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TRUCK RENTING AND LEASING ASSOCIATION

April 10, 2003

Financial Crimes Enforcement Network (FinCEN)
United States Department of Treasury
P.O. Box 39
Vienna, VA 22183
regcomments@fincen.treas.gov

ATTN: ANPRM—Sections 352 and 326—Vehicle Seller Regulations

Dear FinCEN:

I am writing on behalf of the Truck Renting and Leasing Association (TRALA) in response to the Advanced Notice of Proposed Rulemaking (ANPRM) published in the February 24, 2003, Federal Register (Vol.68, No.36, Page 8568) pursuant to Sections 352 and 326 of the USA PATRIOT Act of 2001. TRALA appreciates the opportunity to respond to this ANPRM and supports the Department's goal of limiting the opportunities for money laundering activities by terrorists.

TRALA's more than 650 members lease, rent and maintain one million vehicles annually through more than 30,000 locations. The majority of TRALA members focus on leasing and renting commercial trucks, while some also engage in short-term rentals to consumers. TRALA members also include truck, trailer, engine and tire manufacturers, as well as component suppliers, finance and insurance companies, and many others providing services to the industry. The truck renting and leasing industry is responsible for about 40 percent of all new commercial truck registrations (classes 3 through 8) in the nation.

While the Bank Secrecy Act (BSA) defines a "business engaged in vehicle sales" as a financial institution subject to the provisions of the USA PATRIOT Act, TRALA appreciates FinCEN's understanding that not all businesses engaged in vehicle sales present equal risks of being used for money laundering purposes. Based on limited cash flow, customer base, and primary business activities of truck renting and leasing companies, TRALA members present minimal levels of risk for money laundering opportunities. The answers to the following questions presented in the ANPRM detail TRALA's contention that additional regulation affecting the activities of truck renting and leasing companies would not further the Department's anti-money laundering goals.

1. What is the potential money laundering risk posed by vehicle sellers? Do money laundering risks vary by (1) vehicle type (e.g. boat, airplane, automobile); (2) market (wholesale vs. retail); or (3) business line (international sales, sales to governments)?

TRALA members' primary business activities revolve around the leasing, renting and maintaining of trucks and trailers through contracts with commercial customers. Many of these customers are long-standing commercial relationships, limiting the potential for money-laundering exposure. As alternatives to purchasing, leasing and renting allow for the use of a vehicle without the outlay of larger amounts of capital. This core concept in the renting and leasing industry makes it an unlikely target for money laundering activity.

Truck renting and leasing companies do not engage in new vehicle sales and the disposal of used vehicles is only an ancillary activity for truck renting and leasing companies. The range of methods for disposing of used trucks includes trade packages with the manufacturers, wholesale disposal and fleet and retail sales. The percentage of trucks disposed through these methods varies among TRALA members. However, many of the disposal outlets for used trucks and trailers involve known commercial customers, again limiting the possibilities for money laundering activities.

2. Should vehicle sellers be exempt from coverage under Sections 352 and 326 of the PATRIOT Act?

Based on the minimal risk of money laundering in the truck renting and leasing business, truck and trailer sales by truck renting and leasing companies should not be subject to additional regulations under the PATRIOT Act. Existing law aimed at money laundering activity already requires truck renting and leasing companies to report cash transactions over \$10,000 to the Internal Revenue Service.

TRALA member companies vary widely in size. At every size, however, there would be substantial, even prohibitive expense to incorporate regulations that may necessitate electronic reporting, access to computer databases, employee training, and other costly implementation measures. For the smaller companies, the expense simply could be overwhelming; for the larger, the extent of systems overhauls may be very large. Truck renting and leasing companies are not banks and do not have the type of systems that banks have as part of their normal business to track and report customer payment and identity information. In particular, customer identification programs of the scope that might be imposed on banks could require major overhauls of the systems of much of the industry and would not yield a substantial law enforcement benefit. TRALA contends that additional requirements targeting truck renting and leasing companies for which vehicle sales is an ancillary activity would not provide appropriate benefits in reducing the risk of money laundering.

3. If vehicle sellers, or some subset of the industry should be subject to the anti-money laundering program requirements, how should the program be structured?

Truck renting and leasing operations may be located within the context of a larger company facility or corporate entity. If regulatory mandates for vehicle sellers are deemed necessary by the Department, they should not affect leasing, renting or other business activities unrelated to vehicle sales.

4. How should a vehicle seller be defined? Should there be a minimum threshold value in the definition? Should it include wholesale and retail sellers? Should sellers of used vehicles be included?

“Vehicle sellers” as used in the PATRIOT Act could arguably encompass virtually all of American business. It could include automobile and aircraft manufacturers, retail dealers and every business that owns its own vehicles and sells them off over time. For truck renting and leasing companies, the sale of used vehicle is generally an ancillary or incidental part of business. Ancillary or incidental sales such as those of truck renting and leasing companies should not be included in this definition. Such ancillary sales simply do not warrant the imposition of a substantial regulatory regime beyond current requirements.

Special exceptions should be considered for sellers of commercial vehicles because of the nature of their customer base. Also, the definition of vehicle should not include trailers, which have no means of self-propulsion. While such equipment may be called vehicles or even motor vehicles for tax, registration and safety purposes, they simply do not fit within the examples of vehicles given in the USA PATRIOT Act.

5. Do vehicle sellers maintain “accounts” for their customers?

Truck renting and leasing companies maintain contractual relationships with their customers for leasing, renting and maintenance activities. These often require checks on creditworthiness and identification. Since vehicle sales are not a primary business activity for truck renting and leasing companies, there are seldom ongoing accounts for these transactions. However, used truck disposals through trade packages with truck manufacturers may be contractual. In any event, we believe that “accounts” should be construed to be analogous to bank accounts or credit card accounts that enable the free flow of money with minimal if any involvement in the underlying transactions in goods and services.

TRALA appreciates the opportunity to provide you with these general comments in response to the ANPRM. The association and its member companies would be happy to discuss these issues with you in greater detail as you progress in the rulemaking process. If you have any questions or comments on this submittal, please do not hesitate to contact me at any time.

Sincerely,

Thomas M. James
Vice President, Government Relations