

Europe. Recent years have seen a significant shift in export destinations, however, with Europe's share declining to 30 percent of inshell shipments (3,321 tons) in the 2002–2003 season. Inshell shipments to Asia have increased dramatically in the past few years, growing to 55 percent of total exports of 10,979 tons in the 2002–2003 season. Hong Kong is the largest export destination, followed by China. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 28 and November 13, 2003, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 16, 2004. The Board's staff mailed copies of this rule to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended March 16, 2004. Two comments were received during that period. However, because the comments did not address the substance of the interim final rule, they are not being considered in this finalization.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 2493, January 16, 2004) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

#### PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 982 which was published at 69 FR 2493 on January 16, 2004, is adopted as a final rule without change.

Dated: April 6, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410–02–P**

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### 12 CFR Part 335

**RIN 3064–AC79**

##### Securities of Nonmember Insured Banks

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Interim final rule; request for comment.

**SUMMARY:** The FDIC is adopting, on an interim basis, a final rule amending its securities disclosure regulations applicable to banks with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). This amendment implements the requirements of the Exchange Act, as amended by the Sarbanes-Oxley Act of 2002, which mandates electronic filing of reports related to beneficial ownership of securities by the directors, executive officers, and principal shareholders of public companies. Current provisions of the FDIC's securities disclosure regulations prohibit electronically transmitted filings or submissions of

materials in electronic format to the FDIC. The amended rules provide an exception to this prohibition, requiring electronically transmitted filings of beneficial ownership reports by bank directors, officers and principal shareholders to disclose securities transactions and ownership. Related technical or procedural provisions are also being amended as appropriate.

**DATES:** These amendments are effective on June 11, 2004. Written comments must be received by the FDIC not later than June 11, 2004. These amendments may be immediately followed by the affected party.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Website:* <http://www.fdic.gov/regulations/laws/federal/propose.html>.

- *E-mail:* [comments@fdic.gov](mailto:comments@fdic.gov).

Include RIN number in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station located at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, D.C. 20429, between 9 a.m. and 4:30 p.m. on business days, and the FDIC may post the comments on its Web site at <http://www.fdic.gov/regulations/laws/federal/propose.html>.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898–8922; Mary Frank, Senior Financial Analyst, Division of Supervision and Consumer Protection, (202) 898–8903; or Carl J. Gold, Counsel, Legal Division, (202) 898–8702, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Authority for This Final Rule

*a. Appropriate Federal Banking Agency Authority Under the Exchange Act*

Section 12(i) of the Securities Exchange Act of 1934 as amended (15

U.S.C. 78I(i)) authorizes the Federal banking agencies (the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS)) to enforce sections 10A(m) (standards relating to audit committees), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain bonuses and profits), 306 (insider trades during pension blackout periods), 401(b) (disclosure of pro forma financial information), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) of the Sarbanes-Oxley Act of 2002, in regard to the depository institutions for which each Federal banking agency is, respectively, the primary federal supervisor. The Exchange Act seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures.

The FDIC is authorized, in administering the above-listed statutory provisions, to promulgate regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (collectively referred to as "state nonmember banks"). These regulations must be substantially similar to the regulations of the Securities and Exchange Commission (SEC) under the listed sections of the Exchange Act, unless the FDIC publishes its reasons for deviating from the SEC's rules.

#### *b. Section 16 of the Exchange Act*

Section 16 of the Exchange Act applies to every person who is the beneficial owner of more than 10 percent of a class of equity security registered under section 12 of the Exchange Act and to each officer and director of the issuer of the security (collectively, "reporting persons," "insiders," or "filers"). Upon becoming a reporting person, or upon the section 12 registration of that class of securities, section 16(a) requires a reporting person to file an initial report with the SEC (or in the case of an insured depository institution, its appropriate Federal banking agency) disclosing the amount of his or her beneficial ownership of all

equity securities of the issuer. To keep this information current, section 16(a) also requires reporting persons to report changes in their beneficial ownership. Prior to the Sarbanes-Oxley Act, insiders of state nonmember banks with a class of equity securities registered under section 12 of the Exchange Act filed these beneficial ownership reports on paper. In the case of insiders connected to state nonmember banks, reports were filed using FDIC Forms F-7, F-8, and F-8A.

