

regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 22, 2006.

Allen D. Klein,
Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments

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| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|--|
| * * * * * | * * * * * | * * * * * |
| May 24, 2006 | December 20, 2006 | NDAC 69–05.2–06–03 NDAC 69–05.2–10–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–09 NDAC 69–05.2–22–07 NDAC 69–05.2–24–01 |

[FR Doc. E6–21716 Filed 12–19–06; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Monetary Offices

31 CFR Part 82

Prohibition on the Exportation, Melting, or Treatment of 5-Cent and One-Cent Coins

AGENCY: United States Mint, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: To protect the coinage of the United States, this interim rule prohibits the exportation, melting, and treatment of 5-cent and one-cent coins. This interim rule is issued pursuant to 31 U.S.C. 5111(d), which authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. This interim rule is effective until April 14, 2007. The public is invited to comment until January 14, 2007. Thereafter, but prior to April 14, 2007, the Department of the Treasury will reevaluate the need for the rule in light of the public comments, and other relevant factors. Upon consideration of the public comments and other relevant factors, the Department of the Treasury may issue a final rule extending or modifying

the provisions of this interim rule, or may allow the interim rule to expire without extension.

DATES: *Effective Date:* This interim rule is effective December 20, 2006 through April 14, 2007.

Expiration Date: Unless extended by a further rulemaking document published in the **Federal Register**, this interim rule expires April 14, 2007.

Comment Due Date: January 19, 2007.

ADDRESSES: Send written comments to Daniel P. Shaver, Chief Counsel, Office of Chief Counsel, United States Mint, 801 9th Street, NW., Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Kristie Bowers, Attorney-Advisor, United States Mint at (202) 354–7631 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

Section 5111(d) of title 31, United States Code, authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. In enacting 31 U.S.C. 5111(d), Congress has conferred upon the Secretary of the Treasury broad discretion to ensure that he can effectively carry out his statutory duties to protect the Nation’s coinage and to ensure that sufficient quantities of coins are in circulation to meet the needs of the United States. Pursuant to this authority, the Secretary of the Treasury

has determined that, to protect the coinage of the United States, it is necessary to generally prohibit the exportation, melting, or treatment of 5-cent and one-cent coins minted and issued by the United States. The Secretary has made this determination because the values of the metal contents of 5-cent and one-cent coins are in excess of their respective face values, raising the likelihood that these coins will be the subject of recycling and speculation. In fact, the Department has received anecdotal reports suggesting that this activity may already be occurring. The prohibitions contained in this interim rule apply only to 5-cent and one-cent coins.

The primary reason for limiting the melting, exportation, and treatment of 5-cent and one-cent coins is to avoid a shortage of these coins in circulation. Under 31 U.S.C. 5111(a)(1), the core responsibility of the Secretary of the Treasury with respect to the Nation’s coinage is to “mint and issue coins * * * in amounts the Secretary decides are necessary to meet the needs of the United States.” In meeting the needs for low-value circulating coin denominations, the United States Mint estimates that it augments and replenishes only about four percent of the Nation’s 5-cent coin supply, and only about eight percent of the one-cent coin supply, each year. Accordingly, the extraction of even relatively small amounts of these coins from circulation could have a significant impact on the United States Mint’s ability to produce

sufficient volumes of these coins to meet the needs of commerce. Another reason for limiting the melting, exportation, and treatment of 5-cent and one-cent coins is that the United States Mint, and ultimately the United States Treasury and the taxpayer, would have to bear the additional cost of replenishing these coins. At prevailing prices, and based on existing commercial coin counting and recirculation capacities, the cost to the United States Treasury in replenishing 5-cent and one-cent coins taken out of circulation and diverted as scrap metal for recycling could be well in excess of \$1 million per day, and volumes required for replenishment could be in excess of the United States Mint's capacity.

The authority granted to the Secretary by the Coinage Act of 1965 has been invoked on two prior occasions; in both instances the regulations were implemented as interim rules that were later made permanent until rescinded. In 1967, during the transition from silver to cupro-nickel clad coinage, then-Secretary Fowler authorized regulations that prohibited the exportation, melting, or treatment of all U.S. coins containing silver. 32 FR 7496 (May 20, 1967). In 1974, to stem the unprecedented increase in demand for one-cent coins attributable to speculation that the metal content of the coin would soon exceed its face value, then-Secretary Shultz invoked this authority, approving regulations that limited the exportation, melting, or treatment of one-cent coins. 39 FR 13881 (April 18, 1974). These prior regulations were rescinded in 1969 and 1978, respectively, when the prohibitions were no longer necessary to protect the Nation's coinage. 34 FR 7704 (May 15, 1969); 43 FR 24691 (June 7, 1978).

The interim rule provides limited exceptions to the prohibitions. First, exportation and any of the otherwise prohibited activities may be authorized by license granted by the Secretary (or designee). Second, the interim rule also provides exceptions for coins exported in small amounts for legitimate use as money or for numismatic purposes, and for small amounts of coins carried on the person, or in the personal effects, of individuals leaving the country. Finally, there is an exception for coins treated in small quantities for educational, amusement, novelty, jewelry, and similar purposes.

The Secretary of the Treasury has delegated to the Director of the United States Mint the authority to issue these regulations and to approve exceptions by license.

II. Public Comments

The public is invited to submit written comments concerning any aspect of this interim rule. Comments should be received by January 14, 2007. All comments will be available for public inspection. To inspect comments, contact Kristie Bowers, Attorney-Advisor, United States Mint at (202) 354-7631 (not a toll-free call).

III. Procedural Requirements

This rule is not a significant regulatory action for the purposes of Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Pursuant to 5 U.S.C. 553(b)(B), it has been determined that notice and public procedure regarding this interim rule are contrary to the public interest. Issuing this rule for notice and comment rulemaking would only serve to hasten recycling and speculation in 5-cent and one-cent coins, thereby exacerbating the very problems this interim rule seeks to prevent. As stated above, the Secretary of the Treasury has determined that the prohibitions contained in this interim rule are necessary to protect the coinage of the United States for two principal reasons.

First, the economic burden on the Treasury, and ultimately on taxpayers, occasioned by the need to replace 5-cent and one-cent coins withdrawn from circulation if these regulations are not implemented could be in excess of \$1 million per day. At current metal prices, the profit potential from recycling 5-cent and one-cent coins to reclaim copper, nickel and zinc is sufficiently lucrative to effect these dangers in a very short time period. If this were to happen, delaying the implementation of this rule for notice and comment will have undermined the Secretary's ability to fulfill his statutory duty to protect the Nation's coinage. 31 U.S.C. 5111(d). Rather, protecting the 5-cent and one-cent coins currently in circulation, without delay, is essential to avoiding the destruction of coins that would result in high costs to the Government. *Cf. Arteaga v. Lyng*, 660 F. Supp 1142, 1147 (M.D. Fla. 1987).

Second, the potential pace and volume at which such withdrawals could occur would exceed the United States Mint's replenishment capacity and potentially cause a circulating coin shortage. In this regard, employing a notice of proposed rulemaking will serve its intended purposes—that is, to inform the public that the Secretary is considering a limitation on the melting, treatment, and exportation of 5-cent and

