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NACS

1961 Serving the Convenience Store and Petroleum Marketing Industry for 40 Years 2001

May 28, 2002

Judith Starr
Chief Counsel
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: Section 352 MSB Regulations

Dear Ms. Starr:

These comments relating to the Financial Crimes Enforcement Network's ("FinCEN's") proposed regulations on Anti-Money Laundering Programs for Money Services Businesses (the "proposed regulations") are submitted on behalf of the National Association of Convenience Stores ("NACS"). Founded in 1961, NACS is a non-profit trade association representing more than 2,000 retail and 1,700 supplier company members in the United States and abroad. Retail members represent more than 77,000 convenience stores worldwide. These retailers provide consumers with convenient locations to quickly purchase a wide array of products and services, including money orders. Convenience stores also sell retail items such as food and beverages, motor fuels and automotive products such as motor oil and fuel additives. In addition, many convenience stores are small businesses that operate with tight profit margins on many of the products they sell. Increased compliance costs may erode profit margins and require convenience stores to re-evaluate the products they offer.

NACS members are supportive of FinCEN's efforts to combat money laundering and want to aid these efforts without overburdening their businesses. In fact, we appreciate FinCEN's decision to allow money services businesses ("MSBs") that are MSBs only because they serve as agents for other MSBs to allocate compliance responsibilities with the businesses they serve as agents. Many NACS members are agents for other MSBs and will have the opportunity to take advantage of this provision. This is an example of the type of regulatory flexibility that can help achieve FinCEN's goals while allowing the businesses they regulate to continue to serve their customers.

There is, however, one overriding concern NACS has with the proposed regulations – they do not provide enough specific guidance about adequate compliance procedures and practices. The anti-money laundering program that MSBs are required to implement is simply described as one that is "reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities." The only other guidance is that the program should be "commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business." These provisions are not sufficient to let MSBs know whether or not they are adequately complying with the regulations.

We recognize the difficulties involved in writing regulations for businesses as diverse as MSBs. In order to give additional guidance so that MSBs will be more likely to implement programs that FinCEN believes to be sufficient, we propose that FinCEN establish a process for commenting on compliance programs written by trade associations and/or individual MSBs. Such a process could be similar to the Securities and Exchange Commission's issuance of no-action letters. Regulated entities would submit their compliance programs to FinCEN along with information regarding their business, risks, the nature and volume of transactions and other relevant factors. FinCEN could then comment on the sufficiency of the programs. As with the SEC, comments need not be formal approval of the plan, but simply a representation as to whether or not (based on the facts as presented) FinCEN would recommend enforcement action against the MSB due to the sufficiency of the compliance program. FinCEN's view, of course, would only address the program as written and MSBs would remain responsible for fully implementing their program as written as well as changing the program if the changing nature of their business warranted an adjustment.

Such a FinCEN comment procedure would make sense for MSBs because they would get better guidance about their compliance responsibilities and would make sense for FinCEN because they could push MSBs to implement thorough, meaningful compliance programs. This process also could help FinCEN save resources. While it would require staff to analyze and comment on compliance programs, doing so would help ensure that more MSBs have good programs and would help reduce the large burden on staff responsible for enforcing the regulations.

We hope that you will include such a comment procedure in the final regulations. Thank you for your consideration.

Sincerely,

Allison R Shulman
Director, Government Affairs