

Proposed Rules

Federal Register

Vol. 77, No. 135

Friday, July 13, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

RIN 1506-AB15

Request for Comments: Customer Due Diligence Requirements for Financial Institutions; Public Hearing

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

ACTION: Notice of public hearing; request for comment.

SUMMARY: FinCEN is announcing the first in an intended series of public hearings to continue gathering information on its Advance Notice of Proposed Rulemaking (ANPRM) on Customer Due Diligence (CDD) Requirements for Financial Institutions, published in the *Federal Register* on March 5, 2012.¹ In particular, FinCEN seeks further clarification on the issues described in this Notice. FinCEN invites various components of the law enforcement and regulatory communities to participate. In addition, FinCEN invites other interested parties, including industry representatives, to attend and/or provide comments at this first public hearing, to be held on July 31, 2012 at the U.S. Department of the Treasury building in Washington, DC. FinCEN will also provide information in this Notice about how to submit comments and/or attend the hearing and what procedures to follow to submit information to the Treasury Department to obtain entry to the hearing site.

DATES: This public hearing will be held on July 31, 2012, beginning at 9:30 a.m., Eastern Time, and ending at 5 p.m., in Washington, DC. Requests to attend the hearing and/or provide oral comments, written outlines of the oral comments,

and the personal identification information required of those individuals who wish to enter the Treasury Department building, must be received on or before July 24, 2012. More information on the intended subsequent hearings will be provided at a later date.

ADDRESSES: Requests to attend and/or provide comments: Requests to attend and/or provide comments at the Public Hearing must be submitted by email to the FinCEN BSA Resource Center at BSA_Resource_Center@FinCEN.Gov, or by mail to FinCEN, P.O. Box 39, Vienna, VA 22183. Include "CDD Public Hearing" in the body of the text or the "subject" line of the email.

Meeting site: This public hearing will be held at the United States Department of the Treasury, located at 1500 Pennsylvania Avenue Northwest, Washington, DC 20220.

Inspection of comments and outlines: Written comments and outlines may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (not a toll free call). In general, FinCEN will make all written comments, including outlines, publicly available by posting them on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732 and select option 6.

SUPPLEMENTARY INFORMATION:

Information About Attending and/or Providing Comments at the Hearing

Individuals requesting to attend and/or provide oral comments should provide the following information in their request, which must be submitted to FinCEN at the address appearing in this Notice under the heading **ADDRESSES:** *Request to attend and/or provide oral comments:* (1) The name of the person wishing to attend and/or provide comments; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and, if wishing to provide comments, (4) a separate written, one to two-page outline of the proposed comments. FinCEN is requesting a written outline of comments in advance

of the hearing for scheduling purposes. Given space and time limitations, not all requests to attend and/or provide oral comments may be honored. However, any outlines received will be made part of the public record for the hearing.

Based upon the requests received, FinCEN will develop an agenda for witness oral comments, will notify those commenters scheduled as part of the agenda, and will post the agenda on FinCEN's Web site (address: www.fincen.gov). Each comment, as well as a general summary of the hearing's discussion will be made available for public inspection after the public hearing; as such, information that a respondent does not desire to be made public, such as a phone number, should not be included in the outline of the comment discussed above. Information about the webcast will be posted on FinCEN's Web site prior to the public hearing, and the public hearing will be made available via webcast.

Due to security requirements and to facilitate entry to the meeting site, anyone wishing to attend must contact BSA_Resource_Center@FinCEN.Gov, or (202) 354-6400 no later than July 24, 2012, in order to provide the following required clearance information: *For U.S. citizens:* Full name, business affiliation, date of birth, and Social Security number; *For foreign nationals:* Full name, business affiliation, date of birth, passport number, and the country where the passport was issued. When arriving for the meeting, attendees must present a government-issued photo or passport identification and should arrive at least one-half hour prior to the start time of the meeting. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation, are asked to indicate this to BSA_Resource_Center@FinCEN.Gov.

For those unable to attend in person, written comments to the detailed questions may also be submitted for the record by email or mail to the respective address above by July 31, 2012. FinCEN will make such written comments publicly available by posting them on <http://www.regulations.gov>.

Request for Hearing Comments

On March 5, 2012, FinCEN published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the development of a

¹ Financial Crimes Enforcement Network, "Customer Due Diligence Requirements for Financial Institutions," 77 FR 13046 (March 5, 2012), available at <http://www.regulations.gov/#!docketDetail;D=FINCEN-2012-0001;dt=FR%252BPR%252BN%252BO%252BSR>.

Customer Due Diligence (CDD) regulation that would codify, clarify, consolidate, and strengthen existing CDD regulatory requirements and supervisory expectations, and establish a categorical requirement for financial institutions to identify the beneficial owner(s) of their customers, subject to risk-based verification. The comment period for the CDD ANPRM ended on June 11, 2012, and all comments are currently under review. During this ongoing comment review process, FinCEN identified comment letters submitted by multiple law enforcement agencies stating a requirement for financial institutions to identify beneficial ownership of their customers, as discussed in the ANPRM, would significantly enhance law enforcement's ability to conduct financial investigations of all manners of financial crimes. FinCEN has also identified several issues raised by commenters, on which it is soliciting further clarification through oral comment and dialogue during the July 31, 2012 public hearing. Such clarification would assist FinCEN in adequately considering the issues as it moves forward in the rulemaking process. In addition to any other topics or concerns a respondent wishes to address at this public hearing, FinCEN specifically seeks clarification, including examples where appropriate, on the following issues:

1. Multiple comment letters indicated that some financial institutions already identify beneficial ownership of their customers in certain circumstances. FinCEN seeks detailed information as to how and when those financial institutions currently obtain beneficial ownership information, including, but not limited to: (i) The circumstances in which financial institutions obtain beneficial ownership information other than in connection with the regulations implementing Section 312 of the USA PATRIOT ACT,² (ii) the basis for determining that such circumstances warrant the collection of beneficial ownership information, (iii) the specific procedures financial institutions currently use to obtain beneficial ownership information in such circumstances, including the definition of "beneficial owner" used, and (iv) how those circumstances and procedures vary across different lines of business, product type, customer profile and geographic location.

2. FinCEN seeks detailed information as to whether and how financial institutions currently verify beneficial

ownership information obtained from their customers. The information sought includes, but is not limited to, whether and how financial institutions verify: (i) The identity of the individual identified by the customer as the beneficial owner of the customer, and (ii) that the individual identified by the customer as the beneficial owner, is indeed the beneficial owner of the customer (i.e., the status of the identified individual).

3. FinCEN seeks detailed information as to the costs associated with obtaining beneficial ownership information under current practices, and the expected costs associated with obtaining beneficial ownership information as discussed in the ANPRM.

4. FinCEN seeks detailed information as to the costs associated with verifying beneficial ownership information to the extent this is done under current practices, and the expected costs associated with verifying beneficial ownership information as discussed in the ANPRM.

5. Multiple comment letters expressed concern regarding the definition of "beneficial owner" in connection with a categorical requirement for financial institutions to identify beneficial ownership of their customers, as discussed in the ANPRM. FinCEN seeks detailed information about potential alternative definitions, and why such alternatives would be preferable from a financial institution's perspective.

6. As reflected in multiple comment letters, certain financial institutions already identify beneficial ownership of their customers in certain circumstances in order to manage risk more effectively. FinCEN seeks detailed information about how identifying beneficial owners enhances a financial institution's ability to manage risk. FinCEN also seeks detailed information as to the circumstances and account relationships in which beneficial ownership information may not be relevant for financial institutions in managing risk.

7. Many commenters have suggested FinCEN consider requiring financial institutions to obtain beneficial ownership information of their customers on a risk basis. FinCEN seeks detailed information as to (i) how financial institutions would expect to assess risk in determining whether to obtain beneficial ownership information (e.g., what specific factors would a financial institution consider); (ii) specific examples of any customer or account relationships or red flags that would be considered of higher risk for purposes of obtaining and verifying beneficial ownership information, and similarly any such relationships that

would be considered of lower risk for purposes of obtaining and verifying beneficial ownership information; and (iii) how financial institutions would obtain and verify beneficial ownership information on a risk basis. For those financial institutions that already obtain beneficial ownership information on a risk basis, FinCEN seeks detailed information as to when they obtain it—during the onboarding process, or after a review of the account activity? If the latter, would the review of the account activity be a part of a periodic/routine review conducted by the financial institution or based upon the identification of red flags? Do financial institutions reassess risk presented periodically or based upon red flags identified? What steps do financial institutions take when new risks have been identified?

8. FinCEN seeks additional detailed information as to the abilities and limitations of a financial institution in mitigating risk associated with its customer's underlying clients in the context of intermediated accounts. The information sought includes, but is not limited to: (i) The factors a financial institution considers when conducting diligence on its customer (i.e., the intermediary) to assess the risk of the account (e.g., whether the customer is (1) a domestic or foreign entity, (2) regulated or unregulated for anti-money laundering purposes, etc.), (ii) whether, and if so, in what circumstances and what type of information does a financial institution obtain from its customer (i.e., the intermediary) about the customer's underlying clients, and (iii) any monitoring or other procedures applied to the customer's account to identify suspicious activity and mitigate risks that may be associated with the customer's underlying clients.

9. FinCEN seeks detailed information as to how financial institutions currently conduct due diligence on trust accounts. The information sought includes, but is not limited to: (i) How financial institutions assess risk with respect to trust accounts, as opposed to accounts held by natural persons or legal entities, and (ii) what information a financial institution obtains about the trust, including identifying information about the trustee.

