

As discussed above, vehicle sellers form an extremely large and diverse industry, accounting for a major portion of American consumption as well as exports. Given this diversity in the vehicle sellers industry, the risks of money laundering and the costs of preventive programs can vary widely. Thus, FinCEN solicits comment on whether any proposed rule should limit the definition to sellers of particular types of vehicles, to retail or wholesale vehicle sellers, or sellers of new or used vehicles. In addition, FinCEN's regulations in the past have recognized that businesses that do not transact in sufficient dollar amounts or volume, or in cash or monetary instruments, may not present sufficient money laundering risk to require the imposition of federally mandated programs. For example, under the BSA, money services businesses other than money transmitters (currency exchangers, check cashers, and issuers, sellers, and redeemers of traveler's checks and money orders) are defined as financial institutions only if they transact over \$1,000 in covered transactions for any one person in any one day.⁹ This threshold reflects the judgment that businesses that never engage in transactions above that level fail to present a money laundering risk sufficient to justify the regulatory burden. FinCEN solicits comment on whether, if vehicle sellers are required to implement anti-money laundering programs, there should be a monetary threshold of some kind in defining a vehicle seller for purposes of the BSA. Commenters should address whether any such threshold should be transaction based, as with the money services business rules, or on an annual gross income, or some other basis.

5. Do Vehicle Sellers Maintain "Accounts" for Their Customers?

Section 326 requires the setting of minimum standards for identification of customers "in connection with the opening of an account at a financial institution." Section 311 of the Patriot Act provides a definition of "account" for banks, but requires the Secretary to promulgate a regulation defining "account" for non-bank financial institutions. Although such a regulation has yet to be issued, the definition for banks ("a formal banking or business relationship established to provide regular services, dealings, and other financial transactions") is a useful starting point. This definition incorporates two key concepts: (1) Formality of the business relationship,

and (2) regularity of dealings. In light of these concepts, FinCEN solicits comments as to whether (and to what extent) vehicle sellers maintain accounts for their customers, in addition to fleet accounts. What kinds of services do vehicle sellers provide to any such account holders (including fleet account holders)? Are these account relationships ongoing? Are accounts established to receive recurring payments from a customer, or are additional services provided to the account holder?

III. Conclusion

With this ANPRM, FinCEN is seeking input to assist it in determining how to implement the requirements of sections 352 and 326 of the Act with respect to vehicle sellers. FinCEN welcomes comments on all aspects of this potential regulation and encourages all interested parties to provide their views.

IV. Executive Order 12866

Because this is an ANPRM, FinCEN does not know whether or in what form it may issue a regulation pursuant to sections 352 and 326 of the Act affecting vehicle sellers. Accordingly, FinCEN does not know whether potential regulations will constitute a significant regulatory action under the Executive Order. This ANPRM neither establishes nor proposes any regulatory requirements. FinCEN has submitted a notice of planned regulatory action to OMB for review. Because this ANPRM does not contain a specific proposal, information is not available with which to prepare an economic analysis. FinCEN will prepare a preliminary analysis if it proceeds with a proposed rule that constitutes a significant regulatory action.

Accordingly, FinCEN solicits comments, information, and data on the potential effects of any potential regulation. FinCEN will carefully consider the costs and benefits associated with this rulemaking.

Dated: February 12, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RINs 1506-AA28 and 1506-AA38

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Travel Agencies

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

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: FinCEN is in the process of implementing the requirements delegated to it under the USA PATRIOT Act of 2001, in particular the requirements of the Act that require financial institutions to establish anti-money laundering compliance and customer identification programs. The term "financial institution" is defined to include a "travel agency." FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comments on a wide range of questions pertaining to this requirement, including how to define the term travel agency.

DATES: Written comments may be submitted on or before April 10, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments may be submitted by electronic mail to regcomments@fincen.treas.gov with the caption in the body of the text, "ATTN: ANPRM—Section 352—Travel Agency Regulations." Comments may be mailed to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: ANPRM—Section 352—Travel Agency Regulations. Comments should be sent 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 a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905-3590; the Office of the General Counsel, (202) 622-1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622-0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Public Law 107-56)

⁹ 31 CFR 103.11(uu).