

I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 23, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35548, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on W. Karl Hansen, Leonard, Street and Deinard, Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402 (Counsel for CP).

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 13, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011-23811 Filed 9-15-11; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposal That Electronic Filing of Bank Secrecy Act (BSA) Reports Be Required; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: FinCEN is proposing to require electronic filing of certain Bank Secrecy Act (BSA) reports not later than June 30, 2012. This requirement will significantly enhance the quality of our electronic data, improve our analytic capabilities in supporting law enforcement requirements and result in significant reduction in real costs to the United States Government and ultimately to U.S. taxpayers. Specifically, we propose mandatory electronic submission of *all* BSA reports

excluding the Report of International Transportation of Currency or Monetary Instruments (CMIR).¹

DATES: Comments should be submitted on or before November 15, 2011.

ADDRESSES: Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—BSA Required Electronic Filing. BSA Required Electronic Filing comments also may be submitted by electronic mail to the following Internet address: regcomments@fincen.gov, with the caption, “Attention: BSA Required Electronic Filing,” in the body of the text.

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800-949-2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: Bank Secrecy Act, Reporting Forms, (31 CFR chapter X).

Abstract: The statute generally referred to as the “Bank Secrecy Act,” Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5332, authorizes the Secretary of the Treasury (Secretary), *inter alia*, to require financial institutions to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.² Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer

¹ All CMIRs are filed with the Department of Homeland Security’s Customs and Border Protection (CBP) at the port of entry/exit or mailed to the Commissioner of Customs in Washington, DC. There are no electronic filing capabilities at the ports. A CBP contractor keys the data on the completed form into a data tape that is electronically uploaded to the BSA database. FinCEN receives no paper filed CMIRs.

² Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107-56.

the BSA has been delegated to the Director of FinCEN.

The Secretary was granted authority with the enactment of Title 31 U.S.C., to require financial institutions and other persons to file various BSA reports. The information collected on the reports is required to be provided pursuant to Title 31 U.S.C., as implemented by FinCEN regulations found throughout 31 CFR chapter X. The information collected pursuant to this authority is made available to appropriate agencies and organizations as disclosed in FinCEN’s Privacy Act System of Records Notice.³

Current Action: In support of Treasury’s paperless initiative and efforts to make the government operations more efficient, FinCEN has chosen to mandate electronic filing of certain BSA reports effective June 30, 2012.

This requirement will significantly enhance the quality of our electronic data, improve our analytic capabilities in supporting law enforcement requirements, and result in a significant reduction in real costs to the U.S. government and ultimately to U.S. taxpayers. Specifically, we propose to make mandatory the electronic submission of all BSA reports *excluding* the CMIR.⁴

Background: Since October 2002, FinCEN has provided financial institutions with the capability of electronically filing BSA reports through its system called BSA E-Filing. Effective August 2011, the system was expanded to support individuals filing the Report of Foreign Bank and Financial Accounts (FBAR) report. BSA E-Filing is a secure, Web-based electronic filing system. It is a flexible solution for financial institutions or individuals, whether they file one BSA report or thousands. BSA E-Filing is an accessible service that filers can access by using their existing internet connections regardless of connection speed. In addition, it is designed to minimize filing errors and provide enhanced feedback to filing institutions or individuals, thereby providing a significant improvement in data quality.

BSA E-Filing, which is provided free of charge, features streamlined BSA information submission; faster routing of information to law enforcement; greater data security and privacy compared with paper forms; long-term

³ Treasury Department bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN’s System of Records Notice was most recently published at 73 FR 42405, 42407-9 (July 21, 2008).

⁴ See *supra* note 1.

cost savings to institutions, individuals, and the government; and insures compatibility with future versions of BSA reports.

In addition, BSA E-Filing offers the following features not available on paper:

- Electronic notification of submissions, receipt of submission, and errors, warnings, and alerts;
- Batch validation;
- Acknowledgement that a currency transaction report (CTR) and or suspicious activity report (SAR) was filed;
- Feedback reports to filers;
- Faster receipt for money services businesses of registration acknowledgement letter;
- Ability to send and receive secure messages;
- Use of Adobe forms that allows users to create templates, reducing data entry but still providing for printing paper copies if the filer wants to use a paper copy for its internal review and approval processes;
- Ability for supervisory users to assign system roles to their staff; and
- Availability of helpful training materials.

In 2010, we initiated a complete redesign and rebuilding of a new system-of-record that significantly enhances FinCEN's current technical capabilities to receive, process, share, and store BSA data. A significant part of this upgrade was the implementation of state-of-the-art electronic reporting or information collection tools. As of July 1, 2011, over 84% of BSA reports are filed electronically with FinCEN.⁵ FinCEN annually measures customer satisfaction with BSA E-Filing and has a performance goal of at least 90% satisfaction; in Fiscal Year 2010, 96% of customers were satisfied with BSA E-Filing.⁶ To enroll with BSA E-Filing financial institutions or individuals go to <http://bsae filing.fincen.treas.gov/main.html> and follow four easy steps.

