As discussed above, vehicle sellers form an extremely large and diverse industry, accounting for a major portion of American consumption as well as exports. Given this diversity in the vehicle sellers industry, the risks of money laundering and the costs of preventive programs can vary widely. Thus, FinCEN solicits comment on whether any proposed rule should limit the definition to sellers of particular types of vehicles, to retail or wholesale vehicle sellers, or sellers of new or used vehicles. In addition, FinCEN's regulations in the past have recognized that businesses that do not transact in sufficient dollar amounts or volume, or in cash or monetary instruments, may not present sufficient money laundering risk to require the imposition of federally mandated programs. For example, under the BSA, money services businesses other than money transmitters (currency exchangers, check cashers, and issuers, sellers, and redeemers of traveler's checks and money orders) are defined as financial institutions only if they transact over $1,000 in covered transactions for any one person in any one day.[9] This threshold reflects the judgment that businesses that never engage in transactions above that level fail to present a money laundering risk sufficient to justify the regulatory burden. FinCEN solicits comment on whether, if vehicle sellers are required to implement anti-money laundering programs, there should be a monetary threshold of some kind in defining a vehicle seller for purposes of the BSA. Commenters should address whether any such threshold should be transaction based, as with the money services business rules, or on an annual gross income, or some other basis.

5. Do Vehicle Sellers Maintain ''Accounts'' for Their Customers?

Section 326 requires the setting of minimum standards for identification of customers ''in connection with the opening of an account at a financial institution.'' Section 311 of the Patriot Act provides a definition of ''account'' for banks, but requires the Secretary to promulgate a regulation defining ''account'' for non-bank financial institutions. Although such a regulation has yet to be issued, the definition for banks (''a formal banking or business relationship established to provide regular services, dealings, and other financial transactions'') is a useful starting point. This definition incorporates two key concepts: (1) Formality of the business relationship, and (2) regularity of dealings. In light of these concepts, FinCEN solicits comments as to whether (and to what extent) vehicle sellers maintain accounts for their customers, in addition to fleet accounts. What kinds of services do vehicle sellers provide to any such account holders (including fleet accountholders)? Are these account relationships ongoing? Are accounts established to receive recurring payments from a customer, or are additional services provided to the accountholder?

[9] 31 CFR 103.11(uu).

III. Conclusion

With this ANPRM, FinCEN is seeking input to assist it in determining how to implement the requirements of sections 352 and 326 of the Act with respect to vehicle sellers. FinCEN welcomes comments on all aspects of this potential regulation and encourages all interested parties to provide their views.

IV. Executive Order 12866

Because this is an ANPRM, FinCEN does not know whether or in what form it may issue a regulation pursuant to sections 352 and 326 of the Act affecting vehicle sellers. Accordingly, FinCEN does not know whether potential regulations will constitute a significant regulatory action under the Executive Order. This ANPRM neither establishes nor proposes any regulatory requirements. FinCEN has submitted a notice of planned regulatory action to OMB for review. Because this ANPRM does not contain a specific proposal, information is not available with which to prepare an economic analysis. FinCEN will prepare a preliminary analysis if it proceeds with a proposed rule that constitutes a significant regulatory action.

Accordingly, FinCEN solicits comments, information, and data on the potential effects of any potential regulation. FinCEN will carefully consider the costs and benefits associated with this rulemaking.

Dated: February 12, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4173 Filed 2–21–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RINs 1506–AA28 and 1506–AA38

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Travel Agencies

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

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: FinCEN is in the process of implementing the requirements delegated to it under the USA PATRIOT Act of 2001, in particular the requirements of the Act that require financial institutions to establish anti-money laundering compliance and customer identification programs. The term ''financial institution'' is defined to include a ''travel agency.'' FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comments on a wide range of questions pertaining to this requirement, including how to define the term travel agency.

DATES: Written comments may be submitted on or before April 10, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments may be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''ATTN: ANPRM—Section 352—Travel Agency Regulations.'' Comments may be mailed to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: ANPRM—Section 352—Travel Agency Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; the Office of the General Counsel, (202) 622–1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Public Law 107–56)

(the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. When prescribing minimum standards for anti-money laundering programs, section 352 directs the Treasury to consider the extent to which such standards are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

As a ''travel agency'' is defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(Q), it is subject to the anti-money laundering program requirement. On April 29, 2002, FinCEN temporarily exempted certain financial institutions, including travel agencies, from the requirement to establish an anti-money laundering compliance program. The purpose of the deferral was to enable FinCEN to study the affected industries and consider to what extent anti-money laundering program requirements could best be applied, taking into account the specific characteristics of the various entities defined as financial institutions by the BSA.[1]

In addition, section 326 of the Act added new subsection (l) to 31 U.S.C. 5318, which requires Treasury to prescribe regulations setting forth minimum standards for financial institutions to identify customers applying to open accounts. Section 326 applies to all BSA financial institutions that open accounts for their customers.

FinCEN is proceeding with this ANPRM because of questions about travel agencies and money laundering that make it difficult to assess the benefits and burdens associated with imposition of anti-money laundering regulations on this industry. Through this process, FinCEN hopes to solicit sufficient information to enable it to determine whether to go forward with a Notice of Proposed Rulemaking, as well as the scope of entities and procedures that any such Notice should encompass.

II. Issues for Comment

1. How Should a Travel Agency Be Defined? Should There Be a Minimum Threshold Value in the Definition?

Although the BSA identifies a travel agency as a financial institution, the statute contains no definition of the term, nor has FinCEN had an occasion to define the term in a regulation. Thus, the first step in addressing the appropriateness of issuing anti-money laundering regulations is determining a functional definition of a travel agency. The legislative history of the BSA provides no insight into how Congress intended the term to be defined.

As the name implies, a travel agency offers its services in the capacity of an agent, and not as a principal. A travel agency offers travel and tourism related services to the public as a result of agency agreements with airlines, cruise lines, hotels, and other suppliers of travel-related services. It may contract directly with suppliers such as hotels, car rental companies, and tour operators, or may contract with a coordinating body such as the Airlines Reporting Corporation (ARC)[2] and the International Airlines Travel Agency Network (IATAN). Travel agencies also may provide financial services such as traveler's checks to their customers, and may offer travel-related insurance. Travel agencies that offer such financial services in conjunction with travel services are considered financial institutions for the purpose of consumer privacy regulations.[3]

For purposes of this ANPRM, FinCEN is using the following functional definition of travel agency: ''Any person who sells, as an agent and not as a principal, the following travel services: airline tickets, rail tickets, hotel and motel reservations, and cruise reservations, or some combination of those services.'' This definition excludes direct sales by service providers such as hotels and tour buses. These principals are excluded because their inclusion appears to be at odds with the use of the term ''agency'' in the BSA definition (such entities are providers of travel-related services, rather than travel agents).

According to the Small Business Administration (SBA), most travel agencies are small businesses.[4] Of the 22,687 travel agencies identified by the SBA operating out of 29,332 establishments, only 450 fall outside the SBA definition of a small business in this industry. These larger businesses generate 47% of all industry revenue.[5] FinCEN's regulations in the past have recognized that businesses that do not transact in sufficient dollar amounts or volume may not present sufficient money laundering risk to require the imposition of federally mandated programs. For example, under the BSA, money services businesses other than money transmitters (currency exchangers and check cashers, as well as issuers, sellers, and redeemers of traveler's checks and money orders) are defined as financial institutions only if they transact over $1,000 in covered transactions for any one person in any one day.[6] This threshold reflects the judgment that businesses that never engage in transactions above that level fail to present a money laundering risk sufficient to justify the regulatory burden. FinCEN solicits comment on whether, if travel agencies are required to implement anti-money laundering programs, there should be a monetary threshold of some kind in defining a travel agency for purposes of the BSA. Commenters should address whether any such threshold should be transaction based, as with the money services business rules, or on an annual gross income, or some other basis.

2. What Is the Potential Money Laundering Risk Posed By Travel Agencies? Are There Different Kinds of Travel Agencies or Different Services Offered That Pose Different Money Laundering Risks?

Although some travel agencies perform some of the functions of traditional financial institutions, such as selling traveler's checks, such agencies, to the extent they meet the regulatory threshold, would be considered money services businesses under 31 CFR part 103.11(uu)(4). The focus of this ANPRM is on the risks unique to travel agencies' provision of travel-related services. Within this focus, the industry does

[1] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

[2] ARC provides a mechanism that carriers may use to appoint travel agents, and such agents are then entitled to use ARC standard ticket stock for participating carriers, which comprise the vast majority of domestic and international carriers. ARC requires travel agents to obtain and maintain an irrevocable letter of credit as bond.

