

was published in the *Federal Register* on April 3, 1989 (54 FR 13364).

EFFECTIVE DATE: July 6, 1989.

FOR FURTHER INFORMATION CONTACT:

Ramon A. Evon, United States Department of State, Room 4709, Annex 15, Washington, DC 20520, phone (703) 875-6880.

SUPPLEMENTARY INFORMATION: On April 3, 1989, STATE issued the 22 CFR Part 34, for the collection of debts by the Government under the Debt Collection Acts. The necessity for certain technical corrections in the public notification have come to light. This document corrects the regulation.

PART 34 [CORRECTED]

In FR Doc. 89-7736, published in the *Federal Register* of Monday, April 3, 1989, on page 13364 the following corrections are made:

1. On page 13364, in the "Summary", the citation "Pub.L. 97-365, Stat. 1749" is corrected to read "Pub.L. 97-365, 96 Stat. 1749".

2. On page 13367, in § 34.18, paragraph (d) is correctly added to read as follows:

§ 34.18 Notice requirements before offset.

(d) The requirement to assess and collect interest, penalties, and administrative costs, or waiver are in accordance with § 34.4, unless excused in accordance with § 34.4(a)(6);

3. On page 13368, in § 34.20, paragraph (c)(6) is correctly added to read as follows:

§ 34.20 Hearings.

(c) * * *

(6) Failure to appear. In the absence of good cause shown (e.g. excused illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of the creditor agency representative when good cause is shown. Both parties shall be given reasonable notice of the time and place of the new hearing.

May 18, 1989.

Elizabeth A. Gibbons,
Associate Comptroller, Financial
Management.

[FR Doc. 89-15870 Filed 7-5-89; 8:45 am]

BILLING CODE 4710-37-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title I, Subtitle H, section 1358, authorized the Secretary of the Treasury to prescribe regulations defining "at one time" for the purposes of the international transportation and receipt of monetary instruments. This Final Rule adds such a definition to the Bank Secrecy Act regulations, 31 CFR Part 103, in order to define "at one time."

In a related matter, Treasury is amending § 103.11(k), the definition of "monetary instruments," to include all forms of traveler's checks. This amendment clarifies the status of traveler's checks and conforms the definition more closely to the statute.

DATE: This Final Rule is effective August 7, 1989.

ADDRESS: Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC. 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91-508 (codified at 12 U.S.C. 1730d, 1829b, 12 U.S.C. 1951 et seq., and 31 U.S.C. 5311-5326), authorizes the Secretary of the Treasury to require reports on the international transportation and receipt of monetary instruments. 31 U.S.C. 5316. Pursuant to this authority, Treasury issued regulations requiring that a form be filed reporting the international transportation and receipt of monetary instruments that exceed \$10,000. (Customs Form 4790, the "CMIR"). See 31 CFR 103.11(k) and 103.23.

Section 5316 requires that reports be filed by a person, or agent or bailee of a person, when he knowingly transports, is about to transport, or has transported, more than \$10,000 in monetary instruments "at one time" into or out of the United States. The statute also requires that the same report be filed upon receipt of more than \$10,000 in monetary instruments from outside the United States "at one time."

In the Anti-Drug Abuse Act of 1986, 31 U.S.C. 5316 was amended. One amendment was the addition of a new subsection (d). That subsection reads as follows:

The Secretary of the Treasury may prescribe regulations under this section defining the term "at one time" for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for purposes of subsection (a).

The House Report on this provision noted:

This provision closes a loophole regarding reports of transporting cash out of the country. 31 U.S.C. 5316, relating to the reports on exporting and importing monetary instruments, requires reports when one transports more than \$10,000 "at one time." The U.S. Court of Appeals for the First Circuit overturned a conviction in *United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985) holding that structuring currency transactions to avoid the reporting requirements was not a conspiracy to defraud the United States (18 U.S.C. 1001). This amendment permits the Secretary to prescribe regulations to define the term "at one time" to permit the cumulation of closely related events in order that they may collectively be considered to occur at one time for purposes of the reporting requirements.