As a result of the 2010 initiative, FinCEN is in the process of fielding a new BSA Collection, Processing, and Analytic system. The new system, which includes significant e-filing improvements, is designed to support the most efficient state-of-the-art electronic filing. The database will accept XML-based dynamic reports as well as certain other file formats. The

various file formats⁷ will be provided to permit integration into in-house systems or for use by service providers.

All filings (batch, computer-to-computer, and discrete) will be initiated through the BSA E-Filing system⁸ using current registration and log-in procedures. Although batch and computer-to-computer filing processes will remain unchanged, the file format will change to match the database. Batch and computer-to-computer filers will file reports, which are based on an electronic file specification that will be provided free of charge. Discrete filings (the replacement for submitting a single paper report) will be based on Adobe *LiveCycle Designer ES* dynamic forms. The discrete function is available for all small business report filers (as well as individuals). The discrete filing function will be accessed by logging into the BSA E-Filing System and entering a pre-approved user ID and password. During log-in to the discrete filing option, filers will be prompted through a series of questions.⁹

After log-in, a financial institution filing a report through the discrete function will answer another set of questions that will establish a subset of the data fields appropriate to the filer's specific type of filing institution.

Today's proposal requiring filers to submit certain BSA reports electronically using the free FinCEN BSA E-Filing system will provide a range of benefits. Electronic filing will also facilitate the rapid dissemination of financial and suspicious activity information in connection with BSA filings, making information contained in these filings more readily available to—and more easily searchable by—law enforcement, the financial regulatory community, and other users of BSA data. Additionally, the proposal to require certain BSA reports to be filed electronically will result in a significant reduction in the use of paper, producing a positive environmental impact. Further, the implementation of the proposal has the potential to save the government a few million dollars per year through the reduction of expenditures associated with current paper processing, in particular the physical intake and sorting of incoming

reports, and the electronic keying of reported information into the database.

Security: Mandatory electronic filing will provide increased security not available with paper filings. At the present time, all paper reports are mailed to the IRS Enterprise Computing Center—Detroit (ECC-D) as unclassified mail with no special handling via the U.S. Postal Service system. On occasion, mailed paper reports have been delayed, and in some cases damaged beyond readability. A financial institution may not discover that a report was not received by ECC-D until many months after the report was due.¹⁰ For example, problems with delivery of reports may not be discovered until the financial institution is examined by its regulator, and the regulator compares a list of the reports that are posted to the database against the institution's official files. The BSA E-Filing System is a secure 128-bit single socket layer protected Web-based filing system. Reports received are acknowledged and any noted errors are reported back to the filer. This process provides the filer with a record that the required filing was received, as well as suggestions on how to improve the accuracy of their future reports. Reports originated by the filer are posted securely directly to the database, thereby significantly reducing or eliminating possibility of data compromise.

Filer Impact Assessment

a. *Depository institutions:* Based on information available we believe this change in filing procedures will have minimal impact on depository institutions. All depository institutions are currently required to file quarterly call or thrift financial reports with their regulator electronically through a Web-based portal provided by the appropriate federal regulator. This same electronic connectivity may be used to file BSA reports with FinCEN by logging in to the BSA E-Filing System Web-based portal.

b. *Broker-Dealers, Future-Commission Merchants (FCMs), Introducing Brokers in Commodities (IB-Cs), and Mutual Funds:*¹¹ Based on information available we believe this change in filing procedures will have minimal impact on these filing institutions. This group is highly automated and enjoys robust electronic buying and selling systems with sophisticated processing

⁵ As of July 2011, there are over 12,000 registered e-filers. Of the 1250 major filers, 659 are currently e-filing. FinCEN anticipates that many current paper filers will convert to e-file when the new BSA E-Filing system becomes available.

⁶ See FinCEN's 2010 Annual Report, available at http://www.fincen.gov/news_room/rp/files/annual_report_fy2010.pdf.

⁷ The XML Schema, ACSII, and the electronic file specifications will be provided at no cost to filers.

⁸ BSA E-Filing is a free Web-based service provided by FinCEN. More information on the filing methods may be accessed at <http://bsae filing.fincen.treas.gov/main.html>.

⁹ A series of predetermined questions designed to establish the type of institution and filing in much the same manner as used in widely accepted income tax filing software.

¹⁰ The missing report becomes more critical if it was reporting suspicious activity—especially when relating to terrorist financing.