[3] *See* 16 CFR 313.3 (k)(2)(ix) (Federal Trade Commission regulations governing privacy of consumer information).

[4] *See* 67 FR 38184 (May 31, 2002) (raising ceiling for defining a travel agency as a small business to $3 million in total revenue, a definition encompassing 98% of travel agencies).

[5] *Id.*

[6] 31 CFR 103.11(uu)(1)–(4).

present some potential money laundering risks. For example, some travel agencies have a significant portion of their clients pay for the agencies' products and services in cash. While the risk of money laundering is minimized, to some extent, by the existing obligation on all travel agencies to report, pursuant to 26 U.S.C. 6050I, 31 U.S.C. 5331, and 31 CFR 103.30, the receipt of cash or monetary instruments in excess of $10,000,[7] a rule that requires an anti-money laundering compliance or customer identification program may alleviate further the money laundering risk associated with the cash intensive nature of some travel agencies. Moreover, some travel agencies are associated with ancillary businesses, including money services businesses offering money transfer and check cashing, that pose additional money laundering risk. To the extent customers wish to avoid the recordkeeping and reporting requirements applicable to the money services side of the business, they may try to route their transactions through the unregulated travel agency side of the business. Instead of obtaining a money order or traveler's check to make an illicit payment (which would be subject to FinCEN's recordkeeping rules if over $3,000), a money launderer could buy an expensive airline ticket for another person, who could then exchange it for a legitimate-seeming refund.

FinCEN has received reports indicating that some travel agencies (or their customers) have engaged in structuring sequential deposits and withdrawals of cash near the reporting threshold of $10,000. There have also been reports of some travel agencies structuring outgoing wire transfers in small amounts to avoid BSA recordkeeping requirements. Some travel agents have been observed receiving unusual wire transfers from foreign countries or wire transfers of unusually large amounts.

In addition, travel agencies reportedly have been used to transfer value through the provision of in-kind services. A travel agent sending groups to a foreign country, for example, can make an offsetting payment in a foreign entity's U.S. or other account and instruct that entity to cover the costs of the group during their trip. This method is one way that businesses involved in informal value transfer systems, such as hawala,[8] can transfer funds between entities in various countries.

Travel agencies may need to have an understanding of the identity of customers who participate in transactions with money laundering risk. For purchases of travel services involving large sums of cash, knowing the customer's identity may be an essential part of an effective anti-money laundering program. Customers may request complex invoicing arrangements or payment arrangements or may structure their cash payments to avoid BSA reports. While travel agencies may scrutinize non-cash transactions to manage fraud risk, they are undoubtedly less aware of possible money laundering risk with both cash and non-cash transactions.

Accordingly, FinCEN solicits comments on the existence of the above, and other, types of risks in the travel agency business. Specifically, FinCEN is interested in identifying risks in the products and services that travel agencies provide that make them uniquely susceptible to money laundering, as opposed to the risks inherent in all businesses that sell products or services to the public that may be purchased with tainted funds. Such heightened risks include, for example, the ability to transfer funds, even with a sizable penalty or cost, from one person to another; the ability to pay in funds and, in return, receive funds from the travel agency or related business that have the appearance of legitimacy and no ties to incoming funds. Furthermore, should regulatory distinctions based on money laundering risk be made between travel agencies that restrict their sales to domestic travel and those that handle international travel? Are there other functional distinctions that should be made?

3. Should Travel Agencies Be Exempt From Coverage Under Sections 352 and 326 of the Patriot Act?

Based on the determination of the extent of the risk of money laundering within the travel agency industry, the question arises as to whether the industry should be exempt under sections 352 and 326 of the Act. If the risk of money laundering in the travel agency industry is determined to be minimal such that it does not justify the imposition of a regulatory burden, it might be reasonable to exempt the industry from coverage of these provisions. This judgment will be based on the existing risks of money laundering, the potential risks of money laundering, as well as the volume of possible illicit funds that may flow through travel agencies.

In light of these issues, FinCEN would like to solicit comments with regard to the issue of whether there should be an exemption from these provisions for travel agencies. These comments should be designed to enable FinCEN to decide whether or not to propose the promulgation of an appropriate regulation designed to provide protection for the travel agency industry with regard to the risk of money laundering.

