

September 16, 2006. Bankruptcy proceedings are pending, for this purpose, if a contributing sponsor has filed or has had filed against it a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan.

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 3. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 4. In § 4022.2, amend the first paragraph by removing the words “plan year, proposed termination date, substantial owner” and adding in their place “plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, substantial owner.”

■ 5. Add new § 4022.11 to subpart A to read as follows:

§ 4022.11 Guarantee of benefits relating to uniformed service.

This section applies to a benefit of a participant who becomes reemployed after service in the uniformed services that is covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

(a) A benefit described in paragraph (b) of this section that would satisfy the requirements of § 4022.3(a) and (c) (together with any benefit earned for the period preceding military service) except for the fact that the participant was not reemployed on or before the termination date will be deemed to satisfy those requirements if PBGC determines, based upon a demonstration by the participant or otherwise, that he or she became reemployed after the termination date and entitled to the benefit under USERRA.

(b) A benefit described in this paragraph (b) is a benefit attributable to a period of service commencing before the termination date and ending on the termination date during which the participant was serving in the uniformed services as defined in 38 U.S.C. 4303(13) (or was in a subsequent reemployment eligibility period) and to which the participant is entitled under USERRA.

(c) Example: A plan's vesting requirement is 5 years of service with the employer. A participant has

completed 4 years of service when he leaves employment for uniformed service. The plan terminates while the participant is in military service. As of the termination date, the participant would have had 5 years of service and 5 years of benefit accruals if he had remained continuously employed. Upon reemployment after the termination date but within the time limits set by USERRA, the participant would have had 6 years of service under the plan for vesting and benefit accrual purposes, if the plan had not terminated. PBGC would treat the participant as having a vested, nonforfeitable plan benefit with 5 years of vesting service and benefit accruals as of the termination date.

(d) In the case of a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in this section.

Issued in Washington, DC, this 10th day of November 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing publication of this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AB03

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Administrative Ruling System

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

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to amend the procedures for publicly issuing an administrative ruling¹ relating to the Bank Secrecy Act (“BSA”). Reliance on these administrative rulings is limited to persons who are similarly situated to the original recipient of an applicable administrative ruling. To disseminate its interpretations in a more timely and efficient manner, FinCEN will use its

website to make these administrative rulings available to the public.²

DATES: *Effective Date:* December 17, 2009.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN (800) 949-2732 and select option 6.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The BSA, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (the “Secretary”), among other things, to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis, to protect against international terrorism.”³ The Secretary’s authority to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.⁴ FinCEN has interpreted the BSA through implementing regulations that appear at 31 CFR Part 103.

In 1987, the Department of the Treasury’s Office of Financial Enforcement⁵ established an administrative ruling system to ensure uniform guidance and effective and efficient dissemination of official Treasury interpretations of the BSA.⁶ The administrative ruling system was designed to: provide financial institutions with binding ruling interpretations of Part 103; and to provide interpretations of hypothetical situations.⁷ 31 CFR 103.85 requires that the interpretations intended to have precedential value be published periodically in the **Federal Register** and yearly in the Appendix to Part 103.

² FinCEN’s criteria for determining whether a particular ruling will be published is located under the heading “Rulings” on the FinCEN Web site at <http://www.fincen.gov>.

³ 31 U.S.C. 5311.

⁴ See Treasury Order 180-01 (Sept. 26, 2002).

⁵ The Office of Financial Enforcement originally had authority to issue regulations implementing the BSA. In 1994, the Treasury Department merged the Office of Financial Enforcement with FinCEN and granted FinCEN the authority to implement the BSA.

⁶ See 52 FR 35545 (Sep. 22, 1987) (final rule instituting an administrative ruling system).

⁷ If the subject situation is hypothetical, it must include “a statement justifying why the particular situation described warrants the issuance of a ruling.” 31 CFR 103.81(6).

¹ “Administrative ruling” is the title FinCEN uses to represent documents commonly referred to as interpretative rules.