#### *c. Sarbanes-Oxley Act Amendments to Section 16*

As amended by section 403 of the Sarbanes-Oxley Act of 2002, Public Law No. 107-204 (July 30, 2002), section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires electronic submission of certain beneficial ownership reports submitted on or after July 30, 2003. The SEC or, respectively, the appropriate Federal banking agency, is required to make those filings available to the public on the Internet. Institutions with Web sites are required to post their insiders' change in beneficial ownership reports on their Internet Web sites. In addition, section 16, as amended by Sarbanes-Oxley, requires filing of beneficial ownership reports before the end of the second business day following the day on which the subject transaction was executed (effective for transactions on or after August 29, 2002).

#### *d. Agency Action to Implement Sarbanes-Oxley*

On August 27, 2002, the SEC adopted rule amendments to implement the accelerated filing deadline for beneficial ownership reports [see SEC Release No. 34-46421 (Sept. 3, 2002) [67 FR 56462]]. These amendments have, since their adoption, been applicable to insiders of state nonmember banks in accordance with section 335.601 of the FDIC rules. Previously, beneficial ownership reports filed by insiders of state nonmember banks were filed with the FDIC within 10 days from the end of the month of the transaction. On May 7, 2003, the SEC issued a final rule implementing the electronic submission requirements for beneficial ownership reports as required by section 16 of the Exchange Act as amended [SEC Release No. 34-47809 (May 13, 2003) [68 FR 25788]]. On July 30, 2003, the FDIC, FRB, and OCC established an interagency electronic filing system for these beneficial ownership reports, hosted on the FDIC's Web site. See FIL-60-2003, Federal Banking Agencies Announce New Interagency Electronic Filing System for Beneficial Ownership

Reports (July 28, 2003) [<http://www.fdic.gov/news/news/financial/2003/fil0360.html>]. The OTS joined this filing system on October 27, 2003. See OTS 03-36, Office of Thrift Supervision Joins the FDIC's Interagency Electronic Filing System for Beneficial Ownership Reports (October 30, 2003) [<http://www.ots.treas.gov/docs/77336.html>]. Since July 30, 2003, the filing of beneficial ownership reports using the electronic interagency filing system has been authorized for insiders of state nonmember banks to provide a period to test the efficacy of the system.

## **II. Discussion of Interim Final Rule**

### *a. Current Part 335*

The FDIC's securities disclosure regulations, which contain registration and reporting requirements applicable to state nonmember banks with securities registered under section 12 of the Exchange Act (registered banks), are contained in 12 CFR part 335. Before the effective date of section 403 of the Sarbanes-Oxley Act, part 335 of the FDIC rules prohibited any electronically transmitted filings or submissions of materials in electronic format to the FDIC. In regard to the filing of beneficial ownership reports, that prohibition was superseded by section 403 of the Sarbanes-Oxley Act of 2002, which amended section 16 of the Exchange Act.

### *b. Electronic Filing Requirements*

As amended, 12 CFR part 335 will make clear that, except in limited circumstances described below, beneficial ownership reports by state nonmember bank insiders will be filed electronically with the FDIC, consistent with timeframes provided in section 16 of the Exchange Act and SEC regulations. Mandated electronic filing benefits members of the investing public and the financial community by making information contained in the filings available to them immediately after receipt by the FDIC. Electronically filed information concerning insiders' transactions in registered bank equity securities will be publicly accessible substantially sooner and more readily than before. The electronic format of the filed information facilitates research and data analysis by investors and the public. The accelerated filing requirements of section 16(a) of the Exchange Act that took effect on August 29, 2002, also make electronic filing of beneficial ownership reports more useful to the public. Finally, the FDIC believes that investors want electronic access to these forms, that reports of insiders' transactions in equity

securities of registered banks provide useful information as to management's views of the bank's performance or prospects, and that more timely and transparent access to reports will be useful to investors.

As required by section 12(i) of the Exchange Act, the amended 12 CFR part 335 is substantially similar to the Exchange Act regulations of the SEC.<sup>1</sup> Should a reason for deviating from SEC regulations become apparent in the future, the FDIC will consider amending its rules. The FDIC is adopting other technical provisions which address the forms on which beneficial ownership reports are filed. Also, to improve consistency with SEC requirements, the FDIC is revising the names of its existing beneficial ownership report Forms F-7, F-8 and F-8A. These Forms will be renamed as FDIC Forms 3, 4 and 5, respectively.

#### *c. Hardship Exemption*

As discussed, 12 CFR part 335 as amended requires all beneficial ownership reports to be electronically submitted on the FDIC's interagency Beneficial Ownership Filings system. If all or part of a filing cannot be made electronically without undue burden or expense, a reporting person may apply for a continuing hardship exemption under the new section 12 CFR 335.801(b)(6).

A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application must be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted by the FDIC. The written application for the exemption must include the following information:

(1) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(2) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(3) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

If the FDIC determines that the grant of the exemption is appropriate and

consistent with the public interest and the protection of investors, it will so notify the applicant. Upon such notification the filer must submit the document for which the exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. Additional provisions applicable to the continuing hardship exemption and detailed procedures for seeking the exemption are set forth in the text of the amended regulation.

#### *d. Filing Date Adjustment*

Instead of pursuing a hardship exemption, an electronic filer may request a filing date adjustment under this rule where the filer attempts in good faith to file a document with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control. In those instances, the filer may request an adjustment of the document's filing date. The FDIC may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors.

#### *e. Potential Liability in Case of Transmission Errors*

The SEC's rules governing electronic filings provide that an electronic filer "shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission." 17 CFR 232.103. The FDIC believes that this regulation presents a reasonable approach to transmission errors and that it applies to electronic filings made with the FDIC as well. See 12 CFR 335.101(b). Nevertheless, the FDIC invites comments on whether it is necessary or appropriate for the FDIC to add a similar provision to its own rule, and if so, the appropriate scope of such a provision.

### **III. Regulatory Analysis and Procedure**

#### *a. Administrative Procedure Act (APA)*

Public Comment Waiver and Effective Date. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), the FDIC finds good cause to issue this interim final rule without first seeking public comment. Section 553(b) of the APA does not apply to rules of agency

organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impracticable or unnecessary. The FDIC finds that this is a procedural rule, and that, in addition, there is good cause to issue the rule before providing an opportunity for public comment.

The portions of 12 CFR part 335 that are being amended are procedural and do not affect filers' substantive rights. The APA exemption for procedural rules applies to a rule that does not itself affect the substantive rights of those affected, even though the rule "may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 326-27 (D.C. Cir. 1994). Therefore, the APA's notice and comment procedures are not applicable.

In addition, as discussed above, the Sarbanes-Oxley Act mandates that certain beneficial ownership reports be filed electronically. Therefore, the current outright prohibition in 12 CFR part 335 on electronic filing is obsolete. Also, as noted, the SEC has made electronic filing mandatory and the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Therefore, public comment on whether to continue to prohibit the electronic filing of these reports is impracticable and unnecessary. This constitutes good cause for not providing notice and an opportunity for public comment prior to amending the rule.

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule. We also invite filing persons to submit feedback on their use of this system. Following the comment period, the FDIC will consider any comments and will finalize the rule, including making any necessary changes.

#### *b. Paperwork Reduction Act*

Reports of beneficial ownership are considered to be a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The FDIC has previously obtained Office of Management and Budget (OMB) approval of this collection of information under control number 3064-0030. OMB has reviewed and approved the collection as revised to take into account electronic filing. It is estimated that there will be 1,800

<sup>1</sup> The FDIC's rules, at 12 CFR 335.101(b), provide that part 335 generally incorporates the SEC's rules issued under Sections 12, 13, 14, and 16 of the Exchange Act.

responses annually, cumulatively resulting in 1,100 burden hours.

### c. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). As already noted, the FDIC has determined that a notice of proposed rulemaking is not required. Accordingly, no regulatory flexibility analysis is required.

### d. Small Business Regulatory Flexibility Enforcement Fairness Act

Section 804 of the Small Business Regulatory Flexibility Enforcement Fairness Act ("SBREFA"), 5 U.S.C. 801 *et al.*, defines "rule" to exclude any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. The amendments to Part 335 are technical and ministerial applications of the statute and affect only procedural matters. Therefore, the rule is not covered by covered by SBREFA and is not being reported to Congress.

### List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth in the preamble, Part 335 of chapter III of title 12 of the Code of Federal Regulations is amended to read as follows:

### PART 335—SECURITIES OF NONMEMBER INSURED BANKS

■ 1. The authority citation for part 335 continues to read as follows:

**Authority:** 15 U.S.C. 78l(i).

■ 2. Section 335.101 is amended by revising the second sentence of paragraph (a) to read as follows:

#### § 335.101 Scope of part, authority and OMB control number.

(a) \* \* \* The FDIC is vested with the powers, functions, and duties vested in the Securities and Exchange Commission (the Commission or SEC) to administer and enforce the provisions of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78(p)), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding nonmember banks with one or more classes of securities subject to the registration

provisions of sections 12(b) and 12(g) of the Exchange Act.

\* \* \* \* \*

■ 3. Section 335.111 is amended by revising the sixth sentence to read as follows:

#### § 335.111 Forms and schedules.

\* \* \* Forms 3 (§ 335.611), 4 (§ 335.612), and 5 (§ 335.613) are FDIC forms which are issued under section 16 of the Exchange Act and can be obtained from the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

■ 4. Section 335.601 is revised to read as follows:

#### § 335.601 Requirements of section 16 of the Securities Exchange Act of 1934.

Persons subject to section 16 of the Act with respect to securities registered under this part shall follow the applicable and currently effective SEC regulations issued under section 16 of the Act (17 CFR 240.16a-1 through 240.16e-1(1), except that the forms described in § 335.611 (FDIC Form 3), § 335.612 (FDIC Form 4), and § 335.613 (FDIC Form 5) shall be used in lieu of SEC Form 3 (17 CFR 249.103), Form 4 (17 CFR 249.104), and Form 5 (17 CFR 249.105), respectively. Copies of FDIC Forms 3, 4, 5 and the instructions thereto can be obtained from the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

■ 5. Section 335.611 is amended by revising the title to read as follows:

#### § 335.611 Initial statement of beneficial ownership of securities (Form 3).

\* \* \* \* \*

■ 6. Section 335.612 is amended by revising the title to read as follows:

#### § 335.612 Statement of changes in beneficial ownership of securities (Form 4).

\* \* \* \* \*

■ 7. Section 335.613 is amended by revising the title to read as follows:

#### § 335.613 Annual statement of beneficial ownership of securities (Form 5).

\* \* \* \* \*

■ 8. Section 335.701 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 335.701 Filing requirements, public reference, and confidentiality.

(a) *Filing requirements.* Unless otherwise indicated in this part, one

original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, DC. Official filings made at the FDIC's office in Washington, DC should be addressed as follows: Attention: Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the designated FDIC office shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, 550 17th Street, NW., Washington, DC. Beneficial ownership report forms that are electronically submitted to the FDIC through the interagency Beneficial Ownership Filings system will be made available on the FDIC's Web site (<http://www.fdic.gov>).

\* \* \* \* \*

■ 9. Section 335.801 is amended by revising paragraph (b) to read as follows:

#### § 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

\* \* \* \* \*

(b) *Electronic filings.* (1) The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232). The FDIC does not permit electronically transmitted filings or submissions of materials in electronic format to the FDIC, with the exception of beneficial ownership report filings on FDIC Forms 3, 4 and 5.

(2) All reporting persons must file beneficial ownership report Forms 3, 4 and 5, including amendments and exhibits thereto, in electronic format using the Internet based, interagency Beneficial Ownership Filings system, which is accessible through the FDICconnect Business Center, except that a reporting person that has obtained a continuing hardship exemption under these rules may file the forms with the FDIC in paper format. For information and answers to questions regarding beneficial ownership and the

completion and filing of the forms, please contact the FDIC Accounting and Securities Disclosure Section in Washington DC. For information and answers to technical questions or problems relating to the use of FDICconnect, contact the FDICconnect Project Team toll-free at 877-275-3342 or by mail at 3501 North Fairfax Drive, Arlington, VA 22226.

(3) Electronic filings of FDIC beneficial ownership report Forms 3, 4, and 5 must be submitted to the FDIC through the interagency Beneficial Ownership Filings system. Beneficial ownership reports and any amendments are deemed filed with the FDIC upon electronic receipt on business days from 8 a.m. through 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect (Eastern Time). Business days include each day, except Saturdays, Sundays and Federal holidays. All filings submitted electronically to the FDIC commencing after 10 p.m. Eastern Time on business days shall be deemed filed as of 8 a.m. on the following business day. All filings submitted electronically to the FDIC on non-business days shall be deemed filed as of 8 a.m. on the following business day.

(4) Adjustment of the filing date. If an electronic filer in good faith attempts to file a beneficial ownership report with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request an adjustment of the filing date of such submission. The FDIC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(5) *Exhibits.* (i) Exhibits to an electronic filing that have not previously been filed with the FDIC shall be filed in electronic format, absent a hardship exemption.

(ii) Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by applicable SEC rules under the Exchange Act. An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

(iii) Any document filed in paper format in violation of mandated electronic filing requirements shall not be incorporated by reference into an electronic filing.

(6) *Continuing Hardship Exemption.* The FDIC will not accept in paper format any beneficial ownership report filing required to be submitted electronically under this part unless the

filer satisfies the requirements for a continuing hardship exemption:

(i) A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall be sent to the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, and shall contain the information set forth in paragraph (6)(ii) of this subsection.

(A) The application shall not be deemed granted until the applicant is notified by the FDIC.

(B) If the FDIC denies the application for a continuing hardship exemption, the filer shall file the required document in electronic format on the required due date or the proposed filing date or such other date as may be permitted.

(C) If the FDIC determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (6)(iii) of this subsection.

(ii) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(A) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(B) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(C) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

(iii) If the request for a continuing hardship exemption is granted, the electronic filer shall submit the document or group of documents for which the exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. The paper format document(s) shall have placed at the top of page 1, or at the top of an attached cover page, a legend in capital letters:

IN ACCORDANCE WITH 12 CFR 335.801(b), THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A

CONTINUING HARDSHIP EXEMPTION.

(iv) Where a continuing hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed with the FDIC under cover of SEC Form SE (17 CFR 249.444). Form SE shall be filed as a paper cover sheet to all exhibits to beneficial ownership reports submitted to the FDIC in paper form pursuant to a hardship exemption.

(v) Form SE shall be submitted along with all exhibits filed in paper form pursuant to a hardship exemption. Form SE may be filed up to six business days prior to, or on the date of filing of, the electronic form to which it relates but shall not be filed after such filing date. If a paper exhibit is submitted in this manner, requirements that the exhibit be filed with, provided with, or accompany the electronic filing shall be satisfied.

Any requirements as to delivery or furnishing the information to persons other than the FDIC shall not be affected by this section.

(7) *Signatures.* (i) Required signatures to, or within, any electronic submission must be in typed form. When used in connection with an electronic filing, the term "signature" means an electronic entry or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature.

(ii) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the FDIC a copy of any or all documents retained pursuant to this section.

(iii) Where the FDIC's rules require a filer to furnish to a national securities exchange, a national securities association, or a bank, paper copies of a document filed with the FDIC in electronic format, signatures to such paper copies may be in typed form.

\* \* \* \* \*

**Note**—The following forms will not appear in the Code of Federal Regulations.

10. Amend Form F-7 (referenced in § 335.111 and § 335.611) by:

- a. Revising General Instruction 2(a);
- b. Revising General Instruction 3(a);
- c. Adding a note following General Instruction 3;
- d. Revising General Instruction 5(b)(v);

- e. Revising General Instruction 6;
- f. Adding a new General Instruction 8;
- g. Revising the short title of the Initial Statement of Beneficial Ownership of Securities from Form F-7 to Form 3 in the form heading;
- h. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and
- i. Revising newly redesignated Item 5 to the information preceding Table I.

The revisions and additions read as follows:

**Form 3 Initial Statement of Beneficial Ownership of Securities**

\* \* \* \* \*

*General Instructions*

\* \* \* \* \*

**2. When Form Must Be Filed**

(a) This form must be filed within 10 days after the event by which the person becomes a reporting person (*i.e.*, officer, director, 10 percent holder or other person). This form and any amendment is deemed filed with the appropriate Federal Banking Agency upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8:00 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not Federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

\* \* \* \* \*

**3. Where Form Must Be Filed**

(a) A reporting person must file Form 3 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the

FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877-275-3342 or via e-mail at [FDICconnect@fdic.gov](mailto:FDICconnect@fdic.gov).

\* \* \* \* \*

**Note:** If filing pursuant to a hardship exemption under FDIC rules, file three copies of this form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the form or amendment filed.)

\* \* \* \* \*

**5. Holdings Required To Be Reported**

\* \* \* \* \*

**(b) Beneficial Ownership Reported (Pecuniary Interest).**

\* \* \* \* \*

(v) Where more than one person beneficially owns the same equity securities, such owners may file Form 3 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Holdings of securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 3 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 3, copy of Form 3 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a-3(i) regarding signatures.

\* \* \* \* \*

**6. Additional Information**

(a) If space provided in the line items on this Form 3 is insufficient, identify and enter additional information and footnotes under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 3 or space provided for additional comments is insufficient, attach another Form 3, copy of Form 3 or separate 8½ by 11 inch white paper to Form 3, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included with the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

\* \* \* \* \*

**8. Amendments**

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes, under Explanation of Responses as necessary to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 8, provide one or more notes under Explanation of

Responses, as necessary, to explain the amendment.

\* \* \* \* \*

**Form 3 Initial Statement of Beneficial Ownership of Securities**

\* \* \* \* \*

5. If Amendment, Date Original Filed (Month/Day/Year)

\* \* \* \* \*

- 11. Amend Form F-8 (referenced in § 335.111 and § 335.612) by:
  - a. Revising General Instruction 1(a);
  - b. Revising General Instruction 2(a);
  - c. Adding a note following General Instruction 2;
  - d. Revising General Instruction 4(b)(v);
  - e. Revising General Instruction 6;
  - f. Adding a new General Instruction 9;
  - g. Revising the short title of the Statement of Changes in Beneficial Ownership of Securities from Form F-8 to Form 4 in the form heading;
  - h. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and
  - i. Revising newly redesignated Items 3 and 4 to the information preceding Table I.

The revisions and additions read as follows:

**Form 4 Statement of Changes in Beneficial Ownership of Securities**

\* \* \* \* \*

*General Instructions*

\* \* \* \* \*

**1. When Form Must Be Filed**

(a) This form must be filed on or before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed (See SEC Rule 16a-1(a)(2) and Instruction 4 regarding the meaning of "beneficial owner," and SEC Rule 16a-3(g) regarding determination of the date of execution for specified transactions). This form and any amendment is deemed filed with the FDIC upon electronic receipt on business days during the hours of 8:00 a.m. until 10:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8:00 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8:00 a.m. on the following business day. Business days include all weekdays that are not Federal holidays. A paper form submitted by a reporting person that has

obtained a hardship exemption under applicable FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

\* \* \* \* \*

**2. Where Form Must Be Filed**

(a) A reporting person must file Form 4 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877-275-3342 or via e-mail at [FDICconnect@fdic.gov](mailto:FDICconnect@fdic.gov).

\* \* \* \* \*

**Note:** If filing pursuant to a hardship exemption under FDIC rules, file three copies of this Form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the Form or amendment filed.)

\* \* \* \* \*

**4. Transactions and Holdings Required To Be Reported**

\* \* \* \* \*

(b) Beneficial Ownership Reported (Pecuniary Interest).

\* \* \* \* \*

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 4, such owners may file Form 4 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 4 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all the required information for each beneficial owner, and such filings

must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 4, copy of Form 4 or separate page of 8 1/2 by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a-3(i) regarding signatures.

\* \* \* \* \*

**6. Additional Information**

(a) If space provided in the line items on the Form 4 is insufficient, identify and enter additional information under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 4 or space provided for additional comments is insufficient, attach another Form 4, copy of Form 4 or separate 8 1/2 by 11 inch white paper to Form 4, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included with the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

\* \* \* \* \*

**9. Amendments**

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under

Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

\* \* \* \* \*

**Form 4 Statement of Changes in Beneficial Ownership of Securities**

\* \* \* \* \*

Item 3. Date of Earliest Transaction Required To Be Reported (Month/Day/Year)

Item 4. If Amendment, Date Original Filed (Month/Day/Year)

\* \* \* \* \*

12. Amend Form F-8A (referenced in § 335.111 and § 335.613) by:

- a. Revising General Instruction 1(a);
- b. Revising General Instruction 2(a);
- c. Adding a note following General Instruction 2;
- e. Revising General Instruction 4(b)(v);
- f. Revising General Instruction 6;
- g. Adding a new General Instruction 9;
- h. Revising the short title of the Annual Statement of Beneficial Ownership of Securities from Form F-8A to Form 5 in the form heading;
- i. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6;
- j. Revising newly redesignated Items 3 and 4 to the information preceding Table I;
- k. Revising the heading for columns 9 and 10 in Table II.