one-cent coins because the value of their metal content makes it economical to recycle as scrap metal. However, such a notice of proposed rulemaking also would have a significant unintended, but very predictable, consequence—namely, it would serve as an official notice to the public that until such a regulation is finally implemented, the melting, treatment, and exportation of 5-cent and one-cent coins not only is profitable, but also is unquestionably legal. The numerous inquiries that the United States Mint receives, asking whether it is legal to melt one-cent coins, suggests that there is a widely-held belief among the general public that destroying United States coins is either unlawful or, at the very least, unseemly. However, once a notice of proposed rulemaking publicly reinforces that there is no current prohibition against melting the Nation's coins for profit, the sale of massive quantities of 5-cent coins and one-cent coins to recycling firms as scrap metal can be accomplished very quickly, causing a precipitous shortage of these denominations. In this regard, the Attorney General's Manual indicates, as to the "public interest" ground for finding good cause under 5 U.S.C. 553(b)(3), that it "connotes a situation in which the interest of the public would be defeated by any requirement of advance notice," as when announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent." See United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 31, quoted in *Utility Solid Waste Activities Group v. Environmental Protection Agency*, 236 F.3d 749, 755 (D.C. Cir. 2001). Similarly, "in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare." *Mobil Oil Corp. v. Department of Energy*, 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983). Accordingly, delaying this rule for notice and comment would be contrary to the public interest because it could impair the Secretary's mission to ensure that there are sufficient quantities of one-cent and 5-cent coins in circulation to meet the needs of the United States. See 31 U.S.C. 5111(a)(1).

While these concerns are predictive in nature, and therefore not susceptible of strict factual proof, in the judgment of the Department, the risk to the public's confidence in the integrity and reliability of the United States'

monetary system, in the event that precipitous speculation or recycling causes a shortage of one-cent or 5-cent coins, is not insubstantial. *Cf. Mobil Oil Corp.*, 728 F.2d at 1492.

For these reasons, it has also been determined that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to make this interim rule effective immediately.

Although the Secretary of the Treasury has determined that it is necessary to make this interim rule effective immediately, the Department is interested in obtaining input from the public on this matter. The public therefore is invited to submit written comments concerning this interim rule. Within 120 days, the Department of the Treasury will evaluate the public comments and consider other relevant factors before deciding whether to issue a final rule extending or modifying the provisions of this interim rule, or allowing the interim rule to expire without extension.

List of Subjects in 31 CFR Part 82

Administrative practice and procedure, Currency, Penalties.

Authority and Issuance

■ For the reasons set forth, Chapter 1 of Subtitle B of title 31 of the Code of Federal Regulations is amended by adding part 82 to read as follows:

PART 82—5-CENT AND ONE-CENT COIN REGULATIONS

Sec.

- 82.1 Prohibitions.
- 82.2 Exceptions.
- 82.3 Definitions.
- 82.4 Penalties.

Authority: 31 U.S.C. 5111(d).

§ 82.1 Prohibitions.

Except as specifically authorized by the Secretary of the Treasury (or designee) or as otherwise provided in this part, no person shall export, melt, or treat:

- (a) Any 5-cent coin of the United States; or
- (b) Any one-cent coin of the United States.

§ 82.2 Exceptions.

(a) The prohibition contained in § 82.1 against the exportation of 5-cent coins and one-cent coins of the United States shall not apply to:

(1) The exportation in any one shipment of 5-cent coins and one-cent coins having an aggregate face value of not more than \$100 that are to be legitimately used as money or for numismatic purposes. Nothing in this paragraph shall be construed to authorize export for the purpose of sale

or resale of coins for melting or treatment by any person.

(2) The exportation of 5-cent coins and one-cent coins having an aggregate face value amount of not more than \$5 carried on an individual, or in the personal effects of an individual, departing from a place subject to the jurisdiction of the United States.

(b) The prohibition contained in § 82.1 against the treatment of 5-cent coins and one-cent coins shall not apply to the treatment of these coins for educational, amusement, novelty, jewelry, and similar purposes as long as the volumes treated and the nature of the treatment makes it clear that such treatment is not intended as a means by which to profit solely from the value of the metal content of the coins.

(c)(1) The prohibition contained in § 82.1 against exportation, melting, or treatment of 5-cent coins and one-cent coins of the United States shall not apply to coins exported, melted, or treated under a written license issued by the Secretary of the Treasury (or designee).

(2) Applications for licenses should be transmitted to the Director, United States Mint, 801 9th Street, NW., Washington, DC 20220.

§ 82.3 Definitions.

(a) "5-cent coin of the United States" means a 5-cent coin minted and issued by the Secretary of the Treasury pursuant to 31 U.S.C. 5112(a)(5).

(b) "One-cent coin of the United States" means a one-