

maintain for foreign banks to ascertain whether a foreign bank is using the account to provide services to a Burmese financial institution. Instead, if covered financial institutions become aware, through due diligence that is otherwise appropriate or required under existing anti-money laundering obligations, that a foreign bank is using its correspondent account to provide banking services indirectly to a Burmese financial institution, then the covered financial institutions must ensure that the account is no longer used for such purposes. This reflects the approach taken in the proposed rulemaking imposing special measures against Nauru.⁹

Additionally, when a covered financial institution becomes aware that a foreign bank customer is using the U.S. correspondent account to provide services to a Burmese financial institution indirectly, the covered financial institution may afford that foreign bank customer a reasonable opportunity to take corrective action prior to terminating the U.S. correspondent account. Should the foreign bank customer refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account in accordance with this regulation. Treasury has also incorporated the requirement of termination within a reasonable period of time and the reinstatement of a terminated correspondent account found in the final regulation implementing Sections 313 and 319(b) of the Act.¹⁰

This provision is likewise subject to the exception contained in section 103.186(b)(3), described below.

3. Exception

Section 103.186(b)(3) provides for an exception to the prohibition on both direct and indirect correspondent account relationships of the proposed rule. U.S. financial institutions covered by the proposed rule may maintain a correspondent account relationship otherwise prohibited by this rule if the maintenance of such an account is permitted pursuant to Executive Order 13310 and if the transactions involving Burmese financial institutions that are conducted through the correspondent account are limited solely to transactions that are exempted in, or otherwise authorized by regulation,

order, directive, or license issue pursuant to, Executive Order 13310. As described previously in section I(C)(1), certain transactions with Burma are exempt from the prohibitions of Executive Order 13310 or have been authorized through the licensing process. The general licenses (*i.e.*, those of general applicability) or other authorizations issued will be set forth in 31 CFR part 537, and are available on the website of Treasury's Office of Foreign Assets Control, <http://www.treas.gov/offices/eofac/ofac/sanctions/sanctguide-burma.html>. To ensure that those authorized activities are available as a practical matter, U.S. correspondent accounts permitted to operate pursuant to Executive Order 13310 may be used to effect those permitted transactions.

4. Reporting and Recordkeeping Not Required

Section 103.186(b)(3) of the proposed rule states that it does not impose any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation.

V. Designation of Burma To Be of Primary Money Laundering Concern

Effective November 18, 2003, Burma was designated by the Secretary of the Treasury to be a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A, as added by Section 311(a) of the Act. See the notice published elsewhere in this separate part.

VI. Public Comments Requested

Comments are invited from all interested persons concerning this proposed rulemaking, and are specifically sought from the financial sector, including domestic financial institutions and agencies, concerning the appropriateness and effectiveness of this particular special measure, the ability to comply with the special measure, and any competitive disadvantage, cost, or burden associated with compliance.

VII. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As explained above, financial institutions covered by this proposed rulemaking are already prohibited under existing sanctions from maintaining correspondent accounts for Burmese financial institutions. Given the comprehensive sanctions regime, Treasury and FinCEN believe that few foreign correspondent

bank customers of small U.S. financial institutions covered by the proposed rulemaking will themselves maintain correspondent accounts for Burmese financial institutions. Treasury and FinCEN specifically request comment on the extent to which the prohibition contained in the proposed rule would affect small U.S. financial institutions beyond obligations already imposed by existing economic sanctions.

VIII. Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as follows:

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

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

2. Subpart I of part 103 is proposed to be amended by adding § 103.186 under the undesignated centerheading "SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS" to read as follows:

§ 103.186 Special measures against Burma.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* means an account established to receive deposits from, or make payments on behalf of, a foreign financial institution, or handle other financial transactions related to such institution.

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

⁹ 68 FR 18917 (April 17, 2003).

¹⁰ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).