B. Section-by-Section Analysis

FinCEN is amending section 103.85 by removing the requirement that rulings be published in the **Federal Register** before similarly situated persons other than the recipients of the rulings can rely upon them. In addition, FinCEN is no longer publishing these administrative rulings in an Appendix to Part 103. Instead, these rulings will be available on the FinCEN Web site or by mail per written request.⁸

Using alternatives to the **Federal Register** to provide notice to the public of administrative rulings is not uncommon. Many agencies publish bulletins containing their administrative rulings including the Office of the Comptroller of Currency, Internal Revenue Service ("IRS"), and U.S. Customs Service and Border Protection. Specifically, in July of 1955, the IRS implemented the Internal Revenue Bulletin ("IRB") under Revenue Procedure 55-1 to " * * * promote uniform application of the tax laws by Service employees and to assist taxpayers in attaining maximum voluntary compliance."⁹ At the time, the IRS determined that the IRB was the most appropriate forum to provide notice to the public of its administrative rulings.

In 1987, when implementing the BSA administrative ruling system, the Department of the Treasury did not have a bulletin for publishing its determinations concerning the BSA. Therefore, the Department of the Treasury determined that publishing the administrative rulings in the **Federal Register** ensured proper distribution to the public. However, since implementation of the BSA administrative ruling system, various electronic and other means of disseminating information to the public have become available. In particular, FinCEN, like many other administrative agencies, has developed a Web site to provide notice of agency actions to the public. The current address for the Web site is: www.fincen.gov/statutes_regs/rulings/. Similar to the IRS's determination in creating the IRB in 1955, FinCEN, in promoting uniform application and compliance with the BSA, has determined that publishing administrative rulings on the FinCEN

website distributes information to the public more broadly and more expediently than publication in the **Federal Register**. There are a variety of persons who are affected by the BSA. The majority of such affected persons are probably more familiar with the Internet than with the **Federal Register**. Communications with these affected persons through FinCEN's regulatory Helpline has shown that the majority of callers referred to the FinCEN website as a source for information. Also, when responding to questions from affected persons, FinCEN staff members regularly refer individuals to the FinCEN website for information. Because FinCEN's website is specifically tailored to the BSA, affected persons are not required to sift through the volumes of information available in the **Federal Register** before finding a relevant interpretive rule addressing the affected person's issue. Considering the time and resources FinCEN allocates to updating the website and increasing the website's usability, FinCEN believes that it would be inefficient and unnecessary to also publish administrative rulings in the **Federal Register**.

II. Proposed Location in Chapter X

As discussed in a previous **Federal Register** Notice, 73 FR 66414, Nov. 7, 2008, FinCEN is separately proposing to remove Part 103 of Chapter I of Title 31, Code of Federal Regulations, and add Chapter 1000 to 1099 ("Chapter X"). If the notice of proposed rulemaking for Chapter X is finalized, the changes in the present final rule would be reorganized according to the proposed Chapter X. The planned reorganization will have no substantive effect on the regulatory changes herein, except that the words "part 103" in the first sentence of 31 CFR 103.85 would be replaced by "this chapter." The regulatory changes of this specific rulemaking would be renumbered according to the proposed Chapter X as follows:

(a) 103.85 would be moved to 1010.715.

(b) 103.81 would be moved to 1010.711

(c) Appendix A to Part 103—Administrative Rulings would be removed in its entirety and Appendix E to Chapter X—Administrative Rulings would not appear.

III. Notice and Comment Under the Administrative Procedure Act

The administrative ruling procedural changes at 31 CFR 103.85 will take effect 30 days after publication in the **Federal Register**.

The Administrative Procedure Act ("APA") allows an agency to dispense with notice and comment for "rules of agency organization, procedure, or practice."¹⁰ This amendment promulgates general statements of policy, procedures and practices governing the scope and operation of an administrative ruling system. Hence, pursuant to 5 U.S.C. 553(b)(A), notice and public procedure are unnecessary.

IV. Regulatory Flexibility Act

Since no notice of proposed rulemaking is required by the APA (5 U.S.C. 551 *et seq.*), or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

V. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). (OMB Control No. 1506-0009). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Executive Order 12866

As this rulemaking primarily deals with agency management, it has been determined not to be a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VII. Unfunded Mandates Act of 1995

Since no notice of proposed rulemaking is required by the APA (5 U.S.C. 551 *et seq.*), or by any other statute, FinCEN has determined that it is not required to prepare a written statement under section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (March 22, 1995).

List of Subjects in 31 CFR Part 103

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

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the

⁸ Administrative Rulings 88-5, 89-5, 92-1 and 92-2 will be posted on FinCEN's public Web site. Administrative Rulings 88-1, 88-3, 88-4, 89-1, and 89-2 have been superseded by changes to 31 CFR 103.22 and 31 U.S.C. 5318 and are hereby formally rescinded under 31 CFR 103.86(a)(1) and (3). These administrative rulings will not be available on the website.

⁹ See Rev. Proc. 68-44 (July 1968) (Discussion of the objectives of the IRB).

¹⁰ 5 U.S.C. § 553(b).

Code of Federal Regulations is amended as follows:

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

- 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Public Law 107–56, 115 Stat. 307.

- 2. Section 103.85 is revised to read as follows:

§ 103.85 Issuing rulings.

The Director, FinCEN, or his designee may issue a written ruling interpreting the relationship between part 103 and each situation for which the ruling has been requested in conformity with § 103.81. A ruling issued under this section shall bind FinCEN only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if FinCEN makes it available to the public through publication on the FinCEN website under the heading “Administrative rulings” or other appropriate forum. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. FinCEN will make every effort to respond to each requestor within 90 days of receiving a request.

**Appendix A—Administrative Rulings
[Removed]**

- 3. Appendix A to part 103 is removed.

Dated: November 9, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–27449 Filed 11–16–09; 8:45 am]

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**DEPARTMENT OF HOMELAND
SECURITY**

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1017]

RIN 1625–AA11

**Regulated Navigation Areas; Bars
Along the Coasts of Oregon and
Washington**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

DATES: This rule is effective December 17, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1017 and are available online by going to <http://www.regulations.gov>, inserting USCG–2008–1017 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Kion Evans, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch; telephone (206)–220–7232, e-mail Kion.J.Evans@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled “Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington” in the **Federal Register** (74 FR 7022). We received 168 comments on the proposed rule. Public meetings were requested and three were held at the following dates and locations: April 14, 2009 in Astoria, Oregon; April 15, 2009 in Newport, Oregon; and June 2, 2009 in Coos Bay, Oregon.

Background and Purpose

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. More importantly,

the bars can and very often do become extremely hazardous for all types of maritime traffic. In fact, a review of recreational, passenger, and commercial fishing vessel casualty data shows that since 1992 there have been 39 vessel capsizings on or in the vicinity of the bars, resulting in 66 fatalities. Some notable recent vessel casualties include the capsizing of the inspected charter vessel TAKI-TOOO while trying to cross the Tillamook Bay bar, resulting in the deaths of 11 people, and the capsizing of the uninspected passenger vessel SYDNEY MAE II while attempting to cross the Umpqua River bar, resulting in the deaths of 3 people. In addition, several commercial fishing vessels, including the CATHERINE M, the ASH, the STARRIGAVAN and the NETWORK have recently capsized on or in the vicinity of various bars, resulting in the deaths of 10 people.

As evidenced in part by the tragedies noted above, the current regulations governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington are insufficient to ensure the safety of the persons and vessels operating in those areas. Additionally, multiple Coast Guard and National Transportation Safety Board (NTSB) casualty investigations have indicated a need for additional regulations to mitigate the risks associated with the bars and enhance the safety of the persons and vessels operating on and in the vicinity of them. As such, the Thirteenth Coast Guard District is establishing this rule to help ensure the safety of persons and vessels operating on or in the vicinity of the bars.

Discussion of Comments and Changes

The Coast Guard received a total of 168 comments, with 122 comments coming from the 91 documents submitted to the public docket and 46 comments coming from the public meetings. Nine comments requested additional time to comment and/or public meetings. In response to these comments the comment period was extended until June 30, 2009 and an additional public meeting was held in Coos Bay, Oregon.

Unsafe Condition Formula

Twenty-five comments were received about the formula used to determine what constitutes an *Unsafe Condition* as defined in 33 CFR 165.1325(b). The comments expressed concern that the formula is too conservative, prevents smaller recreational and fishing vessels from crossing the bar in even mild to moderate conditions, and doesn’t address all the factors that should be