

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Imposition of Special Measures Against Burma as a Jurisdiction of Primary Money Laundering Concern

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

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 18, 2003, the Secretary of the Treasury designated Burma as a jurisdiction of primary money laundering concern pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. The Department of the Treasury, acting through FinCEN, is issuing this proposed rule to impose special measures against this jurisdiction.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before December 26, 2003.

ADDRESSES: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to regcomments@fincen.treas.gov with the caption in the body of the text, "ATTN: Section 311—Designation of Burma." Comments also may be submitted by paper mail to FinCEN, PO Box 39, Vienna, VA 22183, Attn: Section 311 Special Measure Regulation (Burma). Please submit comments by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Department of the Treasury, (202) 622-1927; the Executive Office for Terrorist Financing and Financial Crimes, (Treasury), (202) 622-0470; or the Office of Chief Counsel (FinCEN), (703) 905-3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has designated Burma as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107-56).

Treasury, acting through FinCEN, is also proposing the imposition of special

measures authorized by section 5318A(b)(5). The special measures imposed under this section would generally prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts in the United States for, or on behalf of, Burmese financial institutions, unless (as explained below) operation of those accounts is not prohibited by Executive Order 13310 of July 28, 2003, and the Burma-related activities of such accounts are solely to affect transactions that are exempt from, or licensed pursuant to, Executive Order 13310. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used by the foreign bank to provide financial services to a Burmese financial institution indirectly.

Additionally, the Secretary designated two Burmese financial institutions, Myanmar Mayflower Bank and Asia Wealth Bank, as financial institutions of primary money laundering concern. By a separate proposed rule, Treasury and FinCEN are proposing the imposition of the fifth special measure as well. This special measure would prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank, notwithstanding any exemption from, or license issued pursuant to Executive Order 13310.

I. Background

A. Section 311 of the USA PATRIOT Act

On October 26, 2001, the President signed the Act into law. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA) (codified in subchapter II of chapter 53 of title 31, United States Code) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act (Section 311) added section 5318A to the BSA, granting the Secretary of the Treasury (Secretary) authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) to be of "primary money laundering concern," and to require U.S. financial institutions to take certain "special measures" against the primary money laundering concern.

Section 311 identifies factors to consider as well as agencies and departments to consult before the

Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting specific special measures against the designee.

Taken as a whole, Section 311 provides Treasury with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing concerns. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can obtain more information about the concerned jurisdictions, institutions, transactions, and accounts; more effectively monitor the respective institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

1. Required Consultations and Statutory Considerations To Be Made Prior To Designating a Foreign Jurisdiction To Be of Primary Money Laundering Concern

Before making a finding that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary is required by statute to consider "such information as the Secretary determines to be relevant, including the following potentially relevant factors," when designating a foreign jurisdiction:

- Evidence that organized criminal groups, international terrorists, or both, have transacted business within the designated jurisdiction;
- The extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of the jurisdiction;
- The substance and quality of administration of the bank supervisory and counter-money laundering laws of the jurisdiction;
- The relationship between the volume of financial transactions occurring in the jurisdiction and the size of the economy of the jurisdiction;
- The extent to which the jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;