4. If Travel Agencies, or Some Subset of the Industry, Should Be Subject to the Anti-Money Laundering Program Requirements, How Should the Program Be Structured?

In applying section 352 to travel agencies, FinCEN must take into account which requirements are ''commensurate with the size, location, and activities'' of this industry. In undertaking this review, FinCEN recognizes that travel agencies likely have some programs already in place to meet existing legal obligations. For example, as a nonfinancial trade or business, travel agencies are required to report on Form 8300 the receipt of over $10,000 in currency and certain monetary instruments. Travel agencies also may have procedures in place to protect themselves against fraud. Such procedures may be sufficient in themselves given the money laundering risk in the industry, or they may serve as a foundation on which additional anti-money laundering program requirements could be built. FinCEN therefore seeks comment on what types of programs travel agencies have in place to prevent fraud and illegal activities, and the applicability of such programs to the prevention of money laundering.

5. Do Travel Agencies Maintain ''Accounts'' for Their Customers?

Section 326 requires the setting of minimum standards for identification of customers ''in connection with the opening of an account at a financial institution.'' Section 311 of the Patriot Act provides a definition of ''account'' for banks, but requires the Secretary to promulgate a regulation defining ''account'' for non-bank financial institutions. Although such a regulation has yet to be issued, the definition for banks (''a formal banking or business relationship established to provide regular services, dealings, and other

[7] Sellers of travel fall within the type of retail business required to report receipts of monetary instruments (cashier's checks, traveler's checks, money orders) that have face amounts of less than $10,000 and which are used to make a purchase of greater than $10,000. *See* 31 CFR 103.30.

[8] *See* Report to Congress in Accordance with Section 359 of the USA Patriot Act (November 22, 2002), available on FinCEN's Web site at *http://www.fincen.gov* under Publications, Reports.

financial transactions'') is a useful starting point. This definition incorporates two key concepts: (1) Formality of the business relationship, and (2) regularity of dealings. In light of these concepts, FinCEN solicits comments as to whether (and to what extent) travel agencies maintain accounts for their customers. If so, what kinds of services do travel agencies provide to account holders? Are these account relationships ongoing? Are accounts established to receive recurring payments from a customer, or are additional services provided to the accountholder?

III. Conclusion

With this ANPRM, FinCEN is seeking input to assist it in determining how to implement the requirements of sections 352 and 326 of the Act with respect to travel agencies. FinCEN welcomes comments on all aspects of potential regulation and encourages all interested parties to provide their views.

IV. Executive Order 12866

Because this is an ANPRM, FinCEN does not know whether or in what form it may issue a regulation pursuant to sections 352 and 326 of the Act affecting travel agencies. Accordingly, FinCEN does not know whether potential regulations will constitute a significant regulatory action under the Executive Order. This ANPRM neither establishes nor proposes any regulatory requirements. FinCEN has submitted a notice of planned regulatory action to OMB for review. Because this ANPRM does not contain a specific proposal, information is not available with which to prepare an economic analysis. FinCEN will prepare a preliminary analysis if it proceeds with a proposed rule that constitutes a significant regulatory action.

Accordingly, FinCEN solicits comments, information, and data on the potential effects of any potential regulation. FinCEN will carefully consider the costs and benefits associated with this rulemaking.

Dated: February 12, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–4172 Filed 2–21–03; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI80–01–7289b, FRL–7443–1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Excess Emissions During Startup, Shutdown or Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve several rule revisions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions to EPA on September 23, 2002. They include rules to address excess emissions occurring during startup, shutdown or malfunction, as well as revisions to related definitions. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action in relation to this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before March 26, 2003.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: January 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–4261 Filed 2–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–7453–1; Docket ID No. OAR–2002–0046]

RIN 2060–AJ53

Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On March 27, 2000, the EPA issued a memorandum which stated that process tanks are ''storage vessels'' under the definition in the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. On May 26, 2000, the American Forest and Paper Association (AF&PA) filed a petition for judicial review of the March 27, 2000 memorandum. The EPA is proposing to amend the standards to address the issues raised by AF&PA in its petition for review. The EPA is also proposing to amend the standards to exempt storage vessels that are subject to the National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.

DATES: The EPA will accept comments regarding this proposal on or before March 26, 2003.

ADDRESSES: *Mail.* Send your comments to: Air Docket, U.S. EPA, Mailcode: 6102T, Room B108, 1200 Pennsylvania Ave, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2002–0046.