

Dated: July 2, 2002.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA30

#### Financial Crimes Enforcement Network; Rescission of Exemption From Bank Secrecy Act Regulations for Sale of Variable Annuities

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

**ACTION:** Notice of rescission of exemption.

**SUMMARY:** FinCEN is announcing today that it is rescinding an exemption from the provisions of the Bank Secrecy Act regulations granted in 1972 to persons required to register as brokers or dealers in securities ("broker-dealers") solely to permit the sale of variable annuities contracts issued by life insurance companies. This action is being taken in order to ensure consistency with USA PATRIOT ACT provisions mandating extension of Bank Secrecy Act requirements to a broad range of financial institutions.

**DATES:** Effective Date: August 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Peter G. Djinis, Executive Assistant Director for Regulatory Policy, FinCEN, at (703) 905-3930; Judith R. Starr, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905-3590.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Bank Secrecy Act, 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 (the "BSA"), authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and 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.<sup>1</sup>

<sup>1</sup> 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

Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

##### II. FinCEN Issuance 2002-1

This document, FinCEN Issuance 2002-1, rescinds an exemption from the provisions of 31 CFR part 103 granted to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. The background and purpose of the rescission are explained below.

The definition of "financial institution" for BSA purposes, found at 31 CFR 103.11(n), includes "a broker or dealer in securities."<sup>2</sup> BSA regulations further define the term "broker or dealer in securities" to include a "broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934."<sup>3</sup> Because variable annuity contracts fall within the definition of "security" under the federal securities laws, life insurance companies wishing to sell variable annuity contracts must register as broker-dealers under the Securities Exchange Act of 1934, and thus fall under the definition of "broker or dealer in securities" found in 31 CFR part 103.

In response to a request from the American Life Convention—Life Insurance Association of America, Treasury in 1972 granted an exemption from the provisions of 31 CFR part 103 to persons registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies.<sup>4</sup> However, given the Congressional mandate found in the USA PATRIOT ACT to extend to all entities defined as financial institutions under the BSA the requirement to establish an anti-money laundering program (*See* Section 352(a) of the USA PATRIOT ACT), and to extend suspicious activity reporting to broker-dealers (*See* Section 356 of the USA PATRIOT ACT), FinCEN believes that it is now appropriate to rescind this exemption pursuant to 31 CFR 103.86.

On December 31, 2001, FinCEN published a notice of proposed

America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107-56.

<sup>2</sup> *See* 31 CFR 103.11(n)(2).

<sup>3</sup> *See* 31 CFR 103.11(f).

<sup>4</sup> *See* 37 FR 248986, 248988, November 23, 1972.

rulemaking (the "Notice"), 66 FR 67670, that would extend to broker-dealers the requirement to report suspicious transactions to the Department of the Treasury. In the Notice, FinCEN indicated that it anticipated that the exemption relating to variable annuity contracts issued by life insurance companies would be rescinded on the effective date of the final rule based on the Notice.<sup>5</sup> A final rule based on the Notice was published in the **Federal Register** on July 1, 2002.<sup>6</sup> FinCEN did not receive any adverse comments on the issue of rescinding the exemption. However, in response to a comment, FinCEN wishes to clarify that rescission of the exemption extends BSA coverage only to the activity of a life insurance company requiring the company to register with the SEC as a broker-dealer, and not to all activity of the life insurance company.

Thus, a person registered with the SEC as a broker-dealer solely to offer and sell variable annuity contracts issued by life insurance companies is subject to all applicable BSA requirements, including the requirement to file reports of suspicious activity, to the extent they offer and sell such contracts.

Dated: July 15, 2002.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[Docket #: OR-01-006a; FRL-7240-9]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: OR; Medford Carbon Monoxide Nonattainment Area

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to Oregon's State Implementation Plan (SIP) which were submitted on May 31, 2001. These revisions consist of the 1993 carbon monoxide (CO) base/attainment year emissions inventory for Medford, Oregon, and the revised Medford CO maintenance plan. Oregon concurrently requested redesignation of

<sup>5</sup> *See* 66 FR 67670, 67672 (December 31, 2001).

<sup>6</sup> *See* 67 FR 44048 (July 1, 2002).