¹¹ FinCEN is considering adding a SAR reporting requirement to Investment Adviser's (IA's) registered with the SEC. Mandatory e-filing will have minimum impact on this group.

and reporting systems.¹² Currently the Securities and Exchange Commission (SEC) mandates electronic filing,¹³ as does the Commodity Futures Trading Commission (CFTC).¹⁴

c. *Insurance companies*: Based on information available we believe this change in filing procedures will have minimal impact on these institutions. This group is highly automated.¹⁵

d. *Casinos and Card Clubs*:¹⁶ Based on information available we believe this change in filing procedures will have minimal impact on these institutions.

e. *Money Services Businesses (MSBs)*: Information gained from a review of the MSB filings of the currency transaction report (CTR), SAR, and Registration of Money Services Business (RMSB) forms indicates that some impact to this group can be expected. Information in trade journals and other publications, along with informal comments from the Internal Revenue Service Small Business/Self Employed, indicate that most filers have Internet connectivity. MSBs routinely accept and process credit card transactions requiring automated communications with the approving card center. They also routinely place orders for goods and services through the Internet and electronically access bill paying services. Additionally, basic Internet access can be obtained through a simple inexpensive dial-up connection or at professional external Internet facilities such as service providers for those MSBs without Internet connectivity. Lastly, FinCEN has included provisions for requesting a hardship exception in this notice in case unforeseen situations arise.¹⁷

f. *Service Providers*: There is a network of third-party service providers with which financial institutions may contract to provide electronic filing services to the BSA E-Filing System. FinCEN believes this group to be highly

automated and many are already using the BSA E-Filing System. We do not anticipate that this proposal will have an impact on this group.

g. *Small businesses*:¹⁸ In support of small businesses, FinCEN's Office of Compliance will provide a temporary hardship exemption capability. A small business may request, and may be granted, an emergency extension of up to one year if it can document a sufficiently serious problem that prevents compliance with the new filing requirements. The approved extension will be effective for one year from the effective date of this notice.¹⁹ A hardship request based solely on a lack of Internet connectivity or a business decision to restrict Internet connectivity will not be considered adequate justification for an extension.

h. *Individual filers*: Effective August 2011, FinCEN expanded its support of electronic filing to individuals.²⁰ The capability to file the Report of Foreign Bank and Financial Accounts (FBAR Form TD F 90-22.1) became available and individuals worldwide can sign up to file their individual FBAR's by accessing the FinCEN E-Filing Web site. Based on new applications to date, there is no indication of any issues with individuals using this new capability.

Paperwork Reduction Act (PRA)

Type of Review: Review of a new proposal to mandate the electronic filing of BSA reports.

Affected Public: Businesses or other for-profit and non-profit institutions.

Frequency: As required.

Estimated Burden: Effective with the FinCEN IT Modernization, BSA reporting will be supported by seven BSA reports.²¹ The burden for electronic filing and recordkeeping of each BSA report is reflected in the OMB approved burden²² for each of these reports. The non-reporting recordkeeping burden is reflected separately.²³

¹⁸ See the Small Business Administration's (SBA) Web site <http://www.sba.gov/content/what-sbas-definition-small-business-concern> for SBA's definition of a small business concern.

¹⁹ Request for emergency extension will be mailed to: Department of the Treasury, Financial Crimes Enforcement Network, Attention RPP-CP, PO Box 39, Vienna, VA 22183 or may be e-mailed to: regcomments@fincen.gov.

²⁰ See page 3 *Background*.

²¹ BSA-SAR, BSA-CTR, Designation Of Exempt Person, CMIR, RMSB, Foreign Bank Account Report, and the Report of Cash Over \$10,000 Received in a Trade or Business (Form 8300).

²² See OMB Control Numbers 1506-0065, 1506-0064, 1506-0009, 1506-0013, 1506-0014, 1506-0018.

²³ See OMB Control Numbers 1506-0051 through 1506-0059.

Estimated number of respondents for all reports = 74,900.²⁴

Estimated Total Annual Responses for all reports = 16,172,770.

Estimated Total Annual Burden Hours = 20,874,761.²⁵

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained pursuant to the BSA must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information only by electronic means is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents (filers), including through the use of automated collection techniques or other forms of information technology; (e) the practicality of utilizing external Internet facilities or service providers to occasionally file BSA reports, (f) estimates of capital or start-up costs and costs of operation, maintenance, or purchase of services to provide information by filers that currently do not have Internet access, and (g) the enhanced security of sensitive information and significant cost savings of electronic filing.

Dated: September 13, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activity; Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

²⁴ All filers subject to BSA reporting requirements excluding CMIR. See *supra* note 1.

²⁵ Includes all reporting and recordkeeping burden associated with filing BSA reports.

¹² Currently both the SEC and the CFTC require electronic reporting. The SEC through the EDGAR system and the CFTC through the NFC Windjammer and Easy File systems.

¹³ See <http://www.sec.gov/info/edgar/regoverview.htm>.

¹⁴ For financial institutions subject to CFTC oversight See NFA Electronic Filings at <http://www.nfa.futures.org/NFA-electronic-filings/index.HTML>.

¹⁵ See the National Insurance Producer Registry (NIPR) at <http://www.nipr.com/>. NIPR is a unique public-private partnership that supports the work of the states and the National Association of Insurance Commissioners (NAIC) in making the producer-licensing process more cost-effective, streamlined and uniform for the benefit of regulators, the insurance industry and the consumers they protect and serve.

¹⁶ Casinos and Card Clubs with gross annual gaming revenues in excess of \$1 million (see 31 CFR1010.100 (t)(5)(ii) and (6)(ii)).

¹⁷ See Filer impact paragraph "g."