the account is no longer used for such purposes. This reflects the approach taken in the proposed rulemaking imposing special measures against Nauru.¹²

Additionally, when a covered financial institution becomes aware that a foreign bank customer is using a correspondent account to provide services to either of the two designated banks indirectly, the covered financial institution may afford that foreign bank customer a reasonable opportunity to take corrective action prior to terminating the U.S. correspondent account. Should the foreign bank customer refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account in accordance with this regulation. FinCEN has also incorporated the requirement of termination within a reasonable period of time and the reinstatement of a terminated correspondent account found in the final regulation implementing sections 313 and 319(b) of the Act.¹³

3. Reporting and Recordkeeping Not Required

Section 103.187(b)(3) of the rule states that it does not impose any reporting or recordkeeping requirement upon any

¹¹ 67 FR 60562 (September 26, 2002), codified at 31 CFR 103.175 (d)(1).

¹² See 68 FR 18917 (April 17, 2003).

¹³ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).

covered financial institution that is not otherwise required by applicable law or regulation.

V. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, financial institutions covered by this rulemaking are already prohibited under existing sanctions from maintaining correspondent accounts for Mayflower Bank and Asia Wealth Bank. Given the limitations placed by the Burmese government on the international activities of these banks, FinCEN believes that few foreign correspondent bank customers of small U.S. financial institutions covered by the rulemaking will themselves maintain correspondent accounts for Mayflower Bank or Asia Wealth Bank.

VI. Executive Order 12866

This rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

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. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

■ 2. Subpart I of part 103 is amended by adding § 103.187 under the undesignated centerheading "SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS" to read as follows:

§ 103.187 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(4) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

Dated: April 2, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–049]

RIN 1625–AA09

Drawbridge Operation Regulation; Belle River, Belle River, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is temporarily changing the regulation governing the operation of the State Route 70 pontoon drawbridge across Belle River, mile 23.8, near Belle River, Louisiana. The temporary change will allow the bridge operations to be adjusted to facilitate the relocation of the tender's house. The final rule will be in effect for eight months from May 15, 2004, to January 15, 2005.

DATES: This rule is effective from May 15, 2004 to January 15, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–03–049 and are available for inspection or copying at 500 Poydras Street, Room 1313, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 504–589–2965. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 9, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation