

Background

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) established the Federal Motor Carrier Safety Administration ("FMCSA") as a new operating administration within the Department of Transportation, effective January 1, 2000 (Pub. L. 106-159, 113 Stat. 1748, December 9, 1999). Continuing the practice first established by FMCSA's predecessors, the Office of Motor Carriers and the Office of Motor Carrier Safety, both within the Federal Highway Administration, FMCSA issues guidance to its Field Service Centers and State Division Offices, in the form of the Field Operations Training Manual (FOTM). Volume III (Enforcement: General Functions of an Investigator) of the first FOTM, which was issued by the new operating administration in January 2000, states: "This chapter has been prepared to assist the Investigator in the performance of investigative work. The intent is to present investigative procedures which can be used while conducting all types of investigations." This guidance is now stored and distributed in electronic format in the eFOTM, which is periodically updated as new policies are adopted in response to legislation and new program initiatives. A redacted version of the eFOTM is available in the FMCSA Electronic Reading Room at: <http://www.fmcsa.dot.gov/foia/electronicreadingroom.htm>. FMCSA redacted certain information from the eFOTM available at this Web site in accordance with the Freedom of Information Act.

The eFOTM is, and has been, best characterized as internal enforcement guidelines, a "best practices" guide for the Agency's Safety Investigators and other enforcement staff. It is intended to provide guidance to assist with the sound exercise of discretion in conducting investigations, compliance reviews, roadside inspections and safety audits. The United States Court of Appeals for the District of Columbia Circuit recognized that the FOTM does not impose new substantive burdens, in the sense that it neither requires nor prohibits any particular actions on the part of motor carriers. *Aulenback, Inc. v. Federal Highway Admin.*, 103 F.3d 156, 169 (DC Cir. 1997). Instead, "the Manual simply provides guidance for [FMCSA staff] seeking to identify motor carrier operations that pose a potential danger to public safety." *Id.* The District of Columbia Circuit has also held that since the FOTM is not a legislative rule, section 553 of the Administrative Procedure Act did not require notice and comment rulemaking to precede

adoption of the manual. *American Trucking Ass'ns, Inc. v. DOT*, 166 F.3d 374 (DC Cir. 1999).

Current Policy

The Agency continues to regard the FOTM and eFOTM as internal enforcement guidance; the guidance does not alter underlying substantive legal requirements and does not provide an independent basis for enforcement. The investigatory procedures set forth in the eFOTM, and whether and to what extent Agency employees follow them, are not relevant in determining whether Federal motor carrier statutes or regulations have been violated or the appropriate penalty to be assessed for such violations. If an employee fails to comply with investigative, inspection, audit or other guidelines, the Agency will address that departure from recommended procedures internally, on a case-by-case basis, and may consider disciplinary action, training or other appropriate measures. However, the Agency hereby provides public notice that it will not consider an FMCSA or State employee's failure to follow the FOTM or eFOTM guidance as a defense to penalties or violations assessed against drivers or motor carriers. An FMCSA or State employee's failure to follow the FOTM or eFOTM guidance will not excuse violations of the Federal Motor Carrier Safety Regulations, Federal Motor Carrier Commercial Regulations, or the Hazardous Materials Regulations by any person, including motor carriers and drivers, nor will it provide grounds for reducing civil penalties. *See In the Matter of J. Line, Inc., dba J-Line Transp.*, Docket No. FMCSA-2008-1087 (Administrative Law Judge's Order Denying Cross-Motions for Final Order) (Jan. 13, 2009); *Swift Transp. Co., Inc.*, Docket No. FMCSA-2004-17248-63 (Order Respecting Field Operations Training Manual) (Jan. 12, 2007).

Issued on: May 19, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 18, 2009

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 25, 2009 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506-0005.

Type of Review: Revision.

Form: FinCEN 103.

Title: Currency Transaction Report by Casinos.

Description: Casinos and card clubs file Form 103 for currency transactions in excess of \$10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(2). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 230,000 hours.

OMB Number: 1506-0014.

Type of Review: Extension.

Form: FINCEN-105.

Title: Report of International Transportation of Currency or Monetary Instruments.

Description: FinCEN, and the Department of Homeland Security (DHS) and the DHS Bureaus, are required under 31 U.S.C. 5316(a) to collect information regarding mailing, shipment, or transportation of currency or monetary instruments of more than \$10,000 in value into or out of the United States

Respondents: Individuals or Households

Estimated Total Reporting Burden: 140,000 hours.

OMB Number: 1506-0033.

Type of Review: Extension.

Title: Customer Identification Programs for Mutual Funds.

Description: Mutual Funds are required to establish and maintain customer identification programs. A copy of the written program must be maintained for five years. *See* 31 CFR 103.131.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 266,700 hours.

OMB Number: 1506–0026.

Type of Review: Extension.

Title: Customer identification programs for banks, savings associations, credit unions, and certain non-federally regulated banks. *Description:* Banks, savings associations, credit unions, and certain non-federally regulated banks are required to develop and maintain customer identification programs. See 31 CFR 103.121.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 242,660 hours.

OMB Number: 1506–0006.

Type of Review: Revision.

Form: 102.

Title: Suspicious Activity Report by Casinos and Card Clubs.

Description: Under 31 CFR 103.21, the Treasury is requiring casinos and card clubs with annual gaming revenue of more than \$1,000,000 to report suspicious activities.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 33,600 hours.

Clearance Officer: Russell Stephenson (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 18, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 25, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1806.

Type of Review: Revision.

Form: 8883.

Title: Asset Allocation Statement Under 338.

Description: Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 4,881 hours.

OMB Number: 1545–1536.

Type of Review: Extension.

Title: Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfer of Interests in Trusts REG–209823–96 (Final).

Description: The recordkeeping requirement in the regulation provides taxpayers with an alternative method for complying with Congressional intent regarding charitable remainder trusts. The recordkeeping alternative may be less burdensome for taxpayers.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 75 hours.

OMB Number: 1545–0132.

Type of Review: Extension.

Form: 1120–X.

Title: Amended U.S. Corporation Income Tax Return.

Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or 1120A. The data is used to determine if the correct tax liability has been reported.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 300,582 hours.

OMB Number: 1545–1965.

Type of Review: Extension.

Title: REG–133446–03 (Final)

Description: Guidance on Passive Foreign Company (PFIC) Purging Elections.

Description: The IRS needs the information to substantiate the taxpayer's computation of the taxpayer's share of the PFIC's post-1986 earning and profits.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 250 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management

and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–12131 Filed 5–22–09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 19, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 25, 2009 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0022.

Type of Review: Revision.

Title: Customer Identification Programs for Futures Commission Merchants and Introducing Brokers.

Description: Futures commission merchants and introducing brokers are required to develop and maintain a customer identification program. A copy of the program must be maintained for five years. See 31 CFR 103.123.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 307,065 hours.

OMB Number: 1506–0034.

Type of Review: Extension.

Title: Customer Identification Programs for Broker-Dealers.

Description: Broker-dealers are required to establish and maintain a customer identification program. A copy of the program must be maintained for five years. See 31 CFR 103.122.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 630,896 hours.

Clearance Officer: Russell Stephenson (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement