



655 15<sup>th</sup> Street, N.W., Seventh Floor  
Washington, D.C. 20005-5701  
Telephone: 202/452-8444  
Fax: 202/429-4519  
E-Mail: [FMI@FMI.ORG](mailto:FMI@FMI.ORG)  
Website: [WWW.FMI.ORG](http://WWW.FMI.ORG)



April 12, 2002

VIA MESSENGER

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

**Re: PRA Comments – SAR--MSB Form**

Dear Sir or Madam:

The Food Marketing Institute<sup>1</sup> (FMI) is pleased to respond to the Financial Crimes Enforcement Network's (FinCEN's) request for comments regarding the creation of a new form entitled, "Suspicious Activity Report by Money Services Businesses," (SAR-MSB) (Form TD F 90-22.56). This form would be utilized by a number of FMI member companies who sell or redeem money orders or traveler's checks and serve as money transmitters.

To accommodate customers, many of our member companies are open 7 days a week, 24 hours a day. Also to address customer needs, our member companies are

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<sup>1</sup> FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

increasingly finding that they are cashing government, personal and payroll checks; issuing money orders; collecting utility payments; issuing stored value gift cards; and selling government permits such as burn permits or garage sale permits. Because of this customer service, many grocery stores find themselves being defined as money services businesses (MSBs). Also in many cases, their MSB activity has caused them to be subject to the recent Bank Secrecy Act regulations requiring registration and reporting of suspicious activity [64 Fed. Reg. 161 (Aug. 20, 1999)], as well as provisions in the USA Patriot Act of 2001, Pub.L. No. 107-56 § 352.

Our members' primary business will continue to be selling milk, eggs and bananas. As a service to customers, many food retailers are now offering some core financial services that are either not offered or not offered at convenient times by traditional financial institutions. Services such as check cashing, money orders or money transmissions are often offered for a minimal charge or no charge to store customers.

Specifically with regard to the draft SAR—MSB form, our industry finds it to be a vast improvement over the current practice we have been asked to adopt in the interim, which includes completing a form designed for banks that has little relevance to the practices or needs of supermarkets. That said, as discussed more fully below, we have several suggestions for improving the form and approving it for wide circulation within the industry.

As an initial matter, however, we must note an inaccuracy in the Supplementary Information Section of a recent **Federal Register** notice on this issue and the substantial frustration and difficulty faced by our members in attempting to meet the very short time line imposed by the agency in this matter. Specifically, the Supplementary Information section of the February 27, 2002, **Federal Register** notice indicates that the **Federal Register** notice "reminding" MSBs that the requirement to report suspicious transactions would apply to transactions occurring on or after January 1, 2002 was published on December 20, 2001. In fact that notice was not published in the **Federal Register** until Friday, December 28, 2001. 66 Fed. Reg. 249 (Dec. 28, 2001). This was a source of tremendous frustration for FMI and its member companies who had been trying to work with FinCEN on these new requirements and had been repeatedly assured that they would not take effect until March or April at the earliest. FMI's membership includes over 26,000 stores and 1.8 million employees. It would not be possible in the absolute best circumstances to disseminate the new interim forms and train that many employees in that many locations on the utilization of the interim form and requirements of the BSA in the 2.5 day time period that was given. It was inconceivable to accomplish this over the New Year's holiday weekend.

With respect to the form itself, as you know, money services businesses that cash checks for customers in excess of \$1,000 for any one customer on any one day are required to register with the Department of the Treasury's Financial Crimes Enforcement Network as a MSB. Some of our members are registered as an MSB solely because of that activity. However, the activity of "check cashing" is not included as a reportable activity in the summary or in "Item 2" on the actual draft TD F 90-22.56. FMI assumes that Treasury intends for any reports of suspicious activity with regard to check cashing

operations to be (1) voluntary and (2) reported under “other” in Part II with a written explanation in Part VII.

We also have the following specific recommendations which we believe will substantially aid retailers, especially small retailers, in understanding the form and, therefore, help elicit the information sought by FinCEN:

“Part I Customer Information” – add in parenthesis on the same line, “(complete only what is known)” This will help insure that associates are not asking customers for the information and thereby alerting them to the fact that a SAR is being filed on the transaction.

“4 Individual’s last name or Entity name”—change the word “entity” to “business” to avoid confusion.

“13 Taxpayer identification number”—add the words “Social Security Number” prior to Taxpayer identification number to improve clarity.

“17 Occupation/Type of business” – In the vast majority of cases, grocery retailers would have no information that would allow them to complete this line.

“Part II Suspect Instrument/Funds Transfer Information”—revise wording to “Transaction Information/Funds Transfer Information” to avoid confusion.

“26 Category of suspicious activity (Check all that apply)”—revise wording to “structuring transactions” instead of just structuring to clarify and move that activity to item “a” since it accounted for 98% of all SARs filed last year. Money laundering would then become “b”.

“Part III Transaction Location Information”—add an optional line for “Name/phone of clerk filling out report” so law enforcement officials could quickly locate the clerk for additional information if needed.

“Part IV Law Enforcement Agency Information, 39 Has a law enforcement agency already been contacted (excluding submission of a SAR-MSB)? If so, check the appropriate box.”—add the word “If” to the beginning of the line, so 39 reads “If a law enforcement agency has already been contacted (excluding submission of a SAR-MSB), check the appropriate box.” This would help clarify that each form does not necessarily require a phone call to law enforcement prior to completion.

“Where and How To Make a Report:” –Item 4. outlines the requirement to retain a copy of all supporting documentation for 5 years from the date of filing the report. FMI assumes that in not specifying where the documentation must be held, retailers could maintain the documentation at the corporate headquarters or other facility. Some Title 31 auditors now require that documentation be held at the actual retail location, so positive clarification has been requested by some of our members. Because of the very limited space available for filing and the lack of knowledge surrounding filing procedures, in many instances, a corporate location outside of the retail store would be a much safer location and would allow easier retrieval of documentation.

Additionally, this section discusses videotapes. Videotapes are traditionally kept by a store for no longer than 30-60 days and then are either reused or discarded. Many stores are in the process of converting from a video cassette recorder (VCR) to a digital video recorder (DVR) to enhance quality and easier searches. Some DVR hard drives can only hold 2-3 weeks worth of images. It would be impractical and a tremendous burden to (1) convert from a digital image to a videotape and (2) file and keep a bulky videotape for 5 years on the chance that some law enforcement official years from now might like to view the tape and may or may not be able to gather any information from the tape. It is also not possible to include videotape in the supporting documentation for **each** SAR for two main reasons. First, it is very time consuming to review the tapes in many cases from 12-20 cameras to identify the suspicious transaction given the thousands of customers traditionally in a retail location in a single day. Retailers would only want to do that when a specific law enforcement need had been outlined and in some cases, a court order had been provided. Additionally, the tapes are used for a host of law enforcement/loss prevention/legal functions. If a tape is automatically filed as supporting documentation for a SAR, it is not readily available for use by loss prevention/law enforcement officials conducting other investigations. We would recommend clarification to accomplish the law enforcement goal and significantly reduce the potential burden, stating that any law enforcement requests to hold and maintain a videotape (where one exists) be made within 30 days of the filing of the SAR—MSB. A request to maintain a digital image would likely need to be made in a significantly shorter time frame to ensure availability (15 days). Clarification in this area is critical.

“General Instructions, Part II Suspect Instrument/Funds Transfer Information Item 25. Funds transfer number(s)”—This item needs further clarification. A clerk would not be able to complete this section. What is Treasury referring to? What is the funds transfer system? The ACH? The Fed Wire?

“Part V – Reporting Business Information, Item 43. Legal name of business.” The second sentence is very confusing and would require additional explanation. Revise to read, “Enter the legal name of the reporting business. The legal name is identified with the business’s established taxpayer identification number.

In addition to these very specific comments, we would like to share a few general observations.

First, because of the title of this form and the location of a customer in relation to a clerk filling out the form, it could not be filled out on the counter without the strong possibility that the customer would know that an SAR was being filed on the transaction. It would therefore be helpful to have the option of filling out an electronic version of the SAR form and filing it electronically. Obviously, all stores would not have that capability either now or in the near future.

Second, it would be very helpful to have further guidance on what constitutes a suspicious transaction or what might constitute a suspicious transaction based on SAR forms that have been filed in the past. Regularly issued Q&A updates from your office would help those responsible for compliance to know what does and does not need to be reported and identify new trends in criminal activity.

April 12, 2002

Page 5

Third, we need additional education pieces and Q&A for not only the registration component and suspicious activity component, but also the money transmission component.

We look forward to continuing to work cooperatively with Treasury and the Financial Crimes Enforcement Network to identify and eliminate illegal activity under Treasury's jurisdiction. This SAR-MSB Form, with the suggested changes we have outlined, is certainly a big step toward that goal. We hope that it can be finalized and distributed to retail stores quickly and in conjunction with a comprehensive education campaign.

Sincerely,

A handwritten signature in black ink that reads "Tim Hammonds". The signature is written in a cursive style with a large, stylized "H" and a long, sweeping underline.

Tim Hammonds  
President and CEO