10. FinCEN seeks detailed information as to the differences, if any, in obtaining beneficial ownership information from foreign legal entity customers compared to domestic legal entity customers.

11. Lack of transparency in the formation and operation of "shell

² 31 CFR 1010.610(b)(1)(iii)(A) and 1010.620(b)(1).

companies”³ may be a desired characteristic for certain legitimate business activity, but it is also a vulnerability that allows these companies to disguise their ownership and purpose. FinCEN seeks detailed information as to whether and how financial institutions identify whether legal entity customers are “shell companies.”

Conclusion

With this public hearing, FinCEN is seeking clarification on the issues raised by commenters regarding the CDD ANPRM set forth above.

Dated: July 9, 2012.

Nicholas Colucci,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2012-17065 Filed 7-12-12; 8:45 am]

BILLING CODE 4810-02-P

POSTAL SERVICE

39 CFR Part 501

Authorization to Manufacture and Distribute Postage Evidencing Systems; Discontinued Indicia

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend the rules concerning the manufacture and distribution of postage evidencing systems to clarify that effective January 1, 2016, all postage evidencing systems (postage meters and PC Postage® products) will be required to produce Information-Based Indicia (IBI) or Intelligent Mail® Indicia (IMI) for evidence of pre-paid postage, and that indicia from noncompliant systems will not be recognized as valid postage.

DATES: Submit all comments on or before September 11, 2012.

ADDRESSES: Mail or deliver written comments to the Manager, Payment Technology, U.S. Postal Service, 475 L’Enfant Plaza SW., Room 3660, Washington, DC 20260-4200. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Payment Technology office.

FOR FURTHER INFORMATION CONTACT: Marlo Ivey, Business Programs

³ The term “shell company,” as used herein, refers to non-publicly traded corporations and limited liability companies that typically have no physical presence (other than a mailing address) and generate little to no independent economic value. See FinCEN Guidance, FIN-2006-G014, “Potential Money Laundering Risks Related to Shell Companies” (November 9, 2006).

Specialist, Payment Technology, U.S. Postal Service, (202) 268-7613.

SUPPLEMENTARY INFORMATION: In 1999, the Postal Service introduced the Information Based Indicia Program (IBIP). Under IBIP, postage evidencing systems submitted for Postal Service test and evaluation were required to produce IBI—digital indicia that use a two-dimensional (2-D) barcode. In 2012, the next generation of postage evidencing was introduced through the publication of the IMI performance criteria. Both IBI and IMI contain a 2-D barcode that includes revenue security-related data elements and product and service information.

Effective January 1, 2016, all postage evidencing systems (postage meters and PC Postage products) will be required to produce IBI or IMI for evidence of pre-paid postage. Indicia from postage evidencing systems that are not IBI-compliant or IMI-compliant will not be recognized as valid after December 31, 2015. The following proposed amendment to 39 CFR part 501 is intended to clarify that noncompliant indicia will be decertified, and will not be recognized as valid after that date.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), the Postal Service invites public comment on the following proposed revisions to the *Code of Federal Regulations*.

List of Subjects in 39 CFR Part 501

Postal Service.

Accordingly, the Postal Service proposes to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended); 5 U.S.C. App. 3.

2. Add section 501.20 to read as follows:

§ 501.20 Discontinued Postage Evidencing Indicia.

(a) *Decertified indicia* (evidence of pre-paid postage) are indicia that have been withdrawn by the Postal Service as valid forms of postage evidence through publication by the Postal Service in the **Federal Register**, or by voluntary withdrawal undertaken by the provider.

(b) Effective January 1, 2016, all Postage Evidencing Systems (postage meters and PC Postage products) will be

required to produce Information-Based Indicia (IBI) or Intelligent Mail Indicia (IMI) for evidence of pre-paid postage. Non-IBI and non-IMI indicia will be decertified effective January 1, 2016, and may not be used as a valid form of postage evidence. These decertified indicia will not be recognized as valid postage after December 31, 2015.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012-17067 Filed 7-12-12; 8:45 am]

BILLING CODE 7710-12-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2012-5; Order No. 1388]

Analytical Methods Used in Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of filing.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to initiate an informal rulemaking proceeding to consider changes in analytical methods used in periodic reporting. This notice addresses procedural steps associated with the filing.

DATES: Comments are due July 31, 2012.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202-789-6820.

SUPPLEMENTARY INFORMATION: On June 26, 2012, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes in the analytical methods approved for use in periodic reporting.¹

Proposal One. Elimination of Separate Delivery Costs for Carrier Route Letters, Flats, and Parcels. The Postal Service proposes to eliminate the separate, shape-based reporting of unit costs within Standard Mail Carrier Route. The Postal Service states that “Carrier Route flats represent over 99

¹ Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals One through Five), June 26, 2012 (Petition).