H. Rep. 99-855, Part I, 99th Cong., 2d Sess. 19.

As a result of this statutory authorization, on November 14, 1988, Treasury published in the *Federal Register* (53 FR 45774), a proposed definition of "at one time" for inclusion in the Bank Secrecy Act regulations. Under the proposed definition, a person who transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

- (1) For the purpose of evading the reporting requirements under § 103.23;
- (2) That person either alone, or in conjunction with, or on behalf of others;
- (3) Transports, mails, ships or receives; is about to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of;
- (4) Monetary instruments;
- (5) In any amount;
- (6) On one or more days;
- (7) Into or out of the United States.

Treasury issued the proposed regulation to make clear that structuring schemes involving the international transportation and receipt of monetary instruments are illegal to the same extent that structuring schemes to evade the domestic currency transaction reporting requirements of 31 CFR 103.22

are illegal. See 31 U.S.C. 5324; 31 CFR 103.53.

A second amendment also was proposed on November 14, 1988, with respect to the international transportation and receipt of traveler's checks. Under 31 CFR 103.11 (k) (ii) and (iii), traveler's checks are presently reportable under 31 CFR 103.23 only if: (1) They are negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; or (2) they are incomplete instruments signed but with the payee's name omitted. The Bank Secrecy Act definition of "monetary instruments" at 31 U.S.C. 5311 (a)(3), however, is very broad and permits Treasury to include all forms of traveler's checks within the definition of "monetary instruments."

Treasury proposed to clarify the definition of "monetary instruments" as it pertains to traveler's checks, and conform the definition more closely to the statute, by including all forms of traveler's checks in the definition of "monetary instruments."

There is a high degree of law enforcement value in reporting all forms of traveler's checks. Traveler's checks are intended to substitute for currency and to operate as currency. Their potential for abuse by drug traffickers and other money launderers therefore is great. For this reason, Treasury proposed to amend the definition of "monetary instruments" and subject all forms of traveler's checks to the reporting requirements of 31 CFR 103.23. The exception from reporting transportation of these instruments by an issuer of traveler's checks or its agent prior to their delivery to selling agents for eventual sale to the public was to be retained. 31 CFR 103.23(c)(7).

Comments

General

Twelve comments were received. There was confusion on the part of some commenters on the effect of these two proposals on a bank's responsibility to file CMIR's and the relationship of these proposals to the domestic currency transaction reporting requirement of § 103.22. Moreover, some commenters wanted to know whether these proposals, if adopted, would have any impact on BSA Administrative Ruling 88-2, which states that a bank does not have to file CMIR's on behalf of its customers, only on its own international transportation and receipt of monetary instruments.

Currently, there are very few instances in which banks have to file a

CMIR, because of several exceptions for banks to the general CMIR filing requirement. See 31 CFR 103.23(c). The amendments made by this Final Rule do not change this situation. There also is no connection between the changes made in this Final Rule and the domestic currency transaction reporting requirements of 31 CFR 103.22 that are imposed on financial institutions. In particular, the domestic transaction reporting requirements applicable to financial institutions still are limited only to transactions in currency, i.e., where there is a physical transfer of currency. Thus, this amendment does not require financial institutions to report domestic transactions involving traveler's checks where no currency in amounts totaling more than \$10,000 is transferred. Moreover, there is no conflict between this amendment and Bank Secrecy Act Administrative Ruling 88-2, issued June 22, 1988. That administrative ruling (published at 53 FR 40064, October 13, 1988) holds that a bank need not file a Form 4790 when a customer comes in with money he or she is transporting or has received from outside the United States. This Final Rule does not change this holding in any way. Banks and other financial institutions file CMIR's on their own transportation or receipt of monetary instruments, not that of their customers.

At one time definition

Most comments received centered on the proposed definition of "at one time." There was concern that the definition, as originally proposed, attempted to combine aspects of both aggregation and a prohibition against structuring, thus confusing potential filers in knowing when to file (per day or over a certain number of multiple days) and giving the appearance that the definition was relevant only when someone was evading the reporting requirement.

After evaluation of the comments and further study of the proposal and its aims, Treasury has clarified the definition. As amended, the definition of "at one time" will read as follows:

For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

- (1) That person either alone, in conjunction with or on behalf of others;
- (2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;
- (3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of § 103.23 on one or more days.

This change will make clear that the general reporting requirement is by calendar day and not over multiple days and that any transportations, mailings, shipments, or receipts on one or more days to evade the general calendar day reporting requirement also will be deemed to have happened "at one time."

This definition also makes it clear that filers are required to aggregate all inbound and outbound transportations, mailings, shipments or receipts of monetary instruments that occur during the course of the same calendar day. In addition, all outbound monetary instruments should be aggregated with all other outbound monetary instruments and all inbound monetary instruments should be aggregated with inbound monetary instruments; there should be no offsetting of inbound monetary instruments against outbound monetary instruments or aggregating of inbound monetary instruments with outbound monetary instruments. Thus, if the total of all monetary instruments transported, shipped or mailed outside the United States or the total of all monetary instruments transported, shipped or mailed into the United States and received during the course of the same calendar day exceeds \$10,000, then a CMIR needs to be filed. For example, a person living on the United States border with Canada transports \$6,000 across the border to Canada at 10:00 a.m., and at 2 p.m. the same day transports another \$7,000 across the border to Canada. Because the person has transported monetary instruments totaling in excess of \$10,000 out of the United States on the same day, i.e., \$13,000, he must file a CMIR.

Finally, one commenter noted that § 103.23 needed to reference the term "at one time" in lieu of "on any one occasion." Treasury notes that the comment is correct and this Final Rule amends § 103.23(a) to change the term "on any one occasion" to "at one time."

Inclusion of all traveler's checks in the definition of monetary instruments

Some commenters requested an exception for traveler's checks in the reconciliation process after they have been negotiated. This exception would be similar to the exception in § 103.23(c)(7) for traveler's checks issuers or agents with respect to the transportation of traveler's checks prior

to their delivery to selling agents for eventual sale to the public.

The reason for the request arises out of the practicalities of the reconciliation and payment process. Once a traveler's check has been negotiated and starts its way through the bank collection process for payment and reconciliation purposes, it can be used no longer; it is considered a "dead" instrument. The check comes back into the United States on its way back to the issuer with restrictive endorsements on the back. Nothing further can be done with these instruments and they cannot be used again for any purpose. Under the current regulations, these instruments are excluded from the definition of "monetary instrument" and the CMIR reporting requirement.

After careful consideration, Treasury agrees with the commenters. Thus, Treasury has added a new exception to § 103.23(c) for persons with respect to traveler's checks that are restrictively endorsed and are in the collection and reconciliation process after the traveler's check has been negotiated. Except for that change, the amendment is being adopted as proposed.

Conclusion

In light of the comments received in response to the Notice, Treasury is adopting the amendments as proposed, with the changes noted above.

Executive Order 12291

This Final Rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of \$100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the

requirements of the Paperwork Reduction Act, 44 U.S.C. 3504(h), under control 1505-0063.

The estimated average burden associated with the collection of information contained in this Final Rule is .1667 hours (10 minutes) per respondent, depending on individual circumstances. Comments concerning the accuracy of this burden should be directed to the Office of Financial Enforcement at the address noted above and the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b, and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118 as amended (31 U.S.C. 5311-5326).

2. Section 103.11 is amended by redesignating paragraphs (a) through (s) as (b) through (t) accordingly, and adding a new paragraph (a) to read as follows:

§ 103.11 Meaning of terms.

(a) *At one time.* For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

- (1) That person either alone, in conjunction with or on behalf of others;
- (2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;
- (3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of section 103.23, on one or more days.

* * * * *

3. Section 103.11 is further amended by redesignating paragraphs (l)(1)(ii) through (l)(1)(iv) as (l)(1)(iii) through (l)(1)(v); by removing the words "traveler's checks" from newly redesignated paragraphs (l)(1)(iii) and (l)(1)(iv); and by adding a new paragraph (l)(1)(ii) to read as follows:

§ 103.11 Meaning of terms.

- * * * * *
- (l) *Monetary instruments.* (1) * * *
- (ii) Traveler's checks in any form;
- * * * * *

4. Section 103.23, is amended by replacing the words "on any one occasion" wherever they appear with the words "at one time" in paragraphs (a) and (b); by redesignating paragraph (c)(8) as (c)(9); and by adding a new paragraph (c)(8), and a reference to the OMB Control Number, all to read as follows:

§ 103.23 Reports of transportation of currency or monetary instruments.

- * * * * *
- (c) * * *
- (8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated,

* * * * *

(Approved by the Office of Management and Budget under control number 1505-0063)

Dated: June 12, 1989.

Salvatore R. Martoche,

Assistant Secretary, (Enforcement).

[FR Doc. 89-15617 Filed 7-5-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS 62035H; FRL 3611-6]

Polychlorinated Biphenyls in Electrical Transformers; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule on polychlorinated biphenyls in electrical transformers published in the Federal Register issue of July 19, 1988 (53 FR

27322). In the introductory text of § 761.30(a)(1)(iv), EPA inadvertently referenced paragraph "(a)(1)(v)", instead of correctly referencing paragraph "(a)(1)(iv)(B)". This document corrects that error.

DATE: This correction is effective July 6, 1989.

FOR FURTHER INFORMATION CONTACT:

Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460 (202-554-1404), TDD: 202-554-0551).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: June 29, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761 [AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, and 2614. Subpart G also issued under 15 U.S.C. 2614 and 2616.

§ 761.30 [Amended]

2. In § 761.30, the introductory text of paragraph (a)(1)(iv), by revising the reference "(a)(1)(v)" to read "(a)(1)(iv)(B)".

[FR Doc. 89-15891 Filed 7-5-89; 8:45 am]

BILLING CODE 6580-50-M

DEPARTMENT OF DEFENSE

48 CFR Part 204

[Defense Acquisition Circular (DAC) 88-9]

Department of Defense Federal Acquisition Regulation Supplement; Contract Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 88-9 amends the DoD FAR Supplement (DFARS) with respect to Fiscal Year 1990 Changes to the DoD Reporting System.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS),

Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2 Title 48 of the Code of Federal Regulations.

The October 1, 1987, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-5. Amendments made by DACs 86-6 through 86-16 were published in the *Federal Register* at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88-9, Item I

Public comments are not solicited because the revisions pertain to internal DoD operating procedures and the Regulatory Flexibility Act does not apply.

C. Regulatory Flexibility Act

DAC 88-9, Item I

This final rule does not constitute a significant revision within the meaning of Pub. L. 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

D. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 204

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88-9]

July 1, 1989.

This Defense Acquisition Circular is effective 1 October 1989.

Defense Acquisition Circular (DAC) 88-9 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Fiscal Year 1990 Changes to the DoD Reporting System (Final Rule)

DFARS Part 204 reporting instructions for the DD 350, Individual Contracting Action Report, and the DD 1057, Monthly Contracting Summary of Actions \$25,000 or Less, are being revised to comply with recent statutory requirements. Changes are effective for reporting beginning 1 October 1989.

Note: This coverage is not to be used before October 1, 1989.

Major changes in the FY 1990 DD 350 reporting instructions are:

(a) Instructions for Items C3 and C8 are revised to address competitive 8(a) awards. Section 303(b) of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) requires that acquisitions offered for award pursuant to Section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible participants under certain conditions. FAR Part 19 and DFARS Part 219 changes to implement this statute will be published in the near future. These actions will be reported as "Full and Open Competition After Exclusion of Sources".

(b) Items E2 through E4 are relocated to Part D for FY 1990 as Items D9 through D11. These items were added in an interim rule published in the *Federal Register* on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484). The interim rule was finalized in DAC 88-8 and is effective for FY 1989 reporting. The changes in this DAC will be effective for reporting beginning in FY 1990.

(c) Item C8 is revised and new Items E2 and E3 are added to report information concerning awards to private or public handicapped organizations under small business set-asides. Section 133 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Pub. L. 100-590) authorizes participation by public or private organizations for the handicapped in small business set-asides for Fiscal Years 1989 through 1993. FAR Part 19 changes to implement the statute will be published in the near future.

Expanded guidance is also provided regarding when a DD 350 must be submitted for actions of \$25,000 or less under the Small Business Competitiveness Demonstration Program. The additional guidance provides, in part, that a DD 350 need no longer be submitted on actions of \$500 or less.

All other changes are editorial or for clarification. Comparable changes are made to the DD Form 1057 reporting