drain is ''unblockable'' if the suction outlet, including the sump, has a perforated (open) area that cannot be shadowed by the area of the 18″ x 23″ Body Blocking Element of ANSI/APSP–16 2011 and the rated flow through any portion of the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. The Staff Technical Guidance of June 2008 will be updated to clarify that placing a removable, unblockable drain cover over a blockable drain does not constitute an unblockable drain. This revocation corrects the previous interpretation, which the Commission now believes was in error and thwarts the intent of the law to require layers of protection in cases where a drain cover, regardless of its size, can be removed, broken, or otherwise expose a blockable drain and present an entrapment hazard. The Commission has set a compliance date of May 28, 2012, to allow time for firms that require modifications as a result of this revocation to bring their pools into compliance with the statute as written. In addition, the Commission invites written comments regarding the ability of those who have installed VGBA compliant unblockable drain covers as described at 16 CFR 1450.2(b) to come into compliance with our revocation by May 28, 2012.

List of Subjects in 16 CFR Part 1450

Consumer protection, Infants and children, Law enforcement.

For the reasons stated above, the Commission amends part 1450 of title 16 of the Code of Federal Regulations as set forth below:

PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

■ 1. The authority citation for part 1450 continues to read as follows:

Authority: 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

§ 1450.2 [Removed and Reserved]

■ 2. Remove and reserve § 1450.2.

Dated: September 29, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–25601 Filed 10–7–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9543]

RIN 1545–BA99

Timely Mailing Treated as Timely Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, August 23, 2011, the regulations provide that the proper use of registered or certified mail, or a service of a private delivery service designated under criteria established by the Internal Revenue Service, will constitute prima facie evidence of delivery. The regulations affect taxpayers who mail Federal tax documents to the Internal Revenue service or the United States Tax Court.

DATES: This correction is effective on October 11, 2011 and applies to any payment or document mailed and delivered in accordance with the requirements of § 301.7502–1 in an envelope bearing a postmark dated after September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Karon, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9543) that is the subject of this correction is under sections 301 and 602 of the Internal Revenue Code.

Need for Correction

As published on August 23, 2011 (76 FR 52561), the final regulations (TD 9543) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9543), that were the subject of FR Doc. 2011–21416, are corrected as follows:

1. On page 52561, column 1, in the regulation heading, the CFR Title and part Number, line 3, the phrase ''26 CFR part 301'' is corrected to read ''26 CFR parts 301 and 602''.

2. On page 52561, column 2, in the preamble, under the caption **''FOR FURTHER INFORMATION CONTACT''**, line 1, the phrase ''(202) 622- 4570'' is corrected to read ''(202) 622–4570''.

3. On page 52562, column 3, in the preamble under the caption ''Special Analyses'', lines 6 and 7 from the bottom of the second paragraph, the phrase ''$2.80 and registered mail can be used for as little as $10.60'' is corrected to read ''$2.85 and registered mail can be used for as little as $10.75.''

4. On page 52562, column 3, in the preamble, the caption ''List of Subjects in 26 CFR part 301'' is corrected to read as follows:

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

5. On page 52562, column 3, in the preamble under the caption ''Adoption of Amendments to the Regulations'', line 1, the phrase ''Accordingly, 26 CFR part 301 is amended as follows:'' is corrected to read ''Accordingly, 26 CFR parts 301 and 602 are amended as follows:''.

Diane O. Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–26187 Filed 10–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1060

RIN 1506–AB12

Comprehensive Iran Sanctions, Accountability, and Divestment Reporting Requirements

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

ACTION: Final rule.

SUMMARY: FinCEN, to comply with the congressional mandate to prescribe regulations under section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (''CISADA'') and consistent with its statutory mission under 31 U.S.C. 310, is issuing this final rule. The rule requires a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank, and report to FinCEN certain information with respect to transactions or other financial services provided by that foreign bank. Under the rule, U.S. banks will only be required to report this

information to FinCEN upon receiving a specific written request from FinCEN. This final rule follows publication of a May 2, 2011 proposed rule, takes into account the public comments received, and adopts the provisions of the proposed rule with minor modifications described in the preamble.

DATES: *Effective Date:* October 11, 2011.

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On July 1, 2010, the President signed CISADA [1] into law. Section 104(c) of CISADA requires the Secretary of the Treasury (''the Secretary'') to prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of correspondent accounts and payable-through accounts for foreign financial institutions that the Secretary finds knowingly engage in sanctionable activities described in section 104(c)(2) of CISADA. The relevant statutory language reads as follows:

''(c) PROHIBITIONS AND CONDITIONS WITH RESPECT TO CERTAIN ACCOUNTS HELD BY FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in an activity described in paragraph (2).

(2) ACTIVITIES DESCRIBED.—A foreign financial institution engages in an activity described in this paragraph if the foreign financial institution—

(A) facilitates the efforts of the Government of Iran (including efforts of Iran's Revolutionary Guard Corps or any of its agents or affiliates)—

(i) to acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction; or

(ii) to provide support for organizations designated as foreign terrorist organizations under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) or support for acts of international terrorism (as defined in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note));

(B) facilitates the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolution 1737 (2006), 1747 (2007), 1803 (2008), or 1929 (2010), or any other resolution that is agreed to by the Security Council and imposes sanctions with respect to Iran;

(C) engages in money laundering to carry out an activity described in subparagraph (A) or (B);

(D) facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in subparagraph (A) or (B); or

(E) facilitates a significant transaction or transactions or provides significant financial services for—

(i) Iran's Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or

(ii) a financial institution whose property or interests in property are blocked pursuant to that Act in connection with—

(I) Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction; or

(II) Iran's support for international terrorism.

(3) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person that violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed under paragraph (1) of this subsection to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act.''

On August 16, 2010, the Office of Foreign Assets Control (''OFAC') published the Iranian Financial Sanctions Regulations, 31 CFR Part 561 (the ''IFSR''). Section 561.201 of the IFSR implements section 104(c) of CISADA. It states that the Secretary will, consistent with authorities under CISADA, prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for a foreign financial institution that the Secretary finds knowingly engages in one or more of the sanctionable activities described in section 561.201(a) of the IFSR.

Section 104(e) of CISADA requires the Secretary to prescribe regulations to establish one or more specific requirements for U.S. financial institutions maintaining correspondent accounts for foreign financial institutions, in connection with the sanctionable activities described in section 104(c)(2) of CISADA. The relevant statutory language reads as follows:

''(e) REQUIREMENTS FOR FINANCIAL INSTITUTIONS MAINTAINING ACCOUNTS FOR FOREIGN FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations to require a domestic financial institution maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

(A) Perform an audit of activities described in subsection (c)(2) that may be carried out by the foreign financial institution.

(B) Report to the Department of the Treasury with respect to transactions or other financial services provided with respect to any such activity.

(C) Certify, to the best of the knowledge of the domestic financial institution, that the foreign financial institution is not knowingly engaging in any such activity.

(D) Establish due diligence policies, procedures, and controls, such as the due diligence policies, procedures, and controls described in section 5318(i) of title 31, United States Code, reasonably designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in any such activity.

(2) PENALTIES.—The penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, shall apply to a person that violates a regulation prescribed under paragraph (1) of this subsection, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.''

In order to comply with the congressional mandate to prescribe regulations under section 104(e) of CISADA, and consistent with its statutory mission under 31 U.S.C. 310, FinCEN is implementing section 104(e)(1)(B) of CISADA. FinCEN considered implementing any one or more of the options under section 104(e)(1) of CISADA, and determined that implementing section 104(e)(1)(B) is the most useful vehicle for effecting the intent of section 104(e) at this time. Section 104(e)(1)(B) of CISADA authorizes the Secretary to prescribe regulations that require a domestic financial institution maintaining a correspondent account in the United States for a foreign financial institution to report to the Department of the Treasury with respect to transactions or other financial services provided with respect to sanctionable activities described in section 104(c)(2) of CISADA that may be carried out by the foreign financial institution.

FinCEN believes that among the services included within the concept of ''transactions or other financial services provided'' by a foreign financial institution are correspondent accounts the foreign financial institution maintains for other foreign financial institutions and transfers of funds the foreign financial institution processes for or on behalf of other foreign financial institutions, individuals, or entities. A foreign financial institution's provision of correspondent account services and transfer of funds services to a financial institution designated by the U.S. Government in connection with Iran's proliferation of weapons of mass

[1] Public Law No. 111–195, 124 Stat. 1312 (2010).

destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism, may be relevant to the sanctionable activities described under section 104(c)(2) of CISADA. As a result, FinCEN is focusing this reporting requirement on the provision of information relating to such correspondent accounts and transfers of funds.[2] In addition, because a foreign financial institution's provision of transfer of funds services to Iran's Islamic Revolutionary Guard Corps (''IRGC'') or any of its agents or affiliates designated by the U.S. Government may also be relevant to the sanctionable activities described under section 104(c)(2) of CISADA, FinCEN is also focusing this reporting requirement on the provision of information relating to such transfers of funds.[3]

FinCEN is implementing section 104(e)(1)(B) of CISADA by issuing regulations that require a bank, upon receiving a written request from FinCEN, to inquire of a specified foreign bank for which it maintains a correspondent account, and report to FinCEN, with respect to the following: (1) Whether the foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act (''IEEPA'');[4] (2) whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly,[5] an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and (3) whether the foreign bank has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA.[6]

In addition, the rule requires a bank to request, when making its inquiry of a specified foreign bank, that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, and report such information to FinCEN.

The rule also requires a bank to report to FinCEN instances in which the bank does not maintain a correspondent account for a foreign bank specified in a written request from FinCEN. This requirement will only apply when FinCEN specifically requests in writing that the bank report such information. To the extent possible and based on all available information, FinCEN intends to send requests directly to banks that FinCEN believes may maintain correspondent accounts for the specified foreign bank(s). The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances.

II. Background Information

A. 31 CFR Part 561 Iranian Financial Sanctions Regulations—Office of Foreign Assets Control

On August 16, 2010, OFAC published the IFSR, 31 CFR part 561. As noted above, section 561.201 of the IFSR implements section 104(c) of CISADA. It states that the Secretary will, consistent with authorities under CISADA, prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for a foreign financial institution that the Secretary finds knowingly engages in one or more of the sanctionable activities described in section 561.201(a) of the IFSR. The names of foreign financial institutions that are found by the Secretary to knowingly engage in such sanctionable activities, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts in the United States, will be published in the **Federal Register** and listed in appendix A to the IFSR. If the Secretary decides to impose strict conditions on the opening or maintaining of a correspondent account or a payable-through account for a foreign financial institution, the actual condition(s) to be imposed will be specified upon the identification of the foreign financial institution in an order or regulation published in the **Federal Register.**

B. Use of CISADA Reports

The CISADA reports received as a result of this rulemaking will be used primarily to provide FinCEN with potentially useful information from U.S. banks regarding the nature of foreign bank activities that may be relevant to CISADA. Based on the reports, immediate action may be taken under section 104(c) of CISADA, or, among other things, there may be consultation with those foreign banks that maintain correspondent accounts for Iranian-linked financial institutions designated under IEEPA, that have processed one or more transfers of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, or that have been unwilling to respond to inquiries from the banks at which the foreign banks maintain correspondent accounts. An investigation by OFAC into the activities of such foreign banks could result in a finding by the Secretary under section 104(c) of CISADA and section 561.201 of the IFSR. For example, when a bank reports that a foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, or has processed one or more transfers of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA, OFAC could use the information to corroborate or supplement data derived from other sources and may request further information from the foreign bank to clarify whether the foreign bank is facilitating significant transactions or providing significant financial services for an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. Such transactions or services can be the basis for prohibiting or imposing strict conditions on the foreign bank's correspondent or payable-through accounts in the United States under section 104(c) of CISADA and section 561.201 of the IFSR.

III. Notice of Proposed Rulemaking

The final rule contained in this document is based on the Notice of Proposed Rulemaking published in the **Federal Register** on May 2, 2011 (''Notice'').[7] With the intent of implementing section 104(e) of CISADA, the Notice proposed to require a U.S. bank that maintains a correspondent account for a foreign bank to inquire of the foreign bank and report to FinCEN certain information with respect to transactions or other financial services provided by that foreign bank. The Notice also proposed that banks would only be required to

[2] *See, e.g.,* CISADA subsection 104(c)(2)(E)(ii), which includes focus on the provision by foreign financial institutions of significant financial services to financial institutions that are of concern under CISADA.

[3] *See, e.g.,* CISADA subsection 104(c)(2)(E)(i), which includes focus on the provision by foreign financial institutions of significant financial services to individuals or entities that are of concern under CISADA.

[4] *See below* Section V. A. for the definition of Iranian-linked financial institution designated under IEEPA.

[5] *See below* Section IV. D. for the rationale for replacing the terminology ''related to'' with ''for or on behalf of, directly or indirectly.''

[6] *See below* Section V. A. for the definition of IRGC-linked person designated under IEEPA.

[7] *See* 76 FR 24410 (May 2, 2011).

report this information to FinCEN upon receiving a specific written request from FinCEN.

IV. Comments on the Notice—Overview and General Issues

The comment period for the Notice ended on June 1, 2011. We received a total of seven comment letters from 14 entities and individuals.[8] Of the seven comment letters, five were submitted by trade groups or associations,[9] one was submitted by a group of seven U.S. Senators, and one was submitted by an advocacy group. The comments were generally supportive of the Notice but sought additional clarification on certain aspects of the Notice. Comments received covered a broad and varied range of topics. Although most of these comments are addressed directly below, a few others are covered in the section-by-section analysis.

Comments on the Notice focused on the following general matters: (A) The approach to implementing section 104(e) of CISADA; (B) the ability of a foreign bank to respond to a CISADA request; (C) the impact of the rule on foreign correspondent account relationships; (D) the scope of information to be reported by a foreign bank; (E) the timeframe for a foreign bank and a U.S. bank to respond to a CISADA request; (F) clarification regarding the proposed model certification; (G) clarification regarding certain definitions and terms; (H) record retention and supporting documentation; (I) sharing information regarding a CISADA request; and (J) estimate of burden.

A. The Approach to Implementing Section 104(e) of CISADA

One of the comments asserted that the Notice was not published in the **Federal Register** until 10 months after the President signed CISADA, which led the commenter to call into question the seriousness of enforcing comprehensive sanctions against Iran. Two commenters urged that the final rule should be implemented as soon as possible. Conversely, another commenter asserted that allowing only a 30-day comment period for the Notice was inadequate. In drafting the Notice, we considered a number of different approaches before settling on the one that we believe will produce the most useful information in the most workable manner. The time it took to publish the Notice reflected the need to craft a rule that would best achieve our policy aims, in a complex and novel context. Because we were mindful of the need to obtain this information expeditiously, we issued the Notice with a 30-day comment period. The quality and scope of the comments convinces us that 30 days was sufficient. We have drafted the final rule as promptly as possible, while taking into consideration all of the comments received and ensuring that we have established a rule that most effectively implements section 104(e) of CISADA.

Section 104(e) of CISADA offers FinCEN four options for rulemaking. One commenter requested clarification regarding how FinCEN determined that implementing section 104(e)(1)(B) would be the most useful way to implement section 104(e) of CISADA. As noted above, FinCEN considered a number of different approaches to implementing section 104(e) of CISADA. We believe that implementing section 104(e)(1)(B) will produce the most useful information in the most workable manner and will best achieve our policy aims. In fact, this belief is echoed in a number of comments FinCEN received. One commenter asserted that section 104(e) of CISADA allows FinCEN to implement any one or more of four requirements, some of which the commenter believes are potentially very burdensome to industry. The commenter believes the proposed requirements appropriately balance the need of the U.S. government to isolate Iran from the global financial system with the need to maintain an effectively functioning correspondent banking system. Another commenter asserted that FinCEN has taken elements of the four options Congress outlined in the statute and incorporated them with existing requirements to develop a rule that considers the costs to industry, the ability of the industry to comply, appropriate use of limited enforcement resources, and the need for information. Yet another commenter asserted that banks providing correspondent relationships in the U.S. are not in a position to speak to the overall activities of their foreign counterparts. The commenter further asserted that as such, if those activities are at issue under section 104(e) of CISADA, it is more appropriate to ask the U.S.-based banks to transmit inquiries to their foreign correspondents than to ask them to conduct independent investigations for which they are ill-suited.

One commenter believes that the proposed rule treats section 104(e) of CISADA as a discretionary provision in which banks will only have to certify they are not doing business with relevant Iranian-linked designated entities and individuals upon a written inquiry from FinCEN. Another commenter suggested that the proposed rule would not meet the requirements of the statute, as domestic financial institutions should be required to provide information to FinCEN, not only when asked, but as soon as they are aware that the foreign financial institution is engaged in a ''prohibited activity.'' FinCEN does not interpret 104(e) to be discretionary. To the contrary, we understand 104(e) to require the Secretary to prescribe regulations mandating that domestic financial institutions take one or more actions, one of which is to provide requested reports to FinCEN, and we believe the final rule reflects this understanding. We also note that the activities described in section 104(c)(2) of CISADA are not ''prohibited activities.'' Instead they are activities that can be grounds for imposing the sanctions described in section 104(c)(1) of CISADA.

FinCEN proposed to target this reporting requirement on those foreign banks that there is some basis to suspect may be engaged in activities that may be sanctionable under section 104(c) of CISADA. We considered requiring every U.S. bank to provide periodic reports from every foreign bank for which they maintain correspondent accounts, but concluded that we would be better served by a rule that focused on those foreign banks that are of interest for purposes of CISADA. By requiring reports from those U.S. banks that maintain correspondent accounts for the specific foreign banks that are of interest for purposes of CISADA implementation, we believe that we will receive the information needed without generating a multitude of unnecessary and uninformative reports.

The reporting requirement in the final rule is scalable. Based on the circumstances, it permits FinCEN to expand the number of U.S. banks that would be required to file reports, as well as the number of foreign banks from whom information would be sought. This means that FinCEN may ask any number of U.S. banks about any number of foreign banks as is necessary, based on the number of foreign banks there is some basis to suspect may be engaged in activities that may be sanctionable under section 104(c) of CISADA.

The targeted approach that FinCEN has proposed is supported by a number of commenters. One commenter strongly recommended incorporating the concept of targeted requests in the final rule. That same commenter noted that it appreciated FinCEN's effort to craft a

[8] All comments to the Notice are available for public viewing at *http://www.regulations.gov.*

[9] One comment letter was submitted on behalf of two trade groups or associations.

regulation that focuses on developing meaningful and properly targeted information. Another commenter expressed support for a request-driven model as an appropriate means of focusing industry and governmental resources on information of value. Yet another commenter asserted that in proposing a reporting requirement that would be imposed only when specifically requested, FinCEN has struck an appropriate balance between the need of the U.S. government to isolate Iran from the global financial system with the need to maintain an effectively functioning correspondent banking system.

One commenter correctly noted that banks are only required to request information from a foreign bank for which they maintain a correspondent account upon receiving a written request from FinCEN regarding that specific foreign bank. This rule does not require a bank to proactively inquire of any one or more of the foreign banks for which it maintains correspondent accounts.

One commenter suggested that under CISADA, a foreign financial institution should be required to report if it has facilitated the activities of a person subject to financial sanctions pursuant to United Nations (''U.N.'') Security Council Resolutions with respect to Iran. The commenter suggested that the proposed rule should be amended to require this additional disclosure. We recognize that foreign banks' transactions involving persons subject to financial sanctions pursuant to U.N. Security Council Resolutions with respect to Iran are among the sanctionable activities described in section 104(c)(2) of CISADA; however, there are other avenues for obtaining information on such transactions and FinCEN has determined that this specific reporting mechanism is not the most efficacious means to obtain such information at this time. However, as FinCEN collects and assesses the information required under this rule, we will continue to consider whether expanding the scope of this rule to include information pertaining to whether a foreign bank has facilitated the activities of a person subject to financial sanctions pursuant to U.N. Security Council Resolutions with respect to Iran would provide additional useful information as it relates to CISADA. If that is determined to be the case, FinCEN will consider proposing an expansion of this reporting requirement to include such information. At this time, FinCEN believes that a focus on foreign banks' transactions involving Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA will provide the most beneficial information for purposes of implementing section 104(c) of CISADA.

One commenter suggested that alternative resources might better serve the same purpose as the proposed rule. The commenter encouraged FinCEN to place greater reliance on government-to-government requests given the commenter's belief that such requests are likely to be far more reliable when collecting information to identify sanctions targets. The same commenter asserted that the benefit of an inter-governmental approach is the opportunity to urge other countries to adopt and implement similar sanctions. FinCEN clarifies that this rule is one tool that is being utilized to collect information as it relates to identifying potential sanctions targets under CISADA. As the commenter correctly suggested, additional methods of information collection are being utilized to identify sanctions targets. The commenter also suggested that FinCEN utilize existing Bank Secrecy Act (''BSA'') reporting tools as necessary to implement this reporting requirement. FinCEN agrees, and will leverage existing BSA reporting tools as appropriate.

B. The Ability of a Foreign Bank To Respond to a CISADA Request

Four commenters asserted that privacy legislation in certain jurisdictions may prohibit foreign banks from providing the requested information with respect to individual customer accounts and transactions. Three of these same commenters asserted that under CISADA banks have no legal authority to compel foreign banks to provide the requested information. FinCEN acknowledges that some foreign banks may choose not to respond or may not be able to respond due to their own jurisdictions' privacy legislation. For this reason the rule incorporates an option for U.S. banks to report to FinCEN instances in which they have not received a response from a foreign bank.

Although foreign banks are not necessarily required to respond under CISADA authority, those foreign banks may feel compelled to respond in order to maintain good relationships with the U.S. banks with which they maintain correspondent accounts. Even in instances in which a foreign bank does not respond to a bank's inquiry, that information is still valuable. As noted elsewhere in this rulemaking, based on the reports received, immediate action may be taken under section 104(c) of CISADA, or, among other things, there may be consultation with foreign banks, including those that have been unwilling to respond to inquiries. An investigation by OFAC into the activities of such foreign banks could result in a finding by the Secretary under section 104(c) of CISADA and section 561.201 of the IFSR.

One commenter suggested that the proposed rule should clearly outline the ramifications for foreign banks that fail to provide the required information or provide incorrect information. The commenter suggested that those ramifications should mirror the sanctions outlined in section 104(c)(1) of CISADA. If a foreign bank fails to respond or provides incorrect information an investigation may be conducted into the activities of such foreign bank which could, in turn, result in a finding under section 104(c) of CISADA.

One commenter contended that the proposed rule does not take into account the fact that a foreign bank may conduct legitimate business with an Iranian-linked financial institution designated under IEEPA, through licensed transactions and clearing. The commenter further asserted that for this reason, it would be possible for a U.S. authority to impose a penalty under CISADA on a foreign bank for undertaking transactions which had been licensed by its own competent authority. If a foreign bank wishes to explain that a correspondent account or transfer of funds identified in a certification was licensed by a competent authority in the foreign bank's home jurisdiction, the foreign bank may provide this explanatory information in the certification form. Such explanatory information may be taken into account when the foreign bank's certification is reviewed and it is determined what further action, if any, is appropriate under section 104(c) of CISADA. The model certification has been revised to include language that identifies this type of circumstance as an example of information a foreign bank can include in its certification.

C. The Impact of the Rule on Foreign Correspondent Account Relationships

One commenter requested that FinCEN clarify that a request for information regarding a foreign bank or even a positive report from a foreign bank is not a mandate to close or restrict an account. The commenter asserted that one option under the rule is for a bank to report that it cannot determine to its satisfaction that the foreign bank does not maintain a relevant account or

has not processed relevant transfers of funds. The commenter requested that FinCEN acknowledge in the final rule that this option meets compliance expectations for the bank, and the bank is not expected to take further action. Another commenter similarly suggested that the rule should clarify that a bank that does not receive a response from a foreign bank is merely required to report that and does not have to take any other action, including closing the account.

As explained elsewhere in the rulemaking, this rule does not require a bank to take any steps with respect to the foreign bank other than those relating to the collection of information outlined in the rule, regardless of the response received from the foreign bank. While the rule does not preclude a bank from taking any other action based on the bank's assessment of the facts and bank policy, including restricting or terminating a correspondent account relationship with a foreign bank or filing a suspicious activity report, a bank is not required to take any additional action based solely upon the fact that the bank: (i) Has received a request for information under this regulation; (ii) has received a response from the foreign bank; or (iii) has not received a response from the foreign bank.

If a foreign bank does not respond to an inquiry made by a bank under this rule, the bank will be in compliance with these reporting requirements so long as the bank timely reports to FinCEN that the foreign bank did not respond to the bank's inquiry. In addition, if a bank cannot determine that the foreign bank does not maintain a relevant account or has not processed relevant transfers of funds, the bank will be in compliance with these reporting requirements so long as the bank timely reports such information to FinCEN, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank has information that is inconsistent with the certification.

FinCEN requested comment regarding the impact of this information collection on banks' correspondent account relationships with foreign banks. One commenter suggested that a barrage of requests from the United States could create, over time, an unintended consequence of alienating foreign correspondents. The commenter also asserted that foreign banks might be driven to find alternate ways to direct transactions to avoid dealing with the United States. The commenter sees this as having a two-part negative impact: the immediate detriment to the economy and the decreasing ability of the United States to receive valuable information on international transactions. As stated elsewhere in the rulemaking, FinCEN proposed to target this reporting requirement on those foreign banks that there is some basis to suspect may be engaged in activities that may be sanctionable under section 104(c) of CISADA. We considered requiring every U.S. bank to provide periodic reports from every foreign bank for which they maintain correspondent accounts, but concluded that we would be better served by a rule that focused on those foreign banks that are of interest for purposes of CISADA. We believe that by taking a targeted approach we will avoid alienating foreign banks for which we have no concern regarding sanctionable Iranian-related activities. For these reasons, we believe the commenter's concerns are unfounded.

D. The Scope of Information To Be Reported by a Foreign Bank

FinCEN requested comment as to whether the terminology ''processed one or more transfers of funds'' should be further clarified, and if so, how and what terms should be used in the alternative. A few commenters requested further clarification; however FinCEN did not receive any suggestions regarding alternative terminology.

One commenter asserted that the broad definition of the term ''processed one or more transfers of funds'' appears problematic. The commenter suggested that according to the definition, this term would include each and every transaction, in particular those that do not require using a correspondent account. Another commenter suggested that it would need further clarity regarding the term ''processed one or more transfers of funds'' to identify which transactions FinCEN intends to reach. Another commenter questioned what is meant by the term ''other than through a correspondent account,'' in the context of a request that a foreign bank certify whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, ''other than through a correspondent account.''

As explained in the Notice, the terminology ''processed one or more transfers of funds'' is meant to address circumstances through which transfers of funds are made without requiring a correspondent account, specifically including circumstances in which financial institutions are part of a common payments or clearing mechanism that provides for transfers of funds among participants without requiring bilateral correspondent account relationships. If a foreign bank is reporting that it maintains a correspondent account for a specific Iranian-linked financial institution designated under IEEPA, the foreign bank does not also have to report that it has processed transfers of funds for that specific Iranian-linked financial institution, as that is assumed within the context of the reported correspondent account. Alternatively, for example, in instances in which a foreign bank is part of a common payments or clearing mechanism that provides for transfers of funds among participants without requiring bilateral correspondent account relationships, those foreign banks should report whether they have processed transfers of funds for an Iranian-linked financial institution designated under IEEPA through such common payments or clearing mechanisms. This type of example is the reason we used the terminology processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, ''other than through a correspondent account.'' [10]

[10] As it relates to the model certification, a foreign bank should fill out each section of the model certification by selecting one box in each section of the model certification. For example, if a foreign bank has a correspondent account for an Iranian-linked financial institution designated under IEEPA, the foreign bank will select the second box under section B of the model certification: ''Foreign Bank hereby certifies that it *does* maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA.'' The foreign bank will also fill out the corresponding chart in section B of the model certification for each applicable correspondent account. The language in the first box under section C of the model certification states ''Foreign Bank hereby certifies that to its knowledge it *has not processed* one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-Linked Financial Institution Designated Under IEEPA, *other than through a correspondent account* detailed above.'' The language ''other than through a correspondent account detailed above'' is intended to direct the foreign bank not to reenter the information that was already entered in section B of the model certification in section C of the model certification. However, regardless of which box the foreign bank selects in section B of the model certification, the foreign bank should also select one box from section C of the model certification. If a foreign bank has not processed any transfers of funds outside of a correspondent account relationship with an Iranian-linked financial institution designated under IEEPA, the foreign bank will select the first box under section C of the model certification. If the foreign bank has processed transfers of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA outside of a correspondent account relationship, the foreign bank will select the second box under section C of the model certification: ''Foreign Bank hereby certifies that it *has processed* one or more transfers of funds within

FinCEN also clarifies that in the context of a request that a foreign bank certify whether it has processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, the foreign bank should report whether it has processed any transfers of funds related to an IRGC-linked person designated under IEEPA, regardless of whether the transfers of funds were processed through a correspondent account or through some other common payments or clearing mechanism.

One commenter noted that under section 1060.300(b), the foreign bank is requested to certify that it has not ''processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution'' or ''related to an IRGC-linked person.'' The commenter contended that this concept is broader than can reasonably be expected. The commenter explained that while the foreign bank could reasonably determine whether such relevant designated entities and individuals were parties to a transaction, it has no reliable way of ascertaining whether a transaction with a third party has a relationship to such relevant designated entities and individuals. The commenter provided the following example: if the head office of a foreign bank processes a non-USD-denominated payment from its customer in another country outside the United States to a Middle Eastern trading company, it would have no way of knowing whether the trading company may in turn be acting on behalf of a relevant designated entity or individual. The commenter suggested that the requested certification relate to payments ''to or from'' the relevant designated entities or individuals as opposed to ''related to.''

Another commenter noted that it is conceivable that transactions can be conducted that are settled through correspondent accounts held for other credit institutions where the foreign bank does not or cannot recognize that a relevant transaction is conducted on behalf of or in the interest of an Iranian-linked financial institution designated under IEEPA. The commenter suggested that the certification from the foreign bank, therefore, must at least contain the qualification that it is not aware of, or should not necessarily have been aware of, such circumstance.

In the context of the request that a foreign bank certify whether it has processed one or more transfers of funds within the preceding 90 calendar days ''related to'' an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and whether it has processed one or more transfers of funds within the preceding 90 calendar days ''related to'' an IRGC-linked person designated under IEEPA, FinCEN has agreed to replace ''related to'' with ''for or on behalf of, directly or indirectly.'' The terminology ''for or on behalf of, directly or indirectly,'' is meant to include situations where a foreign bank has knowledge that a transfer of funds it is processing is for or on behalf of an Iranian-linked financial institution designated under IEEPA, or an IRGC-linked person designated under IEEPA, but where the designated entity or individual does not appear on the face of the transaction. In other words, the phrase is meant to include those situations in which the processing is being done with knowledge based on a relationship that exists through a third party such as a money exchange or trading house.

Consistent with the above mentioned revision and based on comments received, FinCEN has also incorporated the phrase ''to its knowledge'' into the reporting requirement that upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA.'' [11] [Emphasis added.]

In order to be consistent with the revisions to the regulation text, FinCEN has also incorporated the phrase ''to its knowledge'' into the model certification in the following places: ''Foreign Bank hereby certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-Linked Financial Institution Designated Under IEEPA, other than through a correspondent account detailed above;'' [emphasis added] and ''Foreign Bank hereby certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC–Linked Person Designated Under IEEPA.'' [Emphasis added.]

One commenter noted that when inquiring of a foreign bank, the U.S. bank would also be required to ask the foreign bank to agree to report if it establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA within 365 calendar days after its initial response and that would in turn be reported to FinCEN by the U.S. bank. The commenter believes this is the most difficult element of the proposal. The commenter asserted that a request is based on whether the United States has designated an entity under IEEPA. The commenter further suggested that since IEEPA is a U.S. law, and the IEEPA lists are constantly changing, any affected foreign bank would be required to develop systems to monitor and track whether or not a transaction might be covered. The commenter also suggested that foreign banks would have to sort through the entire OFAC list as a first step to identify which entities are covered and then apply it to its own records. The commenter recommended that FinCEN or OFAC create a special section/list for IEEPA designations that is easily accessed by foreign banks around the world.

FinCEN clarifies that the rule does not call on a foreign bank to report on new transfers of funds processed for a relevant designated entity or individual following its initial response. The rule only calls on a foreign bank to report any new correspondent accounts opened for an Iranian-linked financial institution designated under IEEPA within 365 calendar days after the foreign bank's initial response. Also, as noted elsewhere in the rulemaking and in the model certification, a list of financial institutions that meet the criteria of Iranian-linked financial institutions designated under IEEPA ([IFSR] tags) are included at the following link on OFAC's *Web site: http://www.treasury.gov/resource-*

the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-Linked Financial Institution Designated Under IEEPA, *other than through a correspondent account* detailed above.'' In this case the foreign bank also will fill out the corresponding chart in section C of the model certification for each applicable Iranian-linked financial institution designated under IEEPA. Similarly, the foreign bank will also select one box from section D of the model certification.

[11] *See* section 1060.300(c)(1)(iv).

center/sanctions/Programs/Documents/irgc_ifsr.pdf. As of June 27, 2011, there were 22 financial institutions with IFSR tags, meaning 22 Iranian-linked financial institutions designated under IEEPA.[12] The foreign bank can go to the link to look for updates to the site when they open a new correspondent account. In addition, as part of standard practices, banks globally should perform some type of customer identification or verification, customer due diligence, and/or ''know your customer'' policy in opening new accounts. In light of the global awareness of risks in conjunction with certain transactions related to Iran, it does not appear to be unreasonable to expect that a foreign bank that has received a request under this rulemaking could report on new correspondent accounts within the succeeding 365 calendar days.

The commenter also suggested that FinCEN call on a foreign bank to respond to these requests within 30 calendar days after the foreign bank identifies a new correspondent account with an Iranian-linked financial institution designated under IEEPA. This comment is addressed by text in the model certification, which provides as follows: ''Foreign Bank hereby agrees to notify in writing the Bank if Foreign Bank establishes a new Correspondent Account for an Iranian-Linked Financial Institution Designated Under IEEPA at any time within 365 calendar days from the date of this response. Foreign Bank agrees to provide such notification within 30 calendar days of the establishment of the new correspondent account.''

FinCEN requested comment regarding whether setting a minimum dollar threshold for a foreign bank to report on transfers of funds processed within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA or related to an IRGC-linked person designated under IEEPA would lessen the reporting obligations, while still providing useful information. FinCEN also requested comment regarding what that minimum dollar threshold should be.

Three commenters suggested that a threshold should be set. Two of these commenters asserted that section 104 of CISADA applies to a ''significant transaction or transactions.'' For this reason, the commenters suggested that a threshold should be set to require foreign banks to only report on significant transactions. As it relates to section 104(c) of CISADA, a determination of significance will be decided on a case-by-case basis. Neither section 104 of CISADA nor the IFSR defines a minimum dollar threshold for ''significant transactions.''[13] Neither of these commenters suggested what the minimum dollar threshold should be.

Only one commenter proposed what that minimum dollar threshold should be. The commenter suggested that FinCEN should apply the $3,000 threshold that exists in some other anti-money laundering rules because monitoring transactions of lesser value can be overly burdensome with little benefit. The commenter also suggested that a threshold for minimum aggregate through-put in a correspondent account can also serve to better focus resources on identifying the riskiest correspondent accounts. However, the commenter further asserted that it is mindful that parsing activity at the margins of the threshold can incur its own compliance costs and therefore thresholds should always be applied permissively and not as technical standards that generate compliance complexities.

Considering the fact that a threshold of $3,000 is unlikely to eliminate a substantial number of responses from foreign banks, and considering the commenter's proposal that utilizing the minimum threshold should be at the foreign bank's discretion due to the potential burden of added compliance costs, FinCEN has determined that it will not set a minimum threshold for reporting on transfers of funds. In addition, for these same reasons, FinCEN will not set a minimum threshold for reporting on correspondent accounts. This rule calls for reports on all correspondent accounts with Iranian-linked financial institutions designated under IEEPA regardless of the volume of transactions conducted through the correspondent accounts.

E. The Timeframe for a Foreign Bank and a U.S. Bank To Respond to a CISADA Request

In the Notice, FinCEN proposed that a bank would be required to report the information required by this rule to FinCEN within 30 calendar days of the date of the written request from FinCEN. In addition, FinCEN proposed that if a bank receives notification from a foreign bank that the foreign bank has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank is required to report the information required by this rule within 10 calendar days of receiving that notification. FinCEN requested comment as to whether these proposed timeframes were appropriate.

Four commenters contended that 30 calendar days to report the information required by this rule to FinCEN is not sufficient. Three of these commenters proposed that the timeframe be extended to 90 calendar days. Two of these commenters asserted that it will take a foreign bank time to research whether it maintains a correspondent account or has processed transfers of funds in the previous 90 calendar days for the relevant designated entities and individuals. Two of these commenters asserted that foreign banks' responses may be subject to legal review by local regulators prior to submission to the bank. One of these commenters suggested that a bank will have to do some level of due diligence to ''certify'' that it does not know that the foreign bank's certification is incorrect. Another one of these commenters asserted that it would be unfortunate if a U.S. bank had to report to FinCEN that a foreign bank has not replied in time, specifically in instances in which the foreign bank is making efforts to do so, as this could cast a bad and perhaps false light on the foreign bank. Another commenter suggested that a 30-day timeframe to respond will likely produce a significant number of ''no response'' reports to FinCEN.

FinCEN has taken these comments into consideration. For this reason, FinCEN is revising the timeframe to respond to 45 calendar days from the date of the written request from FinCEN. FinCEN acknowledges the concerns raised by the commenters; however, these requests are time-sensitive by nature and extending the timeframe for a response to 90 days is not feasible. In addition, as noted elsewhere in this rulemaking, a U.S. bank is not expected to independently verify the information provided by a foreign bank. This should lessen the amount of time necessary for a U.S. bank to review a foreign bank's response prior to submission to FinCEN.

FinCEN does recognize the possibility that there may be certain situations in which additional time for a foreign bank to respond is needed. For this reason, we are amending the final rule to require that if a U.S. bank receives a certification from a foreign bank after the 45 calendar day deadline, the U.S. bank is required to report that information to FinCEN within 10 calendar days of receiving that certification. This additional obligation does not relieve the U.S. bank of its obligation to report to FinCEN within 45

[12] It is important to note that the list is dynamic and should be referenced regularly to ensure the most up-to-date information.

[13] *See* 31 CFR 561.404 for interpretations of ''significant transaction or transactions.''

calendar days the results of the U.S. bank's inquiry, regardless of whether the foreign bank has responded.

One commenter suggested that a bank should be given 30 days to respond to FinCEN upon receiving a notification from a foreign bank that it has opened a new account with an Iranian-linked financial institution designated under IEEPA. As has been clarified elsewhere in this rulemaking, a U.S. bank is not expected to independently verify the information provided by a foreign bank. For this reason, FinCEN believes that if a bank receives notification from a foreign bank that the foreign bank has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank will have sufficient time to report the information required by this rule within 10 calendar days of receiving that notification.

F. Clarification Regarding the Proposed Model Certification

FinCEN requested comment as to the effectiveness of the proposed model certification. One commenter noted that under the proposed rule, the person signing on behalf of the U.S. bank would be required to state that he has read and understood the foreign bank's certification, that the statements made are complete and correct, and that the U.S. bank does not know or suspect, or have reason to suspect that the foreign bank's certification is incorrect. The commenter suggested that a statement that the foreign bank's response is complete and correct would require the certifying U.S. officer to have intimate knowledge of the foreign bank's customers and activities, something that the U.S. bank will never have. The commenter also suggested that the terminology ''know, suspect, and reason to suspect'' raises questions about the level of due diligence a U.S. bank is expected to perform under the proposed rule.

Another commenter noted that section 1060.300(c)(1)(v) requires that the reporting U.S. bank identify any specified foreign bank for which the inquiring U.S. bank ''has not been able to establish to its satisfaction'' does not engage in the listed activities and, further, certify to FinCEN that it does not ''know[], suspect[], or ha[ve] reason to suspect'' that any certification provided by the foreign bank is incorrect. With these few words, the commenter suggested, the proposed rule would appear to shift the burden on the inquiring bank from simply acting as a conduit for FinCEN's inquiries to independently investigating and evaluating the truthfulness of the foreign bank's response.

Another commenter noted that a U.S. bank has no ability to verify the information reported by a foreign bank. The commenter recommended that the final rule acknowledge that the only obligation of the U.S. bank is to request the data and pass along the information it receives as received. An additional commenter expressed similar concerns.

FinCEN clarifies that our expectation with regard to knowledge is only knowledge a U.S. bank would have based on the monitoring it already conducts to comply with OFAC requirements and BSA requirements regarding due diligence over foreign correspondent accounts. We also clarify that we do not expect a U.S. bank to independently verify the information provided by a foreign bank. However, we do expect a bank to report if it has information that is inconsistent with the foreign bank's certification. An example of a situation in which information is inconsistent with the certification might involve a scenario where a U.S. bank's transaction monitoring software recently blocked a transaction on behalf of a certain foreign bank, but that foreign bank does not include such transaction in the report provided to the U.S. bank.

To reflect these clarifications in the final rule more clearly, FinCEN has decided to make revisions to section 1060.300(c)(1)(v) and to the portion of the model certification to be completed by the bank. These revisions directly address the recommendations offered by these commenters.

FinCEN is revising the language in section 1060.300(c)(1)(v) of the final rule to clarify our expectations with regard to the U.S. bank's responsibilities as they relate to the information reported by a foreign bank. Section 1060.300(c)(1)(v) proposed that a bank report to FinCEN the following information regarding a specified foreign bank: The name of any specified foreign bank, for which the bank maintains a correspondent account, *about which the bank has not been able to establish to its satisfaction that the foreign bank* does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, *or if the bank knows, suspects, or has reason to suspect that the certification is incorrect.''* [Emphasis added.]

FinCEN is amending section 1060.300(c)(1)(v) by revising the phrase ''about which the bank has not been able to establish to its satisfaction that the foreign bank'' to read as follows: ''that the bank cannot determine;'' and revising the phrase ''or if the bank knows, suspects, or has reason to suspect that the certification is incorrect'' to read as follows: ''or if the bank has information that is inconsistent with the certification.''

In addition, FinCEN is also revising the corresponding portion of the model certification to be completed by the bank. The proposed language in the model certification stated as follows: ''I, _____ (name of signatory), have read and understand this Certification; the statements made in this Certification are complete and correct, to the best of the knowledge of the Bank; and the Bank does not know, suspect, or have reason to suspect that the Certification made by Foreign Bank is incorrect. I am authorized to submit this document on behalf of the Bank.''

In the final rule, FinCEN is revising the portion of the model certification to be completed by the bank to read as follows: ''I, _____ (name of signatory), have received and reviewed this Certification. To the best of its knowledge, the Bank has no information that is inconsistent with the Certification made by Foreign Bank. I am authorized to submit this document on behalf of the Bank.''

This revision is consistent with the revisions made to section 1060.300(c)(1)(v). FinCEN believes that this revision to the model certification, together with the amendments to section 1060.300(c)(1)(v) discussed above, will alleviate the concerns raised by commenters and more accurately describe FinCEN's expectations with regard to the U.S. bank's obligations as they relate to information received from a foreign bank.

Furthermore, as requested by three commenters, FinCEN clarifies that the individual signing the model certification is only signing on behalf of the relevant bank in his capacity as a duly authorized officer of the bank and not in his personal capacity. As noted in the language in the model certification, the individual signing on behalf of the bank is submitting the ''document on behalf of the Bank.''

Similarly, as requested by one commenter, FinCEN clarifies that the individual signing the model certification is only signing on behalf of the relevant foreign bank in his capacity as a duly authorized officer of the foreign bank and not in his personal capacity. As noted in the language in the model certification, the individual signing on behalf of the foreign bank is ''authorized to execute this certification on behalf of Foreign Bank.''

One commenter requested that FinCEN clarify how foreign banks should convert foreign currency as it relates to the foreign banks' reporting on the approximate value of transactions processed through a correspondent account or transfer(s) of funds processed within the preceding 90 calendar days. FinCEN will not prescribe any specific method or reference rate for the conversion of foreign exchange, but rather leaves it to the foreign bank to convert the sums using a reasonable rate informed by good banking practices. The purpose of this conversion is to help in assessing the significance of the transaction(s) at issue. Examples of reasonable rates may include the rate that the foreign bank would have applied to convert the respective payment into U.S. dollars on the date of the transaction, or, in the case of aggregation of multiple transactions over a time period, the average exchange rate over the applicable time period.

One commenter asserted that while the proposed model certification includes links to websites with information about relevant designated entities and individuals, the commenter believes that the process of responding would be simpler and produce better information if requests to foreign banks also included a list of relevant designated entities and individuals covered by that particular request. The model certification includes a link to the list of relevant designated entities and individuals exclusively applicable to this reporting requirement. FinCEN believes that providing access to this link is sufficient to assist foreign banks in clearly identifying the designated entities and individuals relevant to a request.

As requested by one commenter, FinCEN will consider evaluating the adequacy of the model certification in 12 to 18 months in order to determine if revisions are necessary.

G. Clarification Regarding Certain Definitions and Terms

Refer to Section V.A., below, for clarification regarding the terms bank, correspondent account, and foreign bank.

H. Record Retention and Supporting Documentation

One commenter requested clarification regarding a number of aspects of the record retention requirement, including the record retention period and supporting documentation to be maintained as part of the record retention. The commenter requested that the record retention period be reduced from five years. FinCEN clarifies that the record retention period for this rulemaking will remain five years consistent with FinCEN's other record retention requirements. FinCEN also clarifies that this specific recordkeeping requirement does not serve to change any other applicable recordkeeping requirements. The record retention period will begin on the date the request from FinCEN is issued. If the bank receives notification from a foreign bank that the foreign bank has established a new correspondent account with an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, this will not affect the beginning of the record retention period. The record retention period with regard to that specific foreign bank will still begin on the date the request from FinCEN was issued.

FinCEN clarifies that supporting documentation related to this rulemaking includes any and all correspondence between the bank and FinCEN, or between the bank and the foreign bank, regarding a request for information under this rulemaking. For example, this would include the initial request from FinCEN to the bank, the request from the bank to the foreign bank, the response from the foreign bank to the bank, the report to FinCEN from the bank, and any correspondence associated with any one of these requests/reports. FinCEN also clarifies that although we will maintain a copy of the report the bank submits to FinCEN, the bank must also maintain a copy of that report in order to confirm compliance with this regulation.

I. Sharing Information Regarding a CISADA Request

One of the commenters questioned in what instances it would be appropriate for a bank to inform others internally or externally that it has received a request from FinCEN regarding a specific foreign bank. To the extent that FinCEN would require a request regarding a specific foreign bank remain confidential, we will explicitly state the requirement for confidentiality in the request sent to the bank.

J. Estimate of Burden

Refer to Section IX., below, for a summary of comments regarding the burden estimates.

V. Section-by-Section Analysis

A. General (§ 1060.300(a))

As proposed, section 31 CFR 1060.300(a) requires that, upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of the foreign bank, and report to FinCEN with respect to any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA, any transfer of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account, and any transfer of funds for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

The language in this section of the final rule is substantially the same as proposed. However, for purposes of providing additional clarity as requested by commenters, FinCEN modified the final rule language in the following ways: the phrase ''to the best of the knowledge of the bank'' was removed, consistent with revisions to section 1060.300(c)(1)(v); [14] and ''for or on behalf of, directly or indirectly,'' replaced ''related to.'' [15]

Definitions

Bank

For the purpose of this rule the term ''bank'' is defined in 31 CFR 1010.100(d). A bank includes each agent, agency, branch, or office within the United States of persons doing business in one or more of the following capacities: commercial banks or trust companies, private banks, savings and loan associations, national banks, thrift institutions, credit unions, other organizations chartered under banking laws and supervised by banking supervisors of any State, and banks organized under foreign law.

FinCEN proposed to limit the reporting requirement in this rulemaking to banks, as opposed to all U.S. financial institutions that could fall

[14] *See above* Section IV. F. for the rationale for the revisions to section 1060.300(c)(1)(v).

[15] *See above* Section IV. D. for the rationale for replacing the terminology ''related to'' with ''for or on behalf of, directly, or indirectly.''

within the scope of this rule. FinCEN requested comment as to whether this rulemaking should be expanded to include other types of financial institutions, such as those financial institutions included in FinCEN's definition of ''covered financial institution.'' [16]

Two commenters requested clarification as to why FinCEN proposed to limit this reporting requirement to banks instead of the broader category of U.S. financial institutions as would be permissible under CISADA. One of these commenters also requested clarification as to how FinCEN would determine whether to expand the reporting requirement to other domestic financial institutions.

As explained in the Notice, FinCEN determined that limiting the reporting requirement in this rule to banks will provide useful information as it relates to CISADA, while limiting the obligations of the financial industry. Although there are other financial institutions that could fall within the scope of this rule in light of the breadth of the definition of financial institution in CISADA and the breadth of the definition of correspondent account, this rule focuses on those financial institutions deemed to provide the services most traditionally associated with correspondent banking.

Two trade associations commented on this aspect of the rulemaking. These commenters were in favor of limiting the rulemaking to banks, in order to avoid redundancy and overlapping information. FinCEN did not receive any comments that provided justification for expanding this reporting requirement to include other domestic financial institutions. Based on the comments received, and FinCEN's prior statements regarding the scope of affected U.S. financial institutions, the reporting requirements in the final rule will be limited to banks as proposed.

As FinCEN collects and assesses the information required under this rule, we will continue to consider whether expanding the scope of this rule to include other domestic financial institutions would provide additional useful information as it relates to CISADA. If that is determined to be the case, FinCEN will consider proposing an expansion of this reporting requirement to include other domestic financial institutions.

One commenter requested clarification that the rule will only apply to depository institutions and not to non-depository institutions, even if the two may be within the same bank holding company structure. Another commenter requested clarification regarding whether this rule would apply to U.S. branches of foreign banks. FinCEN clarifies that this rule will only apply to banks as defined in 31 CFR 1010.100(d), and will not apply to any other type of non-bank financial institution that may fall within the same bank holding company structure. In addition, U.S. branches of foreign banks are included within the definition of ''bank'' in 31 CFR 1010.100(d).

Correspondent Account

For the purpose of this rule, the term ''correspondent account'' is defined in 31 CFR 1010.605(c)(1)(ii) and means an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.[17] Although there is a reference in section 104(e) of CISADA to payable-through accounts, as FinCEN is incorporating this requirement into its regulations, such payable-through accounts are subsumed within the definition of a correspondent account at 31 CFR 1010.610(b)(1)(iii)(B).[18] The definition of correspondent account is being adopted in the final rule as proposed.

Three commenters requested clarification regarding the scope of accounts that are included within the breadth of the definition of the term correspondent account. The definition of correspondent account that is included within this rule is the same definition of correspondent account as in 31 CFR 1010.610—Due diligence programs for correspondent accounts for foreign financial institutions. The same scope of accounts included within the requirements of 31 CFR 1010.610 are included within the requirements of this rulemaking, except that the term only applies to such accounts maintained by any bank for any foreign bank.

Foreign Bank

For the purpose of this rulemaking the term ''foreign bank'' is defined in 31 CFR 1010.100(u) and means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

FinCEN proposed to limit the reporting requirement in this rulemaking to information pertaining to the activities of foreign banks, as opposed to the activities of all foreign financial institutions that could fall within the scope of this rule. FinCEN requested comment as to whether this rulemaking should be expanded to include information pertaining to the activities of other types of foreign financial institutions, such as those included in FinCEN's definition of ''foreign financial institution,'' [19] or OFAC's definition of ''foreign financial institution'' [20] in the IFSR.

As explained in the Notice, FinCEN has determined that limiting the reporting requirement in this rule to information pertaining to the activities of foreign banks will provide useful information as it relates to CISADA, while limiting the obligations of the financial industry. Although there are other foreign financial institutions that maintain correspondent accounts with U.S. financial institutions that could provide useful information with respect to CISADA-relevant activities, this rule focuses on those foreign financial institutions deemed to receive the services most traditionally associated with correspondent banking.

Two trade associations commented on this aspect of the rule. The commenters asserted that limiting the scope of the rule to inquiries regarding foreign banks was appropriate. FinCEN did not receive any comments that provided justification for expanding this reporting requirement to include information pertaining to the activities of other foreign financial institutions. Based on the comments received, and FinCEN's prior statements regarding the scope of affected foreign financial institutions, the reporting requirements in the final rule will be limited to foreign banks as proposed.

As FinCEN collects and assesses the information required under this rule, we will continue to consider whether expanding the scope of this rule to include information pertaining to the activities of other foreign financial institutions would provide additional useful information as it relates to CISADA. If that is determined to be the

[16] *See* 31 CFR 1010.605(e) (defining a ''covered financial institution'' as any one of a number of specific U.S. financial institutions, including banks, broker-dealers, futures commission merchants, and mutual funds).

[17] This definition of correspondent account is consistent with the rule's focus on U.S. banks' correspondent account relationships with foreign banks.

[18] 31 CFR 1010.610(b)(1)(iii)(B) states ''* * * a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.''

[19] *See* 31 CFR 1010.605(f).

[20] *See* 31 CFR 561.308.

case, FinCEN will consider proposing an expansion of this reporting requirement to include information pertaining to the activities of other foreign financial institutions.

One commenter asked that FinCEN clarify that the definition of foreign bank excludes U.S. representative offices of foreign banks. The commenter also asked for clarification regarding whether subsidiaries or branches of a single bank operating in different countries are one foreign bank or separate foreign banks for the purpose of a CISADA request. For purposes of this rulemaking, U.S. representative offices are not included within our definition of foreign bank at 31 CFR 1010.100(u), which excludes offices within the United States of a bank organized under foreign law. Although representative offices cannot offer banking services in the United States, they nevertheless are offices of banks organized under foreign law, and therefore are not foreign banks for purposes of the BSA rules. FinCEN will only be sending requests to banks that it knows or believes maintain a correspondent account for the specific foreign bank, specific foreign bank branch, or specific foreign bank subsidiary at issue. This means that the extent of the inquiry will be specific to the correspondent account about which a request is made. In the case of a foreign bank subsidiary, FinCEN would only be requesting information regarding a foreign bank subsidiary if that subsidiary is itself a foreign bank.

Iranian-Linked Financial Institution Designated Under IEEPA

For the purpose of this rule the term ''Iranian-linked financial institution designated under IEEPA'' means a financial institution designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism.[21] The definition of ''Iranian-linked financial institution designated under IEEPA'' is being adopted in the final rule as proposed.

IRGC–Linked Person Designated Under IEEPA

For the purpose of this rule the term ''IRGC-linked person designated under IEEPA'' means Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act).[22] The definition of ''IRGC-linked person designated under IEEPA'' is being adopted in the final rule as proposed.

The names of persons whose property and interests in property are blocked pursuant to IEEPA are published on OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List''). Iranian-linked financial institutions designated under IEEPA are those whose property and interests in property are blocked pursuant to 31 CFR part 544 or 31 CFR part 594 in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism and are identified by ''[IFSR]'' tags located at the end of their entries on the SDN List (*e.g.,* [NPWMD][IFSR] or [SDGT][IFSR]). IRGC-linked persons designated under IEEPA are those whose property and interests in property are blocked pursuant to one or more parts of 31 CFR Chapter V and are identified by ''[IRGC]'' tags located at the end of their entries on the SDN List (*e.g.,* [NPWD][IRGC] or [SDGT][IRGC]). OFAC's electronic SDN List can be found at the following URL: *http://www.treasury.gov/resource-center/sanctions/SDN–List/Pages/default.aspx.* The following financial institutions meet the criteria of Iranian-linked financial institutions designated under IEEPA ([IFSR] tags), and the following persons meet the criteria of IRGC-linked persons designated under IEEPA ([IRGC] tags): *http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf.* These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.

B. Duty To Inquire (§ 1060.300(b))

This section describes a bank's duty to inquire of a specified foreign bank for which the bank maintains a correspondent account, as to whether such foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: (1) Whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; (2) whether it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and (3) whether it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA. In addition, when the bank makes its inquiry, the bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

The language in this section of the final rule is substantially the same as proposed. However, for purposes of providing additional clarity as requested by commenters, FinCEN modified the final rule language in the following way: ''for or on behalf of, directly or indirectly,'' replaced ''related to.''[23]

To assist a bank in obtaining the required information from a specified foreign bank, FinCEN proposed a model certification format for a bank to provide to a specified foreign bank when the bank makes its inquiry regarding whether the specified foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and/or has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution or an IRGC-linked person designated under IEEPA. The model certification will not appear in the Code of Federal Regulations (''CFR''); however, it is included at Appendix A to this **Federal Register** notice. While the model certification will not be included in the CFR, it is still subject to the Paperwork Reduction Act (''PRA''), and therefore any material changes made to the model certification will go through public notice and comment as required under

[21] *See* CISADA subsection 104(c)(2)(E)(ii).

[22] *See* CISADA subsection 104(c)(2)(E)(i).

[23] *See above* Section IV. D. for the rationale for replacing the terminology ''related to'' with ''for or on behalf of, directly or indirectly.''

the PRA. In addition, FinCEN will use its website to make the model certification available to the public. FinCEN requested comment as to the effectiveness of the proposed model certification.[24]

As part of the model certification, the foreign bank is asked to agree to notify, in writing, the bank at which it maintains a correspondent account if the foreign bank establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's response. The model certification sets forth the expectation that the notification shall be due to the bank within 30 calendar days of the establishment of the new correspondent account. If a bank does not utilize the model certification, the bank will need to request separately that the foreign bank provide such information with respect to the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA.

C. Filing Procedures (§ 1060.300(c))

What To File (§ 1060.300(c)(1))

This section describes the filing procedures a bank shall follow to report to FinCEN information required by this rule. Upon receiving a written request from FinCEN, a bank is required to report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, together with the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, other applicable identifying information for the correspondent account, and the approximate value in U.S. dollars (''USD'') of transactions processed through the correspondent account within the preceding 90 calendar days;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, together with the name of the Iranian-linked financial institution designated under IEEPA, the identity of the system or means by which such transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for such transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, together with the name of the IRGC-linked person designated under IEEPA, the identity of the system or means by which such transfer(s) of funds was processed, the full name on the account(s) and the account number(s), if applicable, other applicable identifying information for such transfer(s) of funds, and the approximate value in USD of such transfer(s) of funds processed within the preceding 90 calendar days;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that the bank cannot determine does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank has information that is inconsistent with the certification;
- The name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, together with the name of the Iranian-linked financial institution designated under IEEPA, the full name(s) on the correspondent account and the correspondent account number(s), applicable information regarding whether the correspondent account has been blocked or otherwise restricted, and other applicable identifying information for the correspondent account;
- If applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information; and
- If applicable, the name of any specified foreign bank, for which the bank maintains a correspondent account, that provides a certification to the bank after the 45 calendar day deadline, along with all applicable related information associated with that certification.

The language in this section of the final rule is substantially the same as proposed. However, for purposes of providing additional clarity as requested by commenters, FinCEN modified the final rule language in the following ways: ''for or on behalf of, directly or indirectly,'' replaced ''related to;''[25] ''that the bank cannot determine'' replaced ''about which the bank has not been able to establish to its satisfaction that the foreign bank;'' and '' if the bank has information that is inconsistent with the certification'' replaced ''if the bank knows, suspects, or has reason to suspect that the certification is incorrect.''[26]

[24] *See above* Section IV. F. for a summary of comments associated with the model certification, along with an explanation of slight revisions to the language in the final model certification.

[25] *See above* Section IV. D. for the rationale for replacing the terminology ''related to'' with ''for or on behalf of, directly or indirectly.''

[26] *See above* Section IV. F. for the rationale for replacing the terminology ''about which the bank

Continued

FinCEN also incorporated the phrase ''to its knowledge'' into the reporting requirement that upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank the name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that *to its knowledge* it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA.'' [27] [Emphasis added.]

In addition, FinCEN added the following reporting requirement in the final rule in order to provide additional clarity as requested by commenters: Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank, if applicable, the name of any specified foreign bank, for which the bank maintains a correspondent account, that provides a certification to the bank after the 45-calendar-day deadline, along with all applicable related information associated with that certification.'' [28]

If a bank utilizes the model certification to inquire of a specified foreign bank, the bank can submit the certification from the specified foreign bank to FinCEN in order to comply with this reporting requirement. If a bank does not utilize the model certification to inquire of a specified foreign bank, the bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this rule.

If a specified foreign bank, for which the bank maintains a correspondent account, does not adequately respond to the bank's inquiry, the bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this rule. If a bank receives a notification from a specified foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this rule. If a bank receives a certification from a specified foreign bank after the 45-calendar-day deadline, the bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the information required by this rule.

If a bank receives a written request from FinCEN regarding a specified foreign bank, for which the bank does not maintain a correspondent account, and FinCEN has specifically requested that the bank report instances in which the bank does not maintain a correspondent account for such specified foreign bank, the bank shall report this information to FinCEN, in such format and manner as may be prescribed by FinCEN.

When To File (§ 1060.300(c)(2))

A bank is required to report the information required by this rule to FinCEN within 45 calendar days of the date of the written request from FinCEN. If a bank receives notification from a foreign bank that the foreign bank has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA, the bank is required to report the information required by this rule within 10 calendar days of receiving that notification. If a bank receives a certification from a foreign bank after the 45-calendar-day deadline, the bank is required to report the information required by this rule within 10 calendar days of receiving that certification.

The language in this section of the final rule is substantially the same as proposed. However, for purposes of providing relief as requested by commenters, FinCEN modified the final rule language in the following way: 45 calendar days replaced 30 calendar days.[29]

In addition, FinCEN added a 10-calendar-day deadline for a bank to report if it receives a certification from a foreign bank after the 45-calendar-day deadline. This corresponds with the following reporting requirement added to the final rule: Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank, if applicable, the name of any specified foreign bank, for which the bank maintains a correspondent account, that provides a certification to the bank after the 45-calendar-day deadline, along with all applicable related information associated with that certification.'' [30]

D. Record Retention (§ 1060.300(d))

This section describes the recordkeeping requirements applicable to this rule. A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this rule. This section of the final rule is being adopted as proposed.

E. No Other Action Required (§ 1060.300(e))

Paragraph (e) states that ''[n]othing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account established for, or a transaction engaged in with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation.'' While this paragraph clarifies that the section does not require a bank to take any steps with respect to the foreign bank other than those relating to the collection of information outlined in this section, it also clarifies that this section does not preclude a bank from taking any other action, including restricting or terminating a correspondent account relationship with a foreign bank, or filing a suspicious activity report, based on the bank's assessment of the facts and bank policy. However, a bank is not required to restrict or terminate a correspondent account relationship with a foreign bank, or to file a suspicious activity report, based solely upon the fact that the bank: (i) Has received a request for information under

has not been able to establish to its satisfaction that the foreign bank'' with ''that the bank cannot determine;'' and for the rationale for replacing the terminology ''if the bank knows, suspects, or has reason to suspect that the certification is incorrect'' with ''if the bank has information that is inconsistent with the certification.''

[27] *See* section 1060.300(c)(1)(iv). *Also see above* Section IV. D. for the rationale for incorporating the phrase ''to its knowledge'' into this reporting requirement.

[28] *See* section 1060.300(c)(1)(viii). *Also see above* Section IV. E. for the rationale for implementing this additional reporting requirement.

[29] *See above* Section IV. E. for the rationale for the extension of time to comply with this reporting requirement.

[30] *See* section 1060.300(c)(1)(viii). *Also see above* Section IV. E. for the rationale for implementing this additional reporting requirement, along with the rationale for the corresponding timeframe for reporting.

this regulation; (ii) has received a response from the foreign bank; or (iii) has not received a response from the foreign bank. This section of the final rule is being adopted as proposed.

VI. Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the final rule is designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

VII. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*), FinCEN certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will apply to banks that maintain correspondent accounts for foreign banks. As previously stated in our final rules implementing sections 312,[31] 313,[32] and 319(b)[33] of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, most banks that maintain correspondent accounts for foreign banks tend to be large banks. We expect that small banks will be less likely to maintain correspondent accounts for foreign banks. In most cases, small banks utilize their domestic correspondent accounts with large banks to conduct transactions with foreign banks.

FinCEN invited comment on the impact of this proposal on small entities. One commenter suggested that FinCEN provided no data to support the conclusion that the regulation would not have a significant economic impact on a substantial number of small entities. However, no other commenters expressed concern that this rule would have a significant economic impact on a substantial number of small entities. The rule applies to banks that maintain correspondent accounts for foreign banks. As stated above, and in our previous rules regarding foreign correspondent accounts, we believe most banks that maintain correspondent accounts for foreign banks are large banks. In addition, as noted elsewhere in this rulemaking, FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks. FinCEN further estimates that on average approximately five percent of banks that maintain correspondent accounts for foreign banks will have an account with any one specific foreign bank about which FinCEN is requesting information. Furthermore, as noted elsewhere in this rulemaking, a bank will only be required to comply with this reporting requirement upon receiving a specific written request from FinCEN. Therefore, a substantial number of small entities would not be affected. Accordingly, a regulatory flexibility analysis is not required.

IX. Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0066. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

Reporting Requirements Under Section 104(e) of CISADA

The collection of information in this rule is in 31 CFR 1060.300. The information may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions. The collection of information is mandatory. FinCEN is issuing this final rule that will require a bank to report to FinCEN, upon request, certain information regarding certain foreign banks specified by FinCEN.

Description of Affected Financial Institutions: Banks as defined in 31 CFR 1010.100(d).

Estimated Number of Affected Financial Institutions: 350 banks.

FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks.[34] However, FinCEN estimates that on average around five percent of banks that maintain correspondent accounts for foreign banks will have an account with any one specific foreign bank about which FinCEN is requesting information. This smaller proportion of actual affected financial institutions in each case of a request is based on the fact that foreign banks generally only hold a limited number of correspondent

[31] Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts, 71 FR 496 (Jan. 4, 2006).

[32] Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks, 67 FR 60562 (Sept. 26, 2002).

[33] *Id.*

[34] 177 banks reported a balance due as of September 30, 2010 in either line item 3.a. or 3.b. of Schedule RC–A—Cash and Balances Due From Depository Institutions on the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031, or on the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only—FFIEC 041. Line item 3.a. represents balances due from foreign branches of other U.S. banks and line item 3.b. represents balances due from other banks in foreign countries and foreign central banks. As of September 30, 2010, 7,020 banks, regulated by either the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency, filed either FFIEC 031 or FFIEC 041. 177 of those 7,020 banks reported a balance due for a correspondent account for a foreign bank. These numbers do not include agents, agencies, branches, or offices within the U.S. of a bank organized under foreign law, which are also included within the definition of bank for purposes of this rulemaking. According to the Federal Reserve Board Structure Data for U.S. Banking Offices of Foreign Entities, there are approximately 214 U.S. Offices of Foreign Banking Organizations, as of September 30, 2010. *See http://www.federalreserve.gov/releases/iba/201009/bycntry.htm.* Of those 214 U.S. Offices of Foreign Banking Organizations, approximately 43 only operate in the U.S. as representative offices. *See http://www.federalreserve.gov/releases/iba/201009/bytype.htm.* Representative offices do not maintain correspondent accounts. For this reason, FinCEN is conservatively estimating that it is likely the remaining 171 U.S. Offices of Foreign Banking Organizations do maintain some form of correspondent account for a foreign bank. This results in a total estimate of 348 U.S. banks and foreign banks operating in the U.S. that maintain a correspondent account for a foreign bank.

account relationships with separate U.S. banks. For this reason, the estimated number of financial institutions that may maintain a correspondent account for any one specific foreign bank identified in any one request from FinCEN will be in the range of 18 banks. In order to further reduce the number of affected financial institutions, when possible, FinCEN will rely on information available to help limit the number of banks requested to provide information with respect to the foreign banks that are the subject of specific requests. In turn, FinCEN intends to send requests directly to banks that FinCEN, based on all available information, believes maintain correspondent accounts for the specified foreign bank(s). The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances.

Estimated Average Annual Burden Hours per Affected Financial Institution: 31 hours per bank.

The scope of any request may be with respect to one foreign bank or a number of foreign banks (for example, a number of foreign banks operating in the same jurisdiction). FinCEN believes that regardless of the number of requests transmitted, such requests will pertain to approximately 50 foreign banks in any given year.

Financial Institutions That Maintain a Correspondent Account for a Specified Foreign Bank

A bank will only be required to comply with the requirements of this rule if the bank receives a written request from FinCEN. As noted above, FinCEN estimates that on average approximately five percent of the banks that maintain correspondent accounts for foreign banks, *i.e.,* approximately 18 banks, will maintain correspondent accounts for any one specific foreign bank about which FinCEN is requesting information. If FinCEN makes requests with respect to approximately 50 foreign banks per year and on average 18 banks are required to respond, per request, with regard to a correspondent account they maintain for any one specified foreign bank, there will be approximately 900 CISADA-related reports per year.

Each time a bank receives a request from FinCEN regarding a specific foreign bank for which it maintains a correspondent account, it will incur a reporting burden associated with section 1060.300(b) (inquiry); a reporting burden associated with section 1060.300(c) (reporting); and a recordkeeping burden associated with section 1060.300(d) (record retention).

The estimated average reporting burden associated with section 1060.300(b) for one request from FinCEN is one hour per responding U.S. bank with respect to each specific foreign bank about which FinCEN is requesting information. The estimated average reporting burden associated with section 1060.300(c) for one request from FinCEN is one hour per bank. The estimated average recordkeeping burden associated with section 1060.300(d) for one request from FinCEN is one hour per bank. This results in a total estimated average burden of three hours per bank with respect to each foreign bank about which FinCEN is requesting information. In the unlikely scenario in which the same bank were required to respond to FinCEN with respect to each foreign bank about which FinCEN is seeking information in any given year, the estimated annual burden hours would be 150. FinCEN believes that even with respect to the banks that are most active in the provision of correspondent accounts to foreign banks, they are likely to be required to respond to FinCEN with respect to one fifth of the foreign banks about which FinCEN is seeking information, which corresponds to roughly 30 burden hours per year based on the above calculations.

Financial Institutions That Do Not Maintain a Correspondent Account for a Specified Foreign Bank

In certain instances FinCEN may request that if a bank receives a written request from FinCEN regarding a specified foreign bank, and the bank does not maintain a correspondent account for such specified foreign bank, the bank report this information to FinCEN. As noted above, FinCEN intends to send requests to banks that FinCEN is aware have a correspondent account for a specified foreign bank as often as possible. In instances in which FinCEN is not aware of which banks maintain a correspondent account for a specified foreign bank, FinCEN may send requests to those banks FinCEN believes might have a correspondent account for a specified foreign bank.

In instances in which FinCEN is sending a request to a small number of banks that FinCEN believes might maintain a correspondent account for a specified foreign bank, FinCEN may request, in the written request sent to those banks, that the banks that do not maintain a correspondent account for the specified foreign bank report such information to FinCEN. FinCEN believes that we will rarely be sending a request to a large number of banks that we are not certain maintain a correspondent account for the specified foreign bank for which we are requesting information. In those rare cases, FinCEN would most likely not ask those banks to report if they do not maintain a correspondent account for such foreign bank. One commenter noted support for this element of the proposal. The commenter asserted that barring significant need, asking for a written negative confirmation should be unnecessary because banks are subject to extensive supervision and the banking agencies should be able to assess appropriate compliance.

FinCEN believes that the estimated average reporting burden for a bank to report to FinCEN that it does not maintain a correspondent account for the foreign bank specified in a request from FinCEN will be approximately 30 minutes per request. FinCEN also estimates that across the 50 requests FinCEN anticipates making annually, on average two to five banks will receive a request from FinCEN regarding a foreign bank for which they do not maintain a correspondent account, and for which FinCEN requests that they report such information. This means that approximately 250 banks will be required to report that they do not maintain a correspondent account for a foreign bank specified in a request from FinCEN in any given year. This also means that approximately 125 estimated annual burden hours will be expended each year. FinCEN also estimates that no single bank will receive a request from FinCEN more than two times per year regarding a specified foreign bank for which it does not maintain a correspondent account, and for which FinCEN requests that it report such information. This corresponds to roughly one estimated average annual burden hour per bank.

Estimated Total Annual Burden: 2825 total annual burden hours.

Approximately 900 CISADA-related reports anticipated each year (provided by a varying number of banks) multiplied by three burden hours per report. (2700 total annual burden hours). Approximately 250 reports from banks that do not maintain a correspondent account with a specified foreign bank (provided by a varying number of banks) multiplied by 30 minutes of burden per report. (125 total annual burden hours).

In the Notice, FinCEN specifically requested comment concerning the following:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN,

including whether the information will have practical utility.

FinCEN received no specific comments regarding this request.

(b) The accuracy of the estimated burden associated with the proposed collection of information.

One commenter questioned the estimate that of the approximately 350 banks that maintain correspondent accounts for foreign banks, only five percent are likely to have an account affected by any single written request from FinCEN. The commenter contended that there is nothing provided to support the five percent estimate. As noted above, in order to reduce the number of affected financial institutions, when possible, FinCEN will rely on information available to help limit the number of banks requested to provide information with respect to the foreign banks that are the subject of specific requests. The number of banks that receive a request may vary in each specific case, based on the availability of information to FinCEN and other circumstances. This means that although FinCEN has the discretion to send a request to every U.S. bank that maintains a correspondent account for a specific foreign bank, in circumstances in which we feel it is appropriate, we may choose to only send a request to some of the U.S. banks that maintain a correspondent account for a specific foreign bank. For this reason, we can reasonably estimate that on average approximately five percent of banks that maintain correspondent accounts for foreign banks will have an account with the any one specific foreign bank about which FinCEN is requesting information.

The commenter also noted that FinCEN estimates the impact of a request about a specific foreign bank will require no more than three hours for a U.S. bank to comply. The commenter noted that although there is no way to verify these estimates, it believes that this rule has the potential to be burdensome and complex. In order to manage the burden of this reporting requirement, FinCEN has proposed a model certification for a bank to utilize in order to inquire of a foreign bank. The model certification includes language identifying the purpose for which the bank is requesting information from the foreign bank. In addition, the model certification defines the key terms applicable to this reporting request. The model certification clearly outlines the information a foreign bank is requested to report and provides links to the list of relevant designated entities and individuals on which a foreign bank is requested to report. As suggested by the commenter, FinCEN will track and consider reporting on the effectiveness of the reporting mechanism.

The commenter also suggested that the regulatory burden estimates are inadequate and do not seem to be a good faith effort to fulfill requirements to assess adequately the regulatory burden. However the commenter did not provide any alternative burden estimates. In addition, FinCEN did not receive any other comments which raised concerns regarding the adequacy of the burden estimates.

Based on two comments received, FinCEN clarifies that in evaluating the effect of this rule on banks, we estimated that approximately 18 U.S. banks would be required to file reports with FinCEN for each request regarding a single foreign bank. We reached this estimate based on the following calculation: FinCEN estimates that 350 U.S. banks maintain correspondent accounts for foreign banks, and approximately five percent of the U.S. banks that maintain correspondent accounts for foreign banks will have a correspondent account with any given foreign bank about which FinCEN is requesting information. Five percent of 350 is 18 (rounded up). In any given request, the actual number of U.S. banks that would be required to report will, of course, vary.

(c) How the quality, utility, and clarity of the information to be collected may be enhanced.

FinCEN received various comments regarding clarification associated with the collection of information. Those comments are addressed throughout the preamble of this rulemaking.

(d) How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

One commenter requested that FinCEN utilize e-filing to collect the required information from banks. At this time, FinCEN cannot utilize e-filing for this collection of information. This is something we may consider in the future. FinCEN will prescribe the format and manner in which information will be collected from banks in the requests FinCEN sends to those banks.

X. Effective Date

Publication of a substantive rule not less than 30 days before its effective date is required by the Administrative Procedure Act except as otherwise provided by the agency for good cause.[35] In order to comply with the congressional mandate to prescribe regulations under section 104(e) of CISADA, which will work in tandem with the regulations implementing section 104(c) of CISADA, FinCEN finds that there is good cause for making this amendment effective on October 11, 2011. Regulations implementing section 104(c) of CISADA were required to be prescribed within 90 days of the enactment of the Act on July 1, 2010. As noted above, on August 16, 2010, OFAC published the IFSR. Section 561.201 of the IFSR implements section 104(c) of CISADA. The reports received as a result of this regulation will assist in the implementation of the IFSR.

In finding good cause, FinCEN considered the possible effect of providing less than 30 days notice to affected persons. FinCEN determined that immediate implementation would not unfairly burden these persons because, as explained above, U.S. banks will only be required to report to FinCEN upon receiving a specific written request from FinCEN. As also noted above, FinCEN will only request reports from those U.S. banks that maintain correspondent accounts for the specific foreign banks that are of interest for purposes of CISADA implementation, and as a result we believe that we will receive the information needed without generating a multitude of unnecessary and uninformative reports.

List of Subjects in 31 CFR Part 1060

Banks, Banking, Counter-terrorism, Foreign banking, Reporting and recordkeeping requirements, Terrorism.

Authority and Issuance

For the reasons set forth above, 31 CFR part 1060 is added to read as follows:

PART 1060—PROVISIONS RELATING TO THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010

Sec.
1060.100 [Reserved]
1060.200 [Reserved]
1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.
1060.400 [Reserved]
1060.500 [Reserved]
1060.600 [Reserved]
1060.700 [Reserved]
1060.800 Penalties

Authority: Pub. L. 111–195, 124 Stat. 1312.

[35] 5 U.S.C. 553(d).

§ 1060.100 [Reserved]

§ 1060.200 [Reserved]

§ 1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.

(a) *General.*

(1) Upon receiving a written request from FinCEN, a bank (as defined in 31 CFR 1010.100(d)) that maintains a correspondent account (as defined in 31 CFR 1010.605(c)(1)(ii)) for a specified foreign bank (as defined in 31 CFR 1010.100(u)) shall inquire of the foreign bank, and report to FinCEN, with respect to any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA; any transfer of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account; and any transfer of funds for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

(2) For the purposes of this section, an ''Iranian-linked financial institution designated under IEEPA'' means a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. For the purposes of this section, an ''IRGC-linked person designated under IEEPA'' means Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act).

Note to paragraph (a)(2): Section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (''CISADA''), Public Law 111–195, 124 Stat. 1312, provides the Secretary of the Treasury with authority to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in certain specified activities. Those specified activities include facilitating a significant transaction or transactions or providing significant financial services for a financial institution whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism, or for Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to that Act.

(b) *Duty to inquire.* Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; whether it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA. Upon such inquiry, a bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

(c) *Filing Procedures.*

(1) *What to file.* Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

(i) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The full name(s) on the correspondent account and the correspondent account number(s);

(C) Applicable information regarding whether the correspondent account has been blocked or otherwise restricted;

(D) Other applicable identifying information for the correspondent account; and

(E) The approximate value in U.S. dollars of transactions processed through the correspondent account within the preceding 90 calendar days;

(ii) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The identity of the system or means by which such transfer(s) of funds was processed;

(C) The full name on the account(s) and the account number(s), if applicable;

(D) Other applicable identifying information for such transfer(s) of funds; and

(E) The approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iii) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, and the following related information:

(A) The name of the IRGC-linked person designated under IEEPA;

(B) The identity of the system or means by which such transfer(s) of funds was processed;

(C) The full name on the account(s) and the account number(s), if applicable;

(D) Other applicable identifying information for such transfer(s) of funds; and

(E) The approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iv) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/

or that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA;

(v) The name of any specified foreign bank, for which the bank maintains a correspondent account, that the bank cannot determine does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank has information that is inconsistent with the certification;

(vi) The name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The full name(s) on the correspondent account and the correspondent account number(s);

(C) Applicable information regarding whether the correspondent account has been blocked or otherwise restricted; and

(D) Other applicable identifying information for the correspondent account;

(vii) If applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information; and

(viii) If applicable, the name of any specified foreign bank, for which the bank maintains a correspondent account, that provides a certification to the bank after the 45-calendar-day deadline, along with all applicable related information associated with that certification.

(2) *When to file.* (i) A bank shall report to FinCEN within 45-calendar-days of the date of the request from FinCEN.

(ii) Reports based on subsequent notifications received from a foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA shall be due within 10 calendar days of receipt of the notification.

(iii) Reports based on certifications received from a foreign bank after the 45 calendar day deadline shall be due within 10 calendar days of receipt of the certification.

(d) *Retention of records.* A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this section.

(e) *No other action required.* Nothing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account established for, or a transaction engaged in with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation.

§ 1060.400 [Reserved]

§ 1060.500 [Reserved]

§ 1060.600 [Reserved]

§ 1060.700 [Reserved]

§ 1060.800 Penalties.

A person violating any requirement under this part is subject to the penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.

Dated: October 3, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

Note: This appendix will not appear in the Code of Federal Regulations; however, FinCEN will use its website to make this model certification available to the public.

Appendix A

Certification for Purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and 31 CFR § 1060.300

[OMB Control Number 1506-0066]

The information contained in this Certification is sought for purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") (Public Law 111-195). This Certification will be used to provide the Department of the Treasury, through the Financial Crimes Enforcement Network ("FinCEN"), with information regarding the nature of foreign bank activities that may be relevant to CISADA.

This Certification may be completed by a **foreign bank** that maintains a **correspondent account** with a U.S. **bank** (see definitions below). An entity that is not a foreign bank is not required to complete this Certification.

A **Foreign Bank** is a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank (see definition at 31 CFR § 1010.100(u)). A **Bank** includes each agent, agency, branch, or office within the United States of persons doing business in one or more of the following capacities: commercial banks or trust companies, private banks, savings and loan associations, national banks, thrift institutions, credit unions, other organizations chartered under banking laws and supervised by banking supervisors of any State, and banks organized under foreign law (see definition at 31 CFR § 1010.100(d)).

A **Correspondent Account** for a foreign bank is an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank (see definition at 31 CFR § 1010.605(c)(1)(ii)).

An Iranian-Linked Financial Institution Designated Under IEEPA is a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act ("IEEPA") (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. Iranian-Linked Financial Institutions Designated Under IEEPA are identified by "[IFSR]" tags located at the end of their entries on the Specially Designated Nationals and Blocked Persons List ("SDN List") (e.g., [NPWMD][IFSR] or [SDGT][IFSR]). The Office of Foreign Assets Control's ("OFAC") electronic SDN List can be found at the following URL: http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. The following financial institutions meet the criteria of Iranian-Linked Financial Institutions Designated Under IEEPA ([IFSR] tags): http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf. These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed

regularly for the most current information regarding Iranian-Linked Financial Institutions Designated Under IEEPA.

An IRGC-Linked Person Designated Under IEEPA is Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to IEEPA (or listed in an annex to an Executive order issued pursuant to such Act). IRGC-Linked Persons Designated Under IEEPA are identified by "[IRGC]" tags located at the end of their entries on the SDN List (e.g., [NPWMD][IRGC] or [SDGT][IRGC]). OFAC's electronic SDN List can be found at the following URL: http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. The following persons meet the criteria of IRGC-Linked Persons Designated Under IEEPA ([IRGC] tags): http://www.treasury.gov/resource-center/sanctions/Programs/Documents/irgc_ifsr.pdf. These listings are part of the SDN List, administered by OFAC. Please note that OFAC's SDN List is dynamic and should be reviewed regularly for the most current information regarding IRGC-Linked Persons Designated Under IEEPA.

A. The undersigned financial institution, _____ ("**Foreign Bank**") hereby certifies as follows: (**Note:** Foreign Bank should check one box in each of sections B, C, and D in order to complete the Certification).

B. Correspondent Account maintained for an Iranian-Linked Financial Institution Designated Under IEEPA: Check **one** box to certify.

☐ Foreign Bank hereby certifies that it **does not** maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA.

☐ Foreign Bank hereby certifies that it **does** maintain a correspondent account(s) for an Iranian-Linked Financial Institution Designated Under IEEPA. (If this box has been selected please fill out the below information for each correspondent account maintained for an Iranian-Linked Financial Institution Designated Under IEEPA).

	Iranian-Linked Financial Institution Designated Under IEEPA	Full Name(s) on Correspondent Account	Correspondent Account Number(s)	Applicable Information regarding whether the Correspondent Account has been Blocked or Otherwise Restricted *	Other Applicable Identifying Information for the Correspondent Account	Approximate Value in U.S. Dollars ("USD") of Transactions Processed through the Correspondent Account Within Preceding 90 Calendar Days
1						
2						
3						
4						
5						

(Add more rows as needed)
* Please include other applicable information such as whether the account(s) has been restricted or blocked in accordance with laws or policies, whether the account(s) is dormant, or whether the account(s) activity has been subject to specific exceptions to otherwise applicable restrictions, such as an account(s) licensed by a competent authority in the foreign bank's home jurisdiction.

C. Processed one or more transfers of funds for or on behalf of, directly or indirectly, an Iranian-Linked Financial Institution Designated Under IEEPA, other than through a correspondent account: Check **one** box to certify.

□ Foreign Bank hereby certifies that to its knowledge it **has not processed** one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-Linked Financial Institution Designated Under IEEPA, **other than through a correspondent account** detailed above.

□ Foreign Bank hereby certifies that it **has processed** one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-Linked Financial Institution Designated Under IEEPA, **other than through a correspondent account** detailed above. (If this box has been selected please fill out the below information for each Iranian-Linked Financial Institution Designated Under IEEPA).

	Iranian-Linked Financial Institution Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds *	Approximate Value in USD of Transfer(s) of Funds Processed (other than through a Correspondent Account) Within Preceding 90 Calendar Days
1						
2						
3						
4						
5						

(Add more rows as needed)
* Please include other applicable information such as whether the transfer(s) of funds has been subject to specific exceptions to otherwise applicable restrictions, such as a transfer(s) of funds licensed by a competent authority in the foreign bank's home jurisdiction.

D. Processed one or more transfers of funds for or on behalf of, directly or indirectly, an IRGC-Linked Person Designated Under IEEPA: Check **one** box to certify.

□ Foreign Bank hereby certifies that to its knowledge it **has not processed** one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-Linked Person Designated Under IEEPA.

□ Foreign Bank hereby certifies that it **has processed** one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-Linked Person Designated Under IEEPA. (If this box has been selected please fill out the below information for each IRGC-Linked Person Designated Under IEEPA).

	IRGC-Linked Person Designated Under IEEPA	Identify System or Means by Which Transfer(s) of Funds Was Processed	Full Name on Account(s) (if applicable)	Account Number(s) (if applicable)	Other Applicable Identifying Information for the Transfer(s) of Funds *	Approximate Value in USD of Transfer(s) of Funds Processed Within Preceding 90 Calendar Days
1						
2						
3						
4						
5						

(Add more rows as needed)

* Please include other applicable information such as whether the transfer(s) of funds has been subject to specific exceptions to otherwise applicable restrictions, such as a transfer(s) of funds licensed by a competent authority in the foreign bank's home jurisdiction.

E. General

Foreign Bank hereby agrees to notify in writing the Bank if Foreign Bank establishes a new correspondent account for an Iranian-Linked Financial Institution Designated Under IEEPA at any time within 365 calendar days from the date of this response. Foreign Bank agrees to provide such notification within 30 calendar days of the establishment of the new correspondent account.

Foreign Bank understands that the Bank will provide a copy of this Certification to FinCEN, a bureau of the U.S. Department of the Treasury. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

_____
[Name of Foreign Bank]

_____
[Signature]

_____
[Printed Name]

_____
[Title]

Executed on this _____day of _____, 20___.

To be completed by the Bank:

I, _____(name of signatory), have received and reviewed this Certification. To the best of its knowledge, the Bank has no information that is inconsistent with the Certification made by Foreign Bank. I am authorized to submit this document on behalf of the Bank.

_____
[Name of Bank]

_____
[Signature]

_____
[Printed Name]

_____
[Title]

Submitted on this _____day of _____, 20___.

[FR Doc. 2011–26204 Filed 10–7–11; 8:45 am]
BILLING CODE 4810–02–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1902

Information Security Regulations

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence agency is removing certain information security regulations which have become outdated. The Executive Order upon which the regulations are based has been superseded, and the regulations are no longer needed.

DATES: Effective October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Under the authority of Executive Order 13526, the CIA is removing and reserving 32 CFR part 1902. This part relies on authority that is no longer in force and established criteria and procedures that are superseded by Executive Order 13526. This rule is being issued as final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act, 5 U.S.C. 533(b)(3)(A) for rules of agency procedure and interpretation and Section 6 of the CIA Act as amended, 50 U.S.C. 403g.

List of Subjects in 32 CFR Part 1902

Information security regulations.

PART 1902 [REMOVED AND RESERVED]

§ 1902.13 [Removed and Reserved]

■ Accordingly, under the authority of Executive Order 13526, the CIA removes and reserves part 32 CFR part 1902.