The revisions and additions read as follows:

**Form 5 Annual Statement of Beneficial Ownership of Securities**

\* \* \* \* \*

*General Instructions*

\* \* \* \* \*

1. When Form Must Be Filed

(a) This form must be filed on or before the 45th day after the end of the bank's fiscal year in accordance with SEC Rule 16a-3(f). This form and any amendment is deemed filed with the FDIC upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under applicable FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

\* \* \* \* \*

2. Where Form Must Be Filed

(a) A reporting person must file Form 5 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877-275-3342 or via e-mail at [FDICconnect@fdic.gov](mailto:FDICconnect@fdic.gov).

\* \* \* \* \*

**Note:** If filing pursuant to a hardship exemption under FDIC rules, file three copies of this form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the form or amendment filed.)

\* \* \* \* \*

4. Transactions and Holdings Required To Be Reported

\* \* \* \* \*

(b) Beneficial Ownership Reported (Pecuniary Interest)

\* \* \* \* \*

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 5, such owners may file Form 5 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 5 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all the required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 5, copy of Form 5 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a-3(i) regarding signatures.

\* \* \* \* \*

6. Additional Information

(a) If space provided in the line items on the Form 5 is insufficient, identify and enter additional information under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 5 or space provided for additional comments is insufficient, attach another Form 5, copy of Form 5 or separate 8½ by 11 inch white paper to Form 5, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the



bottom of each report page (e.g., 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included on the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

\* \* \* \* \*

#### 9. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

\* \* \* \* \*

#### Form 5 Annual Statement of Changes in Beneficial Ownership of Securities

\* \* \* \* \*

3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year).

4. If Amendment, Date Original Filed (Month/Day/Year).

\* \* \* \* \*

Table II—Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

\* \* \* \* \*

9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4).

10. Ownership Form of Derivative Securities: Direct (D) or Indirect (I) (Instr. 4).

\* \* \* \* \*

By Order of the Board of Directors.

Dated at Washington, DC, this 6th day of April, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 04-8232 Filed 4-9-04; 8:45 am]

**BILLING CODE 6714-01-P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Part 103

#### Imposition of Special Measures Against Burma

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

**ACTION:** Final rule.

**SUMMARY:** On November 18, 2003, the Secretary of the Treasury (Secretary) designated Burma as a jurisdiction of primary money laundering concern, and proposed a special measure that certain U.S. financial institutions would be required to take concerning Burma, pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. FinCEN is issuing this final rule to require certain U.S. financial institutions to take the proposed special measure regarding Burma.

**DATES:** Effective date: May 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Office of Regulatory Programs, (FinCEN), (202) 354-6400 or the Office of Chief Counsel (FinCEN), (703) 905-3590 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Secretary has designated Burma as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107-56) (the Act). To protect the U.S. financial system against the money laundering risk posed by Burma, FinCEN is imposing a special measure authorized by section 5318A(b)(5). The special measure imposed under this section will generally prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-

through accounts in the United States for, or on behalf of, Burmese banking institutions, unless (as explained below) operation of those accounts is not prohibited by Executive Order 13310 of July 28, 2003, and the Burma-related activities of such accounts are solely to effect transactions that are exempt from, or licensed pursuant to, Executive Order 13310. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used by the foreign bank to provide financial services to a Burmese banking institution indirectly.

Additionally, by separate notice, FinCEN is announcing concurrently the imposition of the fifth special measure against two Burmese banking institutions, Myanmar Mayflower Bank and Asia Wealth Bank. This special measure prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank, notwithstanding any exemption from, or license issued pursuant to, Executive Order 13310.

#### I. Background

##### A. Section 311 of the USA PATRIOT Act

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

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

Section 311 identifies factors to consider as well as agencies and departments to consult before the Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting specific special measures against the designee.

Taken as a whole, Section 311 provides Treasury with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing