Proposed Rules

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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS–SC–20–0064; SC20–915–1 CR]

Avocados Grown in South Florida; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of avocados grown in South Florida to determine whether they favor continuance of the marketing order regulating the handling of avocados produced in the production area.

DATES: The referendum will be conducted from November 30 through December 21, 2020. Only current growers of Florida avocados within the production area that produced avocados during the period April 1, 2019, through March 31, 2020, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; or from the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or on the internet: *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 915, as amended (7 CFR part 915), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by growers. The referendum shall be conducted from November 30 through December 21, 2020, among Florida avocado growers in the production area. Only current Florida avocado growers who were engaged in the production of Florida avocados grown in the production area, during the period of period April 1, 2019, through March 31, 2020, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. The Order will continue in effect if two-thirds of the growers that cast votes, or growers representing two-thirds of the volume of Florida avocados voted in the referendum, cast ballots in favor of continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding the operation of the Order and relative benefits and disadvantages to growers, handlers, and consumers in determining whether continued operation of the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballots used in the referendum have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189, Fruit Crops. It has been estimated it will take an average of 20 minutes for each of the approximately 325 growers of Florida avocados to cast a ballot. Participation is voluntary. Ballots postmarked after December 21, 2020, will not be included in the vote tabulation.

Abigail Campos, Dolores Lowenstine, and Christian D. Nissen of the Southeast Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or their appointees.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–23348 Filed 10–26–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010 and 1020

[Docket No. FINCEN–2020–0002 ; RIN 1506–AB41]

Threshold for the Requirement To Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States, and Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status

AGENCY: Board of Governors of the Federal Reserve System (''Board''); Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Board and FinCEN (collectively, the ''Agencies'') are issuing this proposed rule to modify the threshold in the rule implementing the

Bank Secrecy Act (''BSA'') requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The proposed modification would reduce this threshold from $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. FinCEN is likewise proposing to reduce from $3,000 to $250 the threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on funds transfers and transmittals of funds that begin or end outside the United States. The Agencies are also proposing to clarify the meaning of ''money'' as used in these same rules to ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency (''CVC''), which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further propose to clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

DATES: Written comments on this proposed rule may be submitted on or before November 27, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Board: You may submit comments, identified by Docket No. R–1726; RIN 7100–AF97, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FinCEN:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0002 and the specific RIN number 1506–AB41 the comment applies to.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0002 and the specific RIN number.

FOR FURTHER INFORMATION CONTACT:

Board: Jason Gonzalez, Assistant General Counsel (202) 452–3275 or Evan Winerman, Senior Counsel (202) 872–7578, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

FinCEN: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA PATRIOT Act'') (Pub. L. 107–56) and other legislation, is the legislative framework commonly referred to as the BSA. The Secretary of the Treasury (''Secretary'') has delegated to the Director of FinCEN (''Director'') the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[1] Pursuant to this authority, FinCEN may require financial institutions to keep records and file reports that the Director determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism.[2]

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) (''Annunzio-Wylie'') amended the BSA framework. Annunzio-Wylie authorizes the Secretary and the Board to jointly issue regulations requiring insured depository institutions to maintain records of domestic funds transfers.[3] The Secretary, but not the Board, is authorized to promulgate recordkeeping requirements for domestic wire transfers by nonbank financial institutions.[4] In addition, Annunzio-Wylie authorizes the Secretary and the Board, after consultation with state banking supervisors, to jointly issue regulations requiring insured depository institutions and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.[5] Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.[6] FinCEN can continually monitor the benefits of such regulations through its extensive liaison activity with federal and state law enforcement and financial regulatory entities, and the Board can assess costs through its regulatory oversight of financial institutions under its jurisdiction.

On January 3, 1995, the Agencies jointly issued a recordkeeping rule (the ''Recordkeeping Rule'') that requires banks and nonbank financial institutions to collect and retain information related to funds transfers and transmittals of funds in amounts of $3,000 or more.[7] The Recordkeeping Rule is intended to help law enforcement and regulatory authorities

[1] Treasury Order 180–01 (Jan. 14, 2020).

[2] 31 U.S.C. 5311.

[3] 12 U.S.C. 1829b(b)(2).

[4] 12 U.S.C. 1953.

[5] 12 U.S.C. 1829b(b)(3). The terms ''funds transfer,'' ''originator,'' ''beneficiary,'' and ''payment order'' apply only in the context of banks. The term ''transmittal of funds'' includes a funds transfer and its counterpart in the context of nonbank financial institutions. *See* 31 CFR 1010.100(ddd). Transmittors, recipients, and transmittal orders in the context of nonbank financial institutions play the same role as originators, beneficiaries, and payment orders in the context of banks.

[6] 12 U.S.C. 1829b(b)(3).

[7] 60 FR 220 (Jan. 3, 1995). Through a separate rulemaking, the Board added on January 3, 1995 a new subpart B to 12 CFR part 219 (Regulation S), which cross-references the substantive requirements in the Recordkeeping Rule. *See* 60 FR 231–01 (Jan. 3, 1995). As noted above, the Board (unlike FinCEN) is not authorized to promulgate recordkeeping requirements for domestic wire transfers by nonbank financial institutions. Accordingly, for purposes of Regulation S, the provisions of the Recordkeeping Rule with respect to nonbank financial institutions apply only to international transmittals of funds. 12 CFR 219.23(b).

detect, investigate, and prosecute money laundering, and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

At the same time, FinCEN issued a separate rule—the ''Travel Rule''—that requires banks and nonbank financial institutions to transmit information on certain funds transfers and transmittals of funds to other banks or nonbank financial institutions participating in the transfer or transmittal.[8] The Travel Rule and the Recordkeeping Rule complement each other: Generally, as noted below, the Recordkeeping Rule requires financial institutions to collect and retain the information that, under the Travel Rule, must be included with transmittal orders, although the Recordkeeping Rule also has other applications apart from ensuring that information is available to include with funds transfers. FinCEN issued the Travel Rule pursuant to statutory authority that permits the Treasury to require domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the BSA or to guard against money laundering, and to establish anti-money laundering programs.[9]

This proposed rule would amend both the Recordkeeping Rule and the Travel Rule. The Recordkeeping Rule is codified at 31 CFR 1020.410(a) and 1010.410(e)[10] and the Travel Rule is codified at 31 CFR 1010.410(f).[11] Consistent with its rulemaking authority in the BSA, as amended by Annunzio-Wylie, the Board is proposing the amendments to § 1010.100(ll) and § 1020.410(a) only to the extent the amendments apply to funds transfers by insured depository institutions, and is proposing the amendments to § 1010.100(eee) and § 1010.410(e) only to the extent the amendments would apply to international transmittals of funds by financial institutions other than insured depository institutions. Because the Board's Regulation S generally cross-references those portions of the Recordkeeping Rule promulgated jointly by the Board and FinCEN, it is unnecessary to propose conforming amendments to Regulation S.

B. Information Required To Be Collected, Retained, and Transmitted Under the Recordkeeping and Travel Rules

The Recordkeeping Rule and Travel Rule collectively require banks and nonbank financial institutions to collect, retain, and transmit information on funds transfers and transmittals of funds in amounts of $3,000 or more.

Under the Recordkeeping Rule, the originator's bank or transmittor's financial institution must collect and retain the following information: (a) Name and address of the originator or transmittor; (b) the amount of the payment or transmittal order; (c) the execution date of the payment or transmittal order; (d) any payment instructions received from the originator or transmittor with the payment or transmittal order; and (e) the identity of the beneficiary's bank or recipient's financial institution. In addition, the originator's bank or transmittor's financial institution must retain the following information if it receives that information from the originator or transmittor: (a) Name and address of the beneficiary or recipient; (b) account number of the beneficiary or recipient; and (c) any other specific identifier of the beneficiary or recipient. The originator's bank or transmittor's financial institution is required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer.[12] Similarly, should the beneficiary's bank or recipient's financial institution deliver the proceeds to the beneficiary or recipient in person, the bank or nonbank financial institution must verify the identity of the beneficiary or recipient—and collect and retain various items of information identifying the beneficiary or recipient—if the beneficiary or recipient is not an established customer. Finally, an intermediary bank or financial institution—and the beneficiary's bank or recipient's financial institution—must retain originals or copies of payment or transmittal orders.

Under the Travel Rule, the originator's bank or transmittor's financial institution is required to include information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. An intermediary bank or financial institution is also required to transmit this information to other banks or nonbank financial institutions in the payment chain, to the extent the information is received by the intermediary bank or financial institution.

II. Lowering of Threshold From $3,000 to $250 for Funds Transfers and Transmittals of Funds by Financial Institutions That Begin or End Outside the United States

The existing requirements in 31 CFR 1020.410(a) and 31 CFR 1010.410(e) and (f) to collect, retain, and transmit information on funds transfers and transmittals of funds currently apply only to funds transfers and transmittals of funds in amounts of $3,000 or more. The Agencies are proposing to lower the threshold under the Recordkeeping Rule, and FinCEN is proposing to lower the threshold under the Travel Rule, to $250 for funds transfers and transmittals of funds that begin or end outside the United States.[13] In proposing these modifications, the Agencies considered the usefulness of transaction information associated with smaller-value cross-border transfers and transmittals of funds in criminal, tax, or regulatory investigations or proceedings, and in intelligence or counterintelligence activities to protect against international terrorism, as well as the effect on the payments system of requiring information collection and retention for these transactions. The following two sections lay out, respectively, (A) the potential benefits to national security and law enforcement from reducing the Recordkeeping Rule and Travel Rule thresholds for funds transfers and transmittals of funds that begin or end outside the United States, and (B) the potential effect these new requirements would have on the cost and efficiency of the payments system.

A. Benefit to National Security and Law Enforcement

Information available to the Agencies indicates that malign actors are using smaller-value cross-border wire transfers to facilitate or commit terrorist financing, narcotics trafficking, and other illicit activity, and that increased recordkeeping and reporting concerning these transactions would be valuable to

[8] 60 FR 234 (Jan. 3, 1995).

[9] *Id.; see also* 31 U.S.C. 5218(a)(2) and (h).

[10] As explained in n. 6, *supra,* the Board separately promulgated subpart B to Regulation S, which cross-references the requirements of 31 CFR 1020.410(a) and 1010.410(e).

[11] Recordkeeping requirements for banks are set forth in 31 CFR 1020.410(a). Recordkeeping requirements for nonbank financial institutions are set forth in 31 CFR 1010.410(e). The Travel Rule—codified at 31 CFR 1010.410(f)—applies by its terms to both bank and nonbank financial institutions.

[12] The term ''established customer'' is defined at 31 CFR 1010.100(p).

[13] The ''United States'' includes the States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States. 31 CFR 1010.100(hhh).

law enforcement and national security authorities. In proposing to lower the current threshold under the Recordkeeping and Travel Rules, the Agencies have specifically considered Suspicious Activity Reports (''SARs'') filed by money transmitters, which indicate that a substantial volume of potentially illicit funds transfers and transmittals of funds occur below the $3,000 threshold; evidence used in recent criminal prosecutions; and the views of law enforcement partners and the Financial Action Task Force (''FATF'') [14] on the utility of mandating information collection for smaller-value wire transfers.

First, FinCEN analyzed data derived from approximately 2,000 SARs filed by money transmitters between 2016 and 2019 related to potential terrorist financing-related transmittals of funds.[15] These SARs referenced approximately 1.29 million underlying transmittals of funds, approximately 99 percent of which began or ended outside the United States (only approximately 17,000 of the approximately 1.29 million transactions included within its terrorist-financing analysis dataset involved domestic-only transactions). The mean and median dollar-value of transmittals of funds mentioned in those SARs were approximately $509 and $255, respectively. Approximately 71 percent of those 1.29 million transmittals (more than 916,000) were at or below $500, totaling more than $179 million. Approximately 57 percent of those transmittals (more than 728,000) were at or below $300, totaling more than $103 million. As noted in the 2015 National Terrorism Finance Risk Assessment, terrorist financiers and facilitators are creative and will seek to exploit vulnerabilities in the financial system to further their unlawful aims, including, as the above analysis indicates, through the use of low-dollar transactions.[16]

FinCEN also reviewed a separate subset of 363 SARs filed by a money transmitter for the period between 2012 and 2018 that FinCEN determined to be potentially related to fentanyl trafficking.[17] These SARs referenced approximately 78,000 transmittals of funds, over 82% of which began or ended outside the United States. The mean and median dollar-value of transmittals of funds mentioned in these SARs were approximately $588 and $283, respectively. Approximately 67 percent of those 78,000 transmittals (more than 52,000) were at or below $500, totaling more than $10 million. Approximately 52 percent of those transmittals (more than 40,000) were at or below $300, totaling more than $5.7 million.

In the 1995 rulemaking implementing the Travel Rule, the Treasury noted that it would monitor the effectiveness of financial institutions' suspicious transaction reporting protocols to determine whether potentially illicit transactions below the $3,000 threshold were being reported (and thus whether it might be unnecessary, from a law enforcement perspective, to lower the threshold).[18] FinCEN has been able to analyze some records of transmittals of funds below $3,000, as noted above, because money transmitters have retained records for those transmittals of funds after recognizing the underlying activity as suspicious. However, the Agencies believe that lowering the threshold to capture smaller-value cross-border funds transfers and transmittals of funds would be valuable for law enforcement and national security authorities, despite financial institutions' suspicious activity reporting programs, because some financial institutions may not recognize or retain records for all suspicious activity below the $3,000 threshold or the suspicious pattern may not become clear until the records are aggregated. This could inhibit law enforcement from promptly investigating and mapping illicit networks.

Second, recent prosecutions show that individuals are sending and receiving funds to finance terrorist activity in amounts below (and in some cases, well below) the current $3,000 recordkeeping threshold. Those cases involved persons providing material support for terrorist activity to a designated Foreign Terrorist Organization (''FTO''). In one such case, during 2013, the defendant allegedly sent $1,500 to a co-defendant's financial account within the United States; the co-defendant was collecting money from his co-conspirators in support of an FTO fighter in Syria, ultimately transmitting those funds through money remitting businesses and intermediaries overseas.[19] In another case, a man was prosecuted for meeting with an FTO recruiter in 2015, wiring funds in the amount of $250 to an FTO, and attempting to leave the United States with the intent of joining the FTO in Libya.[20] Another example of small dollar funds transfers made in support of terrorism involved an individual in the United States who received several cash transfers in 2015 from FTO affiliates, totaling about $8,700 and sent primarily in sums of less than $3,000.[21] One such transfer in 2016 was from a person located in Egypt, in the amount of $1,000, and sent through a U.S. money transmitter.[22] The subject later admitted to law enforcement that the money was to be used to finance a terrorist attack in the United States, and the subject was subsequently convicted of providing material support to an FTO.[23]

Third, the Money Laundering and Asset Recovery Section (''MLARS'') of the Criminal Division of the Department of Justice (''DOJ'') has advised the Agencies that it supports lowering the dollar threshold for the Recordkeeping and Travel Rules. In 2006, MLARS (previously known as the Asset Forfeiture and Money Laundering Section) submitted a public comment to the Agencies in response to an Advance Notice of Proposed Rulemaking (''2006 ANPRM'') in which the Agencies sought comments on lowering the thresholds of the Recordkeeping and Travel Rules.[24] MLARS's public comment included a

[14] The FATF is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system.

[15] FinCEN determined that these SARs were potentially related to terrorist financing based on the application of certain search terms and analytic methods developed by FinCEN. FinCEN shared its analysis with law enforcement. FinCEN is aware, based on feedback from domestic and foreign law enforcement partners, that those partners have used information contained in terrorism-related SARs in their investigations.

[16] *See* Dep't of the Treasury, 2015 National Terrorism Finance Risk Assessment, at 2 (June 2015), *https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Terrorist%20Financing%20Risk%20Assessment%20-%2006-12-2015.pdf.*

[17] FinCEN determined that these SARs were potentially related to fentanyl trafficking based on the application of certain search terms and analytic methods developed by FinCEN, including through FinCEN's work with law enforcement. FinCEN shared its analysis with law enforcement.

[18] 60 FR 234, 236 (Jan. 3, 1995).

[19] *See United States* v. *Harcevic,* 2015 WL 1821509, at *1 (E.D. Mo. Apr. 21, 2015); *United States* v. *Hodzic,* 2016 WL 11578530, at *1 (E.D. Mo. Aug. 22, 2016), *report and recommendation adopted,* 355 F. Supp. 3d 825 (E.D. Mo. 2019); *see also* Press Release, Department of Justice, ''Missouri Man Pleads Guilty to Providing Material Support to Terrorists,'' 2019 WL 1472565 (Apr. 3, 2019).

[20] *See* Press Release, Department of Justice, ''Columbus Man Sentenced to 80 Months in Prison for Attempting to Provide Material Support to ISIS'' (July 6, 2019), *https://www.justice.gov/usao-sdoh/pr/columbus-man-sentenced-80-months-prison-attempting-provide-material-support-isis; see also United States* v *Daniels,* 2:2016–cr–222 (ECF No. 7 at 2) (filed Nov. 10, 2016).

[21] *See United States* v. *Elshinawy,* No. CR ELH–16–009, 2018 WL 1521876, at *17–18 (D. Md. Mar. 28, 2018), *aff'd,* 781 F. App'x 168 (4th Cir. 2019).

[22] *Id.* at *17.

[23] *Id.* at *8.

[24] 71 FR 119 (June 21, 2006).

synthesis of comments from agents and prosecutors at several federal law enforcement agencies who use this information, including the Federal Bureau of Investigation (''FBI''), the United States Drug Enforcement Administration (''DEA''), the Internal Revenue Service (''IRS''), the United States Secret Service (''USSS''), and U.S. Immigration and Customs Enforcement. While not the official comment of each such agency, the agents and prosecutors specializing in money laundering cases and who routinely use wire transfer information supported lowering or eliminating altogether the reporting threshold to disrupt illegal activity and increase its cost to the perpetrators. At the same time, MLARS identified two potential concerns—first, that some criminals would structure transactions to evade the lower threshold, and second, if such structuring occurred, those smaller dollar transactions would be difficult to distinguish from legitimate wire transfers. Ultimately, in spite of these concerns, MLARS supported a lower, uniform recordkeeping threshold.

More recently, MLARS has advised the Agencies that it continues to support lowering the threshold, particularly if doing so would bring the Recordkeeping Rule and Travel Rule in line with international standards (which are further described immediately below). MLARS indicated that its views apply equally to funds transfers by banks and transmittals of funds by nonbank financial institutions. The DEA, the IRS, and the USSS have similarly expressed support for lowering the reporting threshold for purposes of the Recordkeeping Rule and Travel Rule.

Finally, the FATF has indicated that records of smaller-value transactions are valuable to law enforcement, particularly with respect to terrorist financing investigations.[25] The FATF recommends that ''basic information'' concerning the originator and beneficiary of wire transfers be immediately available to appropriate government authorities, including law enforcement and financial intelligence units, as well as to financial institutions participating in the transaction.[26] For cross-border wire transfers, the FATF recommends that countries provide for the collection and transmission throughout the payment chain of the originator's name, account number, and address, and the name of the beneficiary and their account number.[27] The FATF further states that countries may adopt a *de minimis* threshold of no higher than USD/EUR 1,000 for cross-border wire transfers, below which the name and account numbers of the originator and beneficiary should be collected and transmitted but need not be verified for accuracy unless there is a suspicion of money laundering or terrorist financing.[28] The FATF recommends that countries minimize this and other thresholds to the extent practicable, after taking into account the risk of ''driving transactions underground'' and the ''importance of financial inclusion.'' [29] The 1,000 USD/EUR *de minimis* cross-border threshold specified in the FATF Recommendations has been adopted by the European Union and by the vast majority of jurisdictions around the world.

Accordingly, the Agencies believe that mandating the collection, retention, and transmission of information for funds transfers and transmittals of funds of at least $250 that originate or terminate outside the United States would likely lead to the preservation of information that would benefit law enforcement and national security investigations. Given the usefulness of this information and the potential that financial institutions may not correctly identify a transaction as suspicious, as noted previously, the Agencies believe that it is appropriate to propose lowering the threshold of the Recordkeeping Rule, and FinCEN concludes that it is appropriate to propose lowering the threshold of the Travel Rule, even though financial institutions are subject to SAR reporting requirements through which they may report certain of these smaller-value transactions that fall below the current threshold.

B. Effect on Financial Institutions and the Payments System

The Agencies believe that the effect of lowering the $3,000 threshold on financial institutions and on the cost and efficiency of the payments system is likely to be low. As demonstrated by the SARs described in the preceding section, some financial institutions are already collecting information on at least a portion of transactions taking place under the current threshold for purposes of reporting suspicious transactions to FinCEN. FinCEN is also aware that some financial institutions already collect information on the originator and beneficiary for transmittals below the $3,000 threshold for reasons separate from reporting suspicious transactions to FinCEN, for instance because it is cost-effective to maintain a single set of processes for all transactions..

The Agencies note that in completing the 1995 rulemakings implementing the Recordkeeping and Travel Rules, and in obtaining comments from the industry in connection with the 2006 ANPRM, some financial institutions advised that they were already collecting information for smaller-value transmittals and that mandating recordkeeping requirements for such transactions would not have a material impact on the payment system. At the same time, other financial institutions expressed concern that imposing information collection requirements (especially for smaller-value transmittals) could increase regulatory compliance costs by mandating the use of new technologies and processes to collect the information, and that these costs could be passed on to consumers.

In deciding on a threshold of $3,000 in 1995, the Agencies balanced the value of data on funds transfers and transmittals of funds with the burden that the Recordkeeping Rule and Travel Rule imposed on both bank and nonbank financial institutions. The Agencies are proposing to lower the threshold because the current threshold may no longer represent the appropriate balance for transmittals originating or terminating outside the United States. As noted in the 2006 ANPRM, subsequent to 1995, the responsibilities of financial institutions under the BSA have expanded. For example, an MSB must now report suspicious transactions [30] and implement anti-money laundering programs for ensuring compliance with the BSA.[31] MSBs may collect and retain information on transmittals of funds as a means of ensuring compliance with the requirement to report suspicious transactions. The requirement for MSBs to report suspicious transactions likely means that reducing or eliminating the threshold for transmittals would impose less of an incremental cost. Further, the

[25] *See* Recommendation 16 and Interpretive Note to FATF Recommendation 16, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation—The FATF Recommendations, at 15–16, 73–77 (June 2019), *available at www.fatf-gafi.org/recommendations.html*).

[26] *See id.* at 73 (Interpretive Note to FATF Recommendation 16).

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See* 31 CFR 1022.320(a)–(f). The requirement applies to transactions occurring after December 31, 2001. The threshold for the requirement to report suspicious transactions is $2,000.

[31] *See* 31 CFR 1022.210(a)–(e). An MSB must implement the program on or before the later of July 24, 2002 and the end of the 90-day period beginning on the day following the date the business is established.

Agencies note that technology has advanced significantly since the issuance of the 2006 ANPRM. Among other things, data storage costs have gone down, and accordingly it is likely that financial institutions generally use less expensive or more efficient means of electronic storage and retrieval. The Agencies believe there has been an increase in the ability of small institutions to rely on third-party vendors to reduce their costs of handling compliance with a revised threshold.

III. Application of the Recordkeeping and Travel Rules to CVC and Digital Assets That Have Legal Tender Status

A. The Meaning of ''Money'' as Applicable to the Recordkeeping and Travel Rules

The Recordkeeping Rule applies to funds transfers (*i.e.,* transactions involving banks) and transmittals of funds (*i.e.,* transactions involving nonbank financial institutions). The term ''funds transfer'' is defined, as in Article 4A of the Uniform Commercial Code (''UCC''), to include ''[t]he series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order.'' [32] The Recordkeeping Rule in turn defines ''payment order'' similarly to the UCC Article 4A definition, stating that a payment order is ''[a]n instruction of a sender to a receiving bank . . . to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of *money* to a beneficiary.'' [33] (Emphasis added.)

The Recordkeeping Rule's definition of ''transmittal of funds'' parallels the UCC Article 4A definition of ''funds transfer,'' with minor adjustments that allow the definition to apply to nonbank financial institutions. Specifically, the Recordkeeping Rule defines transmittal of funds as ''[a] series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient. . . .'' [34] The Recordkeeping Rule's definition of ''transmittal order'' in turn parallels the UCC Article 4A definition of payment order, stating that ''[t]he term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution . . . to pay, a fixed or determinable amount of *money* to a recipient . . . .'' [35] (Emphasis added.)

Accordingly, funds transfers and transmittals of funds involve an instruction to pay a ''fixed or determinable amount of money.'' The Recordkeeping Rule does not explicitly define the word ''money.'' However, in the preamble to the **Federal Register** document adopting the Recordkeeping Rule, the Agencies explained that ''terms . . . that are not defined specifically in the regulation, but are defined in relevant provisions of the UCC, will have the meaning given them in the UCC, unless otherwise indicated.'' [36] Under the UCC, the term ''money'' is defined as ''a medium of exchange currently authorized or adopted by a domestic or foreign government.'' [37]

In guidance issued in November 2010, FinCEN similarly explained that the Travel Rule ''uses terms that are intended to parallel those used in UCC Article 4A, but that are applicable to all financial institutions, as defined within the Bank Secrecy Act's implementing regulations.'' Similar to the Recordkeeping Rule, FinCEN's implementing regulations explain that a transmittal order ''includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient[.]'' [38]

B. FinCEN's Prior Guidance on CVC, and This Proposed Rule's Further Clarification of the Definition of ''Money'' as Applicable to the Recordkeeping and Travel Rules

Since the Agencies issued the Recordkeeping Rule, and FinCEN issued the Travel Rule, a number of CVCs, such as Bitcoin and Ethereum, have been created. CVC is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. Generally, CVCs can be exchanged instantaneously anywhere in the world through peer-to-peer payment systems (a distributed ledger) that allow any two parties to transact directly with each other without the need for an intermediary financial institution. However, in practice, many persons hold and transmit CVC using a third-party financial institution such as a ''hosted wallet'' or an exchange.

Public use of CVCs has grown significantly in recent years. Estimated transactions in Bitcoin alone were approximately $366 billion dollars in 2019 and $312 billion through in 2020 through August.[39] Furthermore, the market capitalization of Bitcoin alone was approximately $216 billion as of August 2020.[40]

The Treasury, including FinCEN, has closely monitored illicit finance risks posed by CVCs. The Agencies note that malign actors have used CVCs to facilitate international terrorist financing, weapons proliferation, sanctions evasion, and transnational money laundering, as well as to buy and sell controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals.[41] For example, North Korean cyber actors, such as the Lazarus Group, have continuously engaged in efforts to steal and extort CVC as a means of generating and laundering large amounts of revenue for the regime.[42]

To mitigate illicit finance risks posed by CVC, the FATF has advised that countries should consider so-called virtual assets as ''property,'' ''proceeds,''

[32] 31 CFR 1010.100(w); *see also* U.C.C. 4A–104(a).

[33] 31 CFR 1010.100(ll); *see also* U.C.C. 4A–103(a)(1).

[34] 31 CFR 1010.100(ddd).

[35] 31 CFR 1010.100(eee).

[36] 60 FR 220, 222 (Jan. 3, 1995).

[37] U.C.C. 1–201(b)(24) (2001); *see also* U.C.C. 4A–105(d) (2012) (stating that Article 1 general definitions are applicable throughout Article 4A).

[38] 31 CFR 1010.100(eee).

[39] Estimates based on data from blockchain.com, *https://www.blockchain.com/charts/estimated-transaction-volume-usd.*

[40] *See* Coingecko, Top 100 Coins by Market Capitalization, *https://www.coingecko.com/en.*

[41] *See, e.g., United States.* v. *Cazes,* No. 1:17CR–00144, Indictment ¶ 2 (E.D. Ca. filed June 1, 2017) (alleging that ''AlphaBay [was] a dark-web marketplace designed to enable users to buy and sell illegal goods, including controlled substances, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other computer hacking tools, firearms, and toxic chemicals . . . AlphaBay required its users to transact in digital currencies, including Bitcoin, Monero, and Ethereum.''); Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687;* Press Release, Dep't of Justice, ''Two Chinese Nationals Charged with Laundering Over $100 Million in Cryptocurrency from Exchange Hack'' at 1 (Mar. 2, 2020) (''North Korea continues to attack the growing worldwide ecosystem of virtual currency as a means to bypass the sanctions imposed on it by the United States and the United Nations Security Council.''), *https://www.justice.gov/opa/pr/two-chinese-nationals-charged-laundering-over-100-million-cryptocurrency-exchange-hack.* For vulnerabilities of digital assets to securities fraud, see SEC—Investor Alert: Ponzi Schemes Using Virtual Currencies, SEC Pub. No. 153 (7/13), *http://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf* (accessed June 23, 2020); CFTC—Investor Alert: Watch Out for Fraudulent Digital Asset and ''Crypto'' Trading websites, *https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/watch_out_for_digital_fraud.html* (accessed Aug. 28, 2020).

[42] Dep't of the Treasury Press Release—Remarks of Sigal Mandelker, Under Secretary for Terrorism and Financial Intelligence (May 13, 2019), *https://home.treasury.gov/news/press-releases/sm687.*

''funds,'' ''funds or other assets,'' or other ''corresponding value'' and, consequently, should apply relevant FATF anti-money laundering/counter-terrorist-financing measures to virtual assets.[43] Consistent with the FATF guidance, in May 2019, FinCEN issued guidance advising that CVC-based transfers effectuated by a nonbank financial institution may fall within the Recordkeeping and Travel Rules, on the grounds that such transfers involve the making of a ''transmittal order'' by the sender—*i.e.,* an instruction to pay ''a determinable amount of money to a recipient''—a criterion for application of the rules.[44] However, FinCEN understands that at least one industry group has asserted that the Recordkeeping and Travel Rules do not apply to transactions involving CVC, in part because the group asserts that CVC is not ''money'' as defined by the rules.

In addition to CVCs, foreign governments—including Iran, Venezuela, and Russia—have created or expressed interest in creating digital currencies that could be used to engage in sanctions evasion. For example, the Venezuelan government developed a state-backed digital currency called the ''petro,'' which the government publicly indicated was designed for the purpose of evading U.S sanctions.[45] The President subsequently issued Executive Order 13827, prohibiting any U.S. persons from involvement in the petro digital currency.

This proposed rule would define ''money'' in 31 CFR 1010.100(ll) and (eee) to make explicitly clear that both payment orders and transmittal orders include any instruction by the sender to transmit CVC or any digital asset having legal tender status to a recipient.[46] The proposed rule would therefore supersede the UCC's definition of ''money'' for purposes of the Recordkeeping and Travel Rules. The Agencies believe this action is appropriate to provide clarity concerning the application of the Recordkeeping and Travel Rules.

FinCEN is aware that the CVC industry is working on developing systems and processes to achieve full compliance with the Travel Rule as applied to virtual currency transactions as a result of the distinctive characteristics of CVCs. The Agencies welcome comment on these efforts and any costs related thereto.

IV. Section-by-Section Analysis

A. Recordkeeping Rule and Travel Rule Thresholds

This proposed rule would lower the Recordkeeping Rule and Travel Rule thresholds set forth in 31 CFR 1020.410 and 31 CFR 1010.410(e) and (f) for financial institutions. The thresholds would be lowered from $3,000 to $250, but only with respect to funds transfers and transmittals of funds that begin or end outside the United States. As set forth in the proposed revised sections below, a funds transfer or transmittal of funds would be considered to begin or end outside the United States if the financial institution knows or has reason to know that the transmittor, transmittor's financial institution, recipient, or recipient's financial institution is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States.

For this purpose, a financial institution would have ''reason to know'' that a transaction begins or ends outside the United States only to the extent such information could be determined based on the information the financial institution receives in the transmittal order, collects from the transmittor to effectuate the transmittal of funds, or otherwise collects from the transmittor or recipient to comply with regulations implementing the BSA.

Financial institutions are already required to retain the address of the transmittor and recipient under the Recordkeeping Rule for transactions subject to the current threshold, and may, as a matter of their own business practices, retain the addresses of other participants in a funds transfer or transmittal of funds. This proposed rule would not impose any new requirements to retain address information, other than those resulting from a change to the applicable thresholds.

B. Definition of ''Money''

This proposed rule also would revise the definitions of payment order and transmittal order set forth in the BSA regulations so that the Recordkeeping Rule and Travel Rule would explicitly apply to domestic and cross-border transactions in CVC and digital assets having legal tender status.

Both the Recordkeeping Rule and Travel Rule refer to a ''payment order'' (in the case of banks) and a ''transmittal order'' (in the case of financial institutions other than banks). These terms, in turn, use the term ''money.'' This proposed rule would clarify the meaning of money in 31 CFR 1010.100(ll) (payment order) and 1010.100(eee) (transmittal order), explaining that money includes (1) a medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction[47] and (2) CVC. The proposed rule would define CVC as a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.[48]

V. Request for Comment

The Agencies welcome comment on all aspects of this proposed rule. The Agencies encourage all interested parties to provide their views.

With respect to the effect of lowering the threshold for the requirement in 31 CFR 1020.410 and 31 CFR 1010.410(e) and (f) to collect, retain, and transmit information on funds transfers and transmittals of funds that begin or end outside the United States, the Agencies in particular request comment on the following questions from financial institutions and members of the public:

(1) To what extent would the proposed rule impose a burden on financial institutions, including with respect to information technology implementation costs? To what extent would the burden be different for thresholds such as $0, $500, or $1,000 for funds transfers and transmittals of funds that begin or end outside the United States? What would be the

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[43] Interpretive Note to FATF Recommendation 15 at 70.

[44] FinCEN Guidance—Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies at 11–12 (May 9, 2019); *see also* 31 CFR 1010.100(eee) (defining transmittal order) *and* 31 CFR 1010.410(e) and (f).

[45] E.O. 13827, Taking Additional Steps to Address the Situation in Venezuela, (March 19, 2018); see also FinCEN Advisory—Updated Advisory on Widespread Public Corruption in Venezuela at 11 (May 3, 2019), *https://www.fincen.gov/sites/default/files/advisory/2019-05-03/Venezuela%20Advisory%20FINAL%20508.pdf.*

[46] The regulatory definitions of ''money'' and ''convertible virtual currency'' that this rulemaking proposes to add to the definitions of ''payment order'' and ''transmittal order'' at 31 CFR 1010.100(ll) and (eee) are specific to those provisions and not intended to have any impact on, inter alia, the definition of ''currency'' in 31 CFR 1010.100(m). Furthermore, nothing in this document shall constitute a determination that any asset that is within the regulatory definitions of ''money'' or ''convertible virtual currency'' that this rulemaking proposes to add to the definitions of ''payment order'' and ''transmittal order'' is currency for the purposes of the federal securities laws, 15 U.S.C. 78c(47), or the federal derivatives laws, 7 U.S.C. 1–26, and the regulations promulgated thereunder.

[47] ''Money'' would also include a monetary unit of account established by an intragovernmental organization or by agreement between two or more countries.

[48] CVC is therefore a type of ''value that substitutes for currency.'' *See* 31 CFR 1010.100(ff)(5)(i)(A).

impact on the burden if the proposed threshold change were extended to all transactions, including domestic transactions?

(2) To what extent would the burden of the proposed rule on financial institutions and the public be mitigated were the Agencies to select a threshold of $250 but not require nonbank financial institutions to collect a social security number or employer identification number (''EIN'') for non-established customers engaging in transmittals of funds between $250 and $3,000 that begin or end outside the United States?

(3) To what extent would the burden of the proposed rule be reduced if the Agencies issued specific guidance about appropriate forms of identification to be used in conjunction with identity verification, including in regards to whether there are circumstances in which verification may be done remotely and what documents are acceptable as proof?

(4) To what extent would the burden of the proposed rule on financial institutions and the public be mitigated if the Agencies were to include in the regulation the standard described in Section IV.A for determining when an institution would be subject to the $250 threshold for cross-border transfers, *i.e.,* that ''reason to know'' that a transaction begins or ends outside the United States exists when such information could be determined based on the information the financial institution receives in the transmittal order, collects from the transmittor to effectuate the transmittal of funds, or otherwise collects from the transmittor or recipient to comply with regulations implementing the BSA?

The Agencies request comment from law enforcement with respect to the following related questions:

(1) To what extent would the proposed rule benefit law enforcement? To what extent would these benefits be different for thresholds such as $0, $500, or $1,000 for funds transfers and transmittals of funds that begin or end outside the United States? What would be the impact on the benefits to law enforcement if the proposed threshold change were extended to all transactions, including domestic transactions?

(2) To what extent would the benefit of the proposed rule to law enforcement be compromised were the Agencies to select a threshold of $250 but not require that nonbank financial institutions collect a social security number or EIN for non-established nonbank customers engaging in transmittals of funds between $250 and $3,000 that begin or end outside the United States?

With respect to the effect of clarifying the meaning of ''money'' in the definitions of ''payment order'' and ''transmittal order'' in 31 CFR 1010.100, the Agencies in particular request comment on the following questions from law enforcement, financial institutions, and members of the public:

(1) Describe the additional costs, if any, from complying with the Recordkeeping Rule and Travel Rule in light of the clarification included in the proposed rule, including with respect to information technology costs.

(2) What mechanisms have persons that engage in CVC transactions developed to comply with the Recordkeeping Rule and Travel Rule and what is the impact of adopting these solutions on the CVC industry, including on other BSA compliance efforts?

VI. Regulatory Analysis

A. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and 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. This proposed rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (''OMB'').

FinCEN believes the primary cost of complying with the proposed rule is captured in its Paperwork Reduction Act (44 U.S.C. 3507(d)) (''PRA'') burden estimates described in detail below, which amount to 3,315,844 hours. FinCEN estimated in its recent OMB control number renewal for SAR requirements that the average labor cost of storing SARs and supporting documentation, weighed against the relevant labor required, was $24 per hour.[49] FinCEN assesses that this is a reasonable estimate for the labor cost of the requirements imposed by this rule. Therefore a reasonable minimum estimate for the burden of administering the proposed rule is approximately $79.58 million annually (3,315,844 hours multiplied by $24 per hour). However, the PRA burden does not include certain costs, such as information technology implementation costs solely resulting from the need to comply with this proposed rule. FinCEN specifically requests comment regarding the costs associated with implementing these requirements.

The benefits from the proposed rule include enhanced law enforcement ability to investigate, prosecute and disrupt the financing of international terrorism and other priority transnational security threats, as well as other types of transnational financial crime. The cost of terrorist attacks can be immense. For instance, one public report estimated the cost of terrorism globally at $33 billion in 2018, though this cost was primarily borne outside the United States.[50] The cost of a major terrorist attack, such as the September 11 attacks, can reach tens of billions of dollars.[51] Of course, it is difficult to quantify the contribution of a particular rule to a reduction in the risk of a terrorist attack. However, even if the proposed rule produced very small reductions in the probability of a major terrorist attack, the benefits would exceed the costs. For instance, if the proposed rule reduced by 0.26 percent the annual probability of a major terrorist attack with an economic impact of $30 billion, the benefits would be greater than the PRA burden costs described above.

Of course, the proposed rule would not simply reduce the probability of terrorism but also would contribute to the ability of law enforcement to investigate a wide array of other priority transnational threats and financial crimes, including proliferation financing, sanctions evasion, and money laundering.

FinCEN considered several alternatives to the proposed rule. First, FinCEN considered the possibility of modifying the proposed rule by applying the FATF's suggested *de minimis* threshold of $1,000 to transactions that begin or end outside the United States. However, this threshold would exclude over 88 percent of the transactions in FinCEN's

[49] 85 FR 31598, at 31604 and 31607 (May 26, 2020).

[50] *See* Institute for Econoimcs and Peace, Global Terrorsim Index, 2019 (Nov. 2019), *http://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf.*

[51] For example, the New York Comptroller estimated in 2002 that the direct physical and human cost of the September 11 attacks on New York was over $30.5 billion. *See* City of New York Comptroller, One Year Later: The Fiscal Impact of 9/11 on New York City (Sept. 4, 2002), *https://comptroller.nyc.gov/wp-content/uploads/documents/impact-9-11-year-later.pdf.*

dataset of transactions potentially linked to terrorism. Given the intended goal of the proposed rule to increase the availability of information to address priority transnational threats, including terrorism, FinCEN believes a lower threshold would be appropriate.

Second, FinCEN considered the possibility of implementing the proposed rule with a threshold of $0 for transactions beginning or ending outside of the United States. FinCEN's terrorism-related transaction analysis suggests that transactions potentially related to terrorism occur at values below the $250 level. Although FinCEN believes that a $0 threshold would lead to enhanced benefits in terms of capturing a larger universe of transactions, requiring collection and verification of transaction information for low-value transactions could impose a substantial burden on small financial institutions, such as small money services businesses. Nonetheless, FinCEN will carefully consider comments to determine whether a $0 threshold would be appropriate in a final rule. FinCEN will also consider in a final rule the extent to which the burden could be minimized by providing guidance on appropriate verification procedures for lower-value transactions.

Third, FinCEN considered applying the requirements of the proposed rule to all transactions, including those that begin and end within the United States. However, FinCEN's analysis identified that only approximately 17,000 of the approximately 1.29 million transactions included within its terrorism analysis dataset involved domestic-only transactions. Applying the requirements to all domestic transactions would therefore capture a relatively small number of additional transactions while resulting in significant additional recordkeeping burden for financial institutions. FinCEN believes that, at this time, it would therefore be appropriate to limit the proposed rule to transactions that begin or end outside the United States. Again, based on comments received, FinCEN will consider in a final rule the extent to which the benefits of extending the scope of the changes to the thresholds of the Recordkeeping Rule and Travel Rule to include domestic transactions would exceed the burdens.

With respect to the clarification of the definition of ''money,'' FinCEN considered the alternative of leaving the regulation as it was, but believed doing so would perpetuate uncertainty about the applicability of the Recordkeeping and Travel Rules to transactions involving CVC.

FinCEN requests comment on the benefits, and any estimates of costs, associated with the requirements of the proposed rule and the proposed alternatives.

Executive Order 13771 requires an agency to identify at least two existing regulations to be repealed whenever it publicly proposes for notice and comment or otherwise promulgates a new regulation. As described above, the proposed amendments to the Recordkeeping Rule and Travel Rule involve a national security function. Therefore, Executive Order 13771 does not apply.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant impact on a substantial number of small entities. This proposed regulation on its face would apply to all financial institutions. However, because of the nature of the requirements contained therein, only banks (including credit unions), money transmitters, and other MSBs would be impacted. Although the Agencies believe that the proposed regulatory changes would affect a substantial number of small entities, the Agencies also believe these changes would be unlikely to have a significant economic impact on such entities. The Agencies, however, recognize the limitations in readily available data about potential costs and benefits and have prepared an initial regulatory flexibility analysis pursuant to the RFA. The Agencies welcome comments on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the comment period.

i. Statement of the Need for, and Objectives of, the Proposed Regulation

The proposed changes to the Recordkeeping Rule and Travel Rule would reduce from $3,000 to $250 the threshold for the requirement to collect, retain, and transmit information on funds transfers and transmittal of funds for transactions that begin or end outside the United States. These changes are necessary because funds transfers and transmittals of funds related to terrorist financing, narcotics trafficking, and other crimes are occurring well below the current $3,000 threshold. It therefore would benefit law enforcement for this additional information to be collected, retained, and transmitted by financial institutions.

The clarifications regarding the meaning of ''money'' in the definitions of ''payment order'' and ''transmittal order'' in 31 CFR 1010.100 address urgent concerns regarding illicit finance, including the financing of international terrorism, sanctions evasion, and weapons proliferation through CVC. In the absence of clarification, some entities may not be aware of or may choose not to comply with the Recordkeeping Rule and the Travel Rule when engaging in transactions involving CVC. The Agencies are also clarifying that ''money'' includes digital assets with legal tender status.

ii. Small Entities Affected by the Proposed Regulation

The proposed changes to the Recordkeeping Rule and Travel Rule would apply to all financial institutions regulated under the BSA.[52] However, as a practical matter, because the requirements of this proposed rule are only triggered by funds transfers and transmittals of funds, the proposal would impact mostly banks and money transmitters. As described in the PRA section that follows, based upon current data there are 5,306 banks, 5,236 credit unions, and 12,692 money transmitters that would be impacted by the proposed rule changes. Based upon current data, for the purposes of the RFA, there are at least 3,817 small Federally-regulated banks and 4,681 small credit unions.[53] The Agencies believe that most money transmitters are small entities.[54] Because the proposed rule would apply to all of these small financial

[52] 31 CFR 1010.400 notes that ''[e]ach financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional recordkeeping requirements. Unless otherwise indicated, the recordkeeping requirements contained in this subpart D apply to all financial institutions.'' *See* 31 CFR 1020.410 (banks), 31 CFR 1022.410 (dealers in foreign exchange), 31 CFR 1022.400 (MSBs), 31 CFR 1023.410 (broker dealers in securities), 31 CFR 1024.410 (mutual funds), 31 CFR 1025.410 (insurance), 31 CFR 1026.410 (futures commission merchants and introducing brokers in commodities), 31 CFR 1027.410 (dealers in precious metals, precious stones, or jewels), 31 CFR 1028.410 (operators of credit card systems), 31 CFR 1029.400 (loan or finance companies), and 31 CFR 1030.400 (housing government sponsored entities).

[53] The Small Business Administration (''SBA'') defines a depository institution (including a credit union) as a small business if it has assets of $600 million or less. The information on small banks is published by the Federal Deposit Insurance Corporation (''FDIC'') and was current as of March 31, 2020.

[54] The SBA defines an entity engaged in ''Financial Transactions Processing, Reserve, and Clearinghouse Activities'' to be small if it has assets of $41.5 million or less. FinCEN assesses that money transmitters most closely align with this SBA category of entities.

institutions, the Agencies conclude that this proposed rule would apply to a substantial number of small entities.

Although the proposed changes would apply to a substantial number of small entities, the Agencies believe that the changes would not have a significant economic impact on such entities for the reasons noted below. In the first year, the Agencies expect additional expense of time and resources to read and understand the regulations and train staff and implement technological changes.

In 2006, the Agencies solicited public comment on the potential benefits and burdens of reducing the threshold for the Recordkeeping Rule and Travel Rule requirements.[55] Based on the comments received at that time, it appears that almost all banks, regardless of size, maintain records of all funds transfers and transmittals of funds regardless of the dollar amount, including those transfers/transmittals below the $3,000 regulatory threshold. Similarly, in 2006, many money transmitters indicated that they maintained records of transfers/transmittals at approximately the $1,000 level. Since 2006 there have been significant advances in technology, likely allowing small entities to comply with regulatory recordkeeping requirements at a lower cost.

As noted previously, in May 2019, FinCEN issued guidance advising that CVC-based transfers effectuated by a nonbank financial institution may fall within the Recordkeeping and Travel Rules, on the grounds that such transfers involve the making of a ''transmittal order'' by the sender—*i.e.,* an instruction to pay ''a determinable amount of money to a recipient''—a criterion for application of the rules.[56] Therefore, the proposed rule would codify FinCEN's existing expectation. In addition, FATF's international standards now call for jurisdictions to apply their rules equivalent to the Recordkeeping and Travel Rule to virtual assets.[57] Therefore, U.S. financial institutions engaged in CVC transactions with an international nexus would likely need to adopt such compliance measures regardless of the applicable U.S. rules, as other countries have aligned or are aligning their regulatory regimes with the FATF recommendations.

As described above, the proposed rule would also clarify the Agencies' existing interpretation that the Recordkeeping and Travel Rules apply to transactions involving a digital asset with legal tender status. The Agencies do not believe that any financial institutions currently facilitate transactions involving sovereign digital currencies.

iii. Compliance Requirements

Compliance costs for entities that would be affected by these regulations are generally, reporting, recordkeeping, and information technology implementation and maintenance costs. Data are not readily available to determine the costs specific to small entities and the Agencies invite comments about compliance costs, especially those affecting small entities.

These proposed changes (a) reduce the threshold for the Recordkeeping and Travel Rule requirements to collect, retain, and transmit information on funds transfers and transmittals of funds for transactions that begin or end outside the United States; and (b) clarify the application of the Recordkeeping and Travel Rule requirements to transactions involving CVC or digital assets with legal tender status. Banks and other financial institutions therefore would need to collect and retain the following information on funds transfers and transmittals of funds in amounts at or above the applicable threshold, including with respect to transactions involving CVC or digital assets with legal tender status: The name and address of the originator or transmittor; the amount and date of the transaction; any payment instructions received; and the identity of the beneficiary's bank or recipient's financial institution. In addition, for transactions at or above the applicable threshold, including with respect to transactions involving CVC or digital assets with legal tender status, an originator's bank or transmittor's financial institution would be required to verify the identity of the person placing a payment or transmittal order if the order is made in person and the person placing the order is not an established customer. An intermediary bank or intermediary financial institution, and the beneficiary's bank or recipient's financial institution, also would be required to retain originals or copies of payment or transmittal orders.

For funds transfers and transmittals of funds at or above the applicable threshold, including with respect to transactions involving CVC or digital assets with legal tender status, the originator's bank or transmittor's financial institution also would be required to include information, including all information required under the Recordkeeping Rule, in a payment or transmittal order sent by the bank or nonbank financial institution to another bank or nonbank financial institution in the payment chain. An intermediary bank or financial institution would also be required to transmit information to other banks or nonbank financial institutions in the payment chain, to the extent the information is received by the intermediary bank or financial institution.

iv. Duplicative, Overlapping, or Conflicting Federal Rules

The Agencies are unaware of any Federal rules that duplicate, overlap with, or conflict with the proposed changes to the Recordkeeping and Travel Rules, except that some financial institutions may already collect some of the information required by the proposed modifications as part of their existing implementation of their risk-based AML programs under the BSA and its implementing regulations.

v. Significant Alternatives to the Proposed Regulations

The Agencies considered several alternatives to the proposed regulatory changes. First, the Agencies considered the possibility of modifying the proposed rule by applying the FATF's suggested *de minimis* threshold of $1,000 to transactions that begin or end outside the United States. However, this threshold would exclude an unacceptably large percentage of transactions. It is unclear what impact this alternative would have on small entities and it might not reduce the impact on affected small entities in a meaningful way.

Second, the Agencies considered the possibility of implementing the proposed rule with a threshold of $0 for transactions that begin or end outside of the United States. Although this would expand the data available to law enforcement, and the Agencies will carefully consider comments to determine whether a $0 threshold would be appropriate in a final rule, the Agencies believed that a $0 threshold might impose a significant burden on small financial institutions and therefore are not proposing a $0 threshold at this time.

Third, the Agencies considered exempting small banks from the lower threshold requirement entirely. However, the Agencies believe that the number of transactions beginning or ending outside the United States is relatively low for most small banks, which should substantially reduce the burden on them from the proposed change in the threshold.

[55] 71 FR 35564 (June 21, 2006).

[56] FinCEN Guidance—Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies at 11–12 (May 9, 2019); *see also* 31 CFR 1010.100(eee) (defining transmittal order) *and* 31 CFR 1010.410(e) and (f).

[57] Interpretive Note to FATF Recommendation 15.

Finally, the Agencies considered the possibility of waiving the requirement that financial institutions obtain a social security number or EIN for funds transfers or transmittals of funds below a certain threshold by non-established customers. Adopting this alternative would primarily impact MSBs, many of which are small and more likely to deal with non-established customers. The Agencies have not adopted this alternative at this time because it would increase the likelihood of criminals using false identities to transmit funds. Although the Agencies have not adopted this alternative at this time, this proposed rule requests comment on the benefits and drawbacks of waiving the requirement to obtain a social security number or EIN below some threshold.

The Agencies welcome comment on the overall regulatory flexibility analysis, especially information about compliance costs and alternatives.

C. Unfunded Mandates Act

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 the 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 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. See section VI.A for a discussion of the economic impact of this proposed rule.

D. Paperwork Reduction Act

The recordkeeping requirements contained in this proposed rule (31 CFR 1010.410 and 31 CFR 1020.410) have been submitted by FinCEN to OMB for review in accordance with the PRA. Written comments and recommendations for the proposed information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular document by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by November 27, 2020. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collections of information are presented to assist those persons wishing to comment on the information collections.

Currently, financial institutions must collect, retain, and transmit certain information as part of funds transfers or transmittals of funds involving $3,000 or more (31 CFR 1020.410(a) and 31 CFR 1010.410(e) and (f)). This proposed rule would modify the thresholds in the rules implementing the BSA requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The modifications would reduce the threshold from the current $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. The proposed rule likewise would modify the threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on funds transfers and transmittals of funds from $3,000 to $250 for funds transfers and transmittals of funds that begin or end outside the United States. The proposed rule would also clarify the meaning of ''money,'' making more clear the transactions in relation to which financial institutions must comply with the Recordkeeping Rule and the Travel Rule.

Since FinCEN has authority to implement the Recordkeeping Rule and Travel Rule with respect to all respondents, FinCEN will be responsible for the entire paperwork burden associated with this information collection.

i. Threshold Changes to the Recordkeeping and Travel Rules

This proposed rule would reduce from $3,000 to $250 the threshold for the requirement to collect, retain, and transmit information on funds transfers and transmittals of funds that begin or end outside the United States. This threshold change is necessary because funds transfers and transmittals of funds related to terrorist financing, drug trafficking, and other crimes often occur well below the current threshold. It therefore would benefit law enforcement for this additional financial information to be collected, retained, and transmitted by financial institutions.

1. 31 CFR 1010.410(e)

This proposed rule would reduce the threshold for the requirement to collect and retain information on transmittals of funds conducted by nonbank financial institutions that begin or end outside the United States.

Description of Recordkeepers: Financial institutions other than banks that conduct transmittals of funds in an amount between $250 and $3,000 that begin or end outside the United States. Although the proposed rule on its face would apply to all nonbank financial institutions, because of the nature of the requirements contained therein, mostly money transmitters and other MSBs that conduct transmittals of funds that begin or end outside the United States would be impacted.

Estimated Number of Recordkeepers: 12,692 money transmitters. As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours would vary depending on the number of transmittals of funds conducted by a nonbank financial institution between $250 and $3,000 that begin or end outside the United States. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of all transmittals of funds of $3,000 or more is 16 hours a year. FinCEN estimates that twice as many transmittals of funds conducted by nonbank financial institutions are between $250 and $3,000, and begin or end outside the United States, in comparison to all transmittals of funds over $3,000. For that reason, FinCEN estimates that the proposed rule would add an additional 32 hours of burden per recordkeeper a year.[58]

Estimated Total Additional Annual Burden Hours: 406,144 hours. (12,692 money transmitters multiplied by 32 hours).

2. 31 CFR 1010.410(f)

This proposed rule would reduce the threshold for the requirement to transmit information on funds transfers and transmittals of funds conducted by financial institutions acting as the transmitting financial institution or the intermediary financial institution in funds transfers and transmittals of funds that begin or end outside the United States.

Description of Recordkeepers: Financial institutions, including banks and credit unions, that are the transmitting or intermediary financial institution in a transmittal of funds in an amount between $250 and $3,000 that begin or end outside the United States. Although the proposed rule on its face would apply to all financial institutions, because of the nature of the requirements contained therein, only

[58] FinCEN estimates that the costs of the Recordkeeping Rule scale linearly with the number of transactions, though there may well be economies of scale that reduce the burden. This observation applies to the other burden estimates in this section as well.

banks, credit unions, money transmitters, and other MSBs that conduct transmittals of funds that begin or end outside the United States would be impacted.

Estimated Number of Recordkeepers: 23,234 financial institutions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.[59] As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of transmittals of funds conducted by banks, credit unions, and money transmitters between $250 and $3,000 that begin or end outside the United States. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to transmit information relating to all transmittals of funds of $3,000 or more is 12 hours a year. FinCEN estimates that twice as many transmittals of funds conducted by banks, credit unions, and money transmitters are between $250 and $3,000, and begin or end outside the United States, in comparison to all transmittals of funds over $3,000. For that reason, FinCEN estimates that the proposed rule would add an additional 24 hours of burden per recordkeeper a year.

Estimated Total Additional Annual Burden Hours: 557,616 hours. (23,234 financial institutions multiplied by 24 hours).

3. 31 CFR 1020.410

This proposed rule would reduce the threshold for the requirement to collect and retain information on funds transfers conducted by a bank acting as the transmitting, intermediary, or recipient bank when the funds transfer begins or ends outside the United States.

Description of Recordkeepers: Banks that are the originator's bank, the intermediary bank, or the beneficiary's bank with respect to funds transfers in an amount between $250 and $3,000 that begin or end outside the United States.

Estimated Number of Recordkeepers: 10,542 banks and credit unions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of funds transfers conducted by banks and credit unions between $250 and $3,000 that begin or end outside the United States. Under OMB control number 1506–0059, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of all funds transfers of $3,000 or more is 100 hours a year. FinCEN estimates that on average twice as many funds transfers conducted by banks and credit unions are between $250 and $3,000 and begin or end outside the United States, in comparison to all transmittals of funds over $3,000. For that reason, FinCEN estimates that the proposed rule would add an additional 200 hours of burden per recordkeeper a year.

Estimated Total Additional Annual Burden Hours: 2,108,400 hours. (10,542 banks and credit unions multiplied by 200 hours).

4. Total Burden Resulting From Threshold Changes to the Recordkeeping and Travel Rules

Total Estimated Annual Burden Increase Because of Threshold Reduction in the Recordkeeping and Travel Rules: 31 CFR 1010.410(e) [406,144 hours] + 31 CFR 1010.410(f) [557,616 hours] + 31 CFR 1020.410 [2,108,400 hours] = 3,072,160 hours.

ii. Clarification of the Meaning of ''Money'' in the Recordkeeping Rule and the Travel Rule

This proposed rule also would clarify the meaning of ''money'' as used in the Recordkeeping Rule and the Travel Rule. Specifically, the proposed rule would explicitly clarify that these rules apply to transactions involving (1) CVC, or (2) any digital asset having legal tender status. The clarification related to such transactions is necessary because many of these transactions present heightened terrorist financing, weapons proliferation, sanctions evasion, and money laundering risks due to their global nature, distributed structure, limited transparency, and speed. While these transactions pose some of the same risks as those made in traditional financial systems, in addition, a combination of features unique to CVC allows individual users to move value nearly instantaneously to anywhere in the world without ever having to pass through a regulated financial institution, thus increasing such risks. Although the clarification is consistent with FinCEN's interpretation of existing rules, the estimates below analyze the costs of compliance with this clarification against a baseline in which financial institutions are not complying with FinCEN's interpretation of the Recordkeeping Rule and Travel Rule for such transactions.

1. 31 CFR 1010.410(e)

This proposed rule would explicitly include within the requirement to collect and retain information on transmittals of funds conducted by nonbank financial institutions transactions involving (1) CVC, or (2) any digital asset having legal tender status.

Description of Recordkeepers: Financial institutions other than banks that conduct transmittals of funds involving CVCs or digital assets with legal tender status. Although the proposed rule on its face applies to all nonbank financial institutions, this provision would only impact money transmitters and other MSBs that conduct transmittals of funds involving CVC or digital assets with legal tender status.

Estimated Number of Recordkeepers: 530 money transmitters and other MSBs engaged in CVC transactions, which FinCEN assesses is a reasonable estimate of the number of MSBs engaging in transactions involving CVC. As of June 2020, there were 12,692 MSBs registered with FinCEN that indicated they were conducting money transmission. Of those 12,692 MSBs, FinCEN estimates that 530 engage in CVC transactions. The FinCEN MSB registration form does not require that companies disclose whether they engage in CVC transactions. This estimate is therefore based on adding the number of MSBs that indicated they engage in CVC transactions in an optional field on the MSB registration form, and the number that did not so indicate but which, based on FinCEN's research, FinCEN believes engage in CVC transactions. FinCEN does not believe that any nonbank financial institutions currently facilitate transactions involving sovereign digital currencies.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of transmittals of funds conducted by a nonbank financial institution engaged in CVC transactions. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of traditional transmittals of funds of

[59] According to the FDIC there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Board, there were 203 other entities supervised by the Board or other Federal regulators, as of June 16, 2020, that fall within the definition of bank. (20 Edge Act institutions, 15 agreement corporations, and 168 foreign banking organizations). According to the National Credit Union Administration, there were 5,236 federally regulated credit unions as of December 31, 2019.

$3,000 or more is 16 hours a year. Above, FinCEN estimated that the additional burden from complying with the $250 threshold imposed by the proposed rule is 32 hours, for a total burden of 48 hours. Because of the large volume of CVC transactions, FinCEN estimates that a nonbank financial institution engaged in CVC transactions conducts five times as many transmittals of funds in CVC in comparison to the number of non-CVC transactions that will be conducted by MSBs as a result of the threshold change. For that reason, FinCEN estimates that the proposed rule would add an additional 240 hours of burden per recordkeeper a year (five multiplied by the new baseline of 48 hours), although this is a conservative estimate because the recordkeeping is likely less costly for transactions involving CVCs since it is likely to be electronic and possible to automate.

Estimated Total Additional Annual Burden Hours: 127,200 hours. (530 money transmitters and other MSBs engaged in CVC transactions multiplied by 240 hours).

2. 31 CFR 1010.410(f)

This proposed rule would explicitly include within the requirement to transmit information on funds transfers and transmittals of funds conducted by financial institutions acting as the transmittor's financial institution or an intermediary financial institution, funds transfers and transmittals of funds transactions involving (1) CVC, or (2) any digital asset having legal tender status.

Description of Recordkeepers: Financial institutions, including banks, that are the transmittor's financial institution or an intermediary financial institution in a transmittal of funds involving CVCs or digital assets with legal tender status. Although the proposed rule on its face applies to all financial institutions, this provision would only impact financial institutions that conduct transmissions of funds involving such CVC. FinCEN does not believe that any financial institutions currently facilitate transactions involving sovereign digital currencies.

Estimated Number of Recordkeepers: 11,072 financial institutions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions. FinCEN assesses that all of these banks and credit unions engage in transactions involving CVCs. As assessed above, 530 MSBs engaged in CVC transactions and would be impacted by this rule (5,306 + 5,236 + 530 = 11,702).

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of transmittals of funds conducted by banks, credit unions, and MSBs involving CVCs below the applicable threshold. Under OMB control number 1506–0058, FinCEN estimates that the recordkeeping burden per recordkeeper to transmit information relating to traditional transmittals of funds of $3,000 or more is 12 hours a year. FinCEN assessed above that the imposition of the $250 threshold for transactions that begin or end outside the United States adds an additional 24 hours of burden per recordkeeper a year, for a total of 36 hours of burden per recordkeeper.

FinCEN understands that banks, including credit unions, currently engage in very few, if any, funds transfers involving CVCs. For that reason, FinCEN therefore estimates that the proposed rule would add only 1 additional hour of burden per bank recordkeeper a year.

Because of the large volume of CVC transactions, FinCEN estimates that the 530 MSBs will process five times the volume of transmittals of funds involving CVC in comparison to the number of non-CVC transactions that will be conducted by MSBs as a result of the change in the threshold. For that reason, FinCEN estimates that the proposed rule would add an additional 180 hours of burden per nonbank recordkeeper a year (five multiplied by the new baseline of 36 hours).

Estimated Total Additional Annual Burden Hours: 95,400 hours (530 money transmitters and other MSBs engaged in CVC transactions multiplied by 180 hours per recordkeeper) plus 10,542 hours (10,542 banks and credit unions multiplied by 1 hour per recordkeeper), for a total additional annual burden of 105,942 hours.

3. 31 CFR 1020.410

This proposed rule would explicitly include transactions involving CVC or digital assets with legal tender status within the requirement to collect and retain information on funds transfers conducted by banks acting as the originator's bank, intermediary bank, or beneficiary's bank.

Description of Recordkeepers: Banks that are the originator's bank, the intermediary bank, or the beneficiary's bank with respect to funds transfers involving CVC or digital assets with legal tender status.

Estimated Number of Recordkeepers: 10,542 banks and credit unions. FinCEN estimates that there are approximately 5,306 federally regulated banks and 5,236 federally regulated credit unions.

Estimated Average Annual Burden Hours per Recordkeeper: The estimated average burden hours will vary depending on the number of funds transfers involving CVC or digital assets with legal tender status conducted by banks and credit unions. Under OMB control number 1506–0059, FinCEN estimates that the recordkeeping burden per recordkeeper to maintain records of funds transfers of $3,000 or more is 100 hours a year. FinCEN understands that banks, including credit unions, currently engage in very few, if any, funds transfers involving CVC. FinCEN does not believe that any banks currently facilitate transactions involving sovereign digital currencies. For that reason, FinCEN therefore estimates that the proposed rule would add only 1 additional hour of burden per bank or credit union recordkeeper a year.

Estimated Total Additional Annual Burden Hours: 10,542 hours. (10,542 banks and credit unions multiplied by 1 hour).

4. Total Burden Resulting From Inclusion of CVC Transactions in the Recordkeeping and Travel Rules

Total Estimated Annual Burden Increase Because of Inclusion of CVC Transactions in the Recordkeeping and Travel Rules: 31 CFR 1010.410(e) [127,200 hours] + 31 CFR 1010.410(f) [105,942 hours] + 31 CFR 1020.410 [10,542 hours] = 243,684 hours.

iii. Total Annual Burden Hours Estimate as a Result of This Proposed Rule

3,072,160 hours (lower threshold) + 243,684 hours (CVC transactions) = 3,315,844 hours.

The current estimated total burden hours for OMB control number 1506–0058 is 2,150,200 hours. 31 CFR 1010.410(e) and (f) are both included in OMB control number 1506–0058. The total estimated increase in burden hours as a result of this proposed rulemaking for this control number is 1,196,902 hours. (533,344 hours (31 CFR 1010.410(e)) + 663,558 hours (31 CFR 1010.410(f)).[60] The new estimated total burden hours for OMB control number 1506–0058 would be 3,347,102 hours.

The current estimated total burden hours for OMB control number 1506–0059 is 2,290,000 hours. 31 CFR 1020.410 is included in OMB control number 1506–0059. The total estimated

[60] This estimated increase is further broken down as follows: 31 CFR 1010.410(e) (threshold changes 406,144 + CVC transactions 127,200 = 533,344), and 31 CFR 1010.410(f) (threshold changes 557,616 + CVC transactions 105,942 = 663,558).

increase in burden hours as a result of this proposed rulemaking for this control number is 2,118,942 hours. (2,108,400 threshold change + 10,542 CVC transactions). The new estimated total burden hours for OMB control number 1506–0059 would be 4,408,942 hours.

iv. Questions for Comment

In addition to the questions listed above, FinCEN specifically invites comment on: (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; (b) the accuracy of the estimated burden associated with the proposed collection of information; (c) how the quality, utility, and clarity of the information to be collected may be enhanced; and (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.

List of Subjects in 31 CFR Parts 1010 and 1020

Administrative practice and procedure, Banks, Banking, Currency, Foreign banking, Foreign currencies, Investigations, Penalties, Reporting and recordkeeping requirements, Terrorism.

For the reasons set forth in the preamble, Parts 1010 and 1020 of Chapter X of Title 31 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; Title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.100, revise paragraphs (ll) and (eee) to read as follows:

§ 1010.100 General definitions.

* * * * *

(ll) *Payment order.* (1) An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(2) For purposes of this paragraph (ll), money means:

(i) A medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction. The term includes a monetary unit of account established by an intragovernmental organization or by agreement between two or more countries; or

(ii) A convertible virtual currency.

(3) For purposes of this paragraph (ll), convertible virtual currency means a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.

* * * * *

(eee) *Transmittal order.* (1) The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(i) The instruction does not state a condition to payment to the recipient other than time of payment;

(ii) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(2) For purposes of this paragraph (eee), the term ''money'' means:

(i) A medium of exchange currently authorized or adopted by a domestic or foreign government, including any digital asset that has legal tender status in any jurisdiction. The term includes a monetary unit of account established by an intragovernmental organization or by agreement between two or more countries; or

(ii) A convertible virtual currency.

(3) For purposes of this paragraph (eee), convertible virtual currency means a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status.

* * * * *

■ 3. In § 1010.410, revise the introductory text of paragraphs (e) and (f) to read as follows:

§ 1010.410 Records to be made and retained by financial institutions.

* * * * *

(e) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of $3,000 or more. A financial institution other than a bank also is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of $250 or more that begins or ends outside the United States. For purposes of this paragraph (e), a transmittal of funds will be considered to begin or end outside the United States if a financial institution other than a bank knows or has reason to know that the transmittor, transmittor's financial institution, recipient, or recipient's financial institution is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States.

* * * * *

(f) Any transmittor's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of $3,000 or more, information as required in this paragraph (f). A financial institution also is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of $250 or more that begins or ends outside the United States. For purposes of this paragraph (f), a transmittal of funds will be considered to begin or end outside the United States if a financial institution knows or has reason to know that the transmittor, transmittor's financial institution, recipient, or recipient's financial institution is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States.

* * * * *

PART 1020—RULES FOR BANKS

■ 4. The authority citation for part 1020 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 5. In § 1020.410, revise the introductory text of paragraph (a) to read as follows:

§ 1020.410 Records to be made and retained by banks.

(a) Each agent, agency, branch, or office located within the United States of a bank is subject the requirements of this paragraph (a) with respect to a funds transfer in the amount of $3,000 or more. A bank also is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of $250 or more that begins or ends outside the United States. For purposes of this paragraph, a funds transfer will be considered to begin or end outside the United States if a bank knows or has reason to know that the originator, originator's bank, beneficiary, or beneficiary's bank is located in, is ordinarily resident in, or is organized under the laws of a jurisdiction other than the United States or a jurisdiction within the United States. For funds transfers subject to the requirements of this paragraph (a), each agent, agency, branch, or office located within the United States of a bank is required to retain either the original or a copy or reproduction of each of the following:

* * * * *

In concurrence: By the Department of the Treasury.

Michael G. Mosier,

Deputy Director, Financial Crimes Enforcement Network.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–23756 Filed 10–23–20; 11:15 am]

BILLING CODE 4810–02–P; 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0513]

RIN 1625–AA09

Drawbridge Operation Regulation; River Rouge, Detroit, MI

AGENCY: Coast Guard, DHS

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80. Delray Connecting Railroad Company, the owner and operator of these three bridges, has requested to stop continual drawtender service and to operate the two bridges only while trains are crossing the bridge, and one bridge upon signal if a 4-hour advance notice is received.

DATES: Comments and related material must reach the Coast Guard on or before December 28, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0513 using Federal e-Rulemaking Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Delray Connecting Railroad requested to reduce drawtender staffing at their three bridges at Zug Island. The National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80, currently open on signal and are required to be manned by a drawtender at each bridge. The reason for the request to stop continual drawtender service is that the primary customer, a steel mill on Zug Island, has been placed into caretaker status, significantly decreasing the rail traffic across these bridges. The operation of the bridges should however remain transparent to the vessels navigating the waterway.

The River Rouge is a commercial waterway that serves several heavy industries near the city of Detroit, MI. The U.S. Army Corps of Engineers in cooperation with the U.S. Environmental Protection Agency are currently improving the width and depth of the Rouge River, where both the swing and the bascule Delray Bridges are located. Originally, the River Rouge navigated two ninety-degree bends through the area that is referred to as the Old Channel before emptying into the Detroit River. In 1888 the Zug Island Improvement Company cut a channel through the south section of Zug Island locally called the Short Cut Channel creating Zug Island and allowing vessels to bypass the two ninety-degree bends in the Old Channel. This Short Cut Channel is the preferred path for large vessels. Currently the waterway is used by large commercial freighters and several tug and barge vessels. Recreational use of the waterway is very limited. There are twelve bridges across the River Rouge.

The National Steel Corporation Railroad Bridge, mile 0.40, is a single leaf bascule bridge, that provides an unlimited clearance in the open position and a vertical clearance of six feet above LWD in the closed position. The Delray Connecting Railroad Bridge, mile 0.34, is a single leaf bascule bridge, that provides an unlimited clearance in the open position and a vertical clearance of seven feet above LWD in the closed position. The Delray Connecting Railroad Bridge, mile 0.80, is a swing bridge that provides an unlimited clearance in the open position and a vertical clearance of seven feet above LWD in the closed position. All three bridges are owned by the Delray Connecting Railroad who is requesting the change.

III. Discussion of Proposed Rule

The proposed rule will establish the procedures to move the bridge to allow rail traffic to cross the bridge while giving notice to the vessels transiting the waterway that the bridge will be lowering. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, one last SECURITE call will be made that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge will be raised and locked in the fully open to navigation position.

The Delray Connecting Railroad Bridge, mile 0.34, has had limited requests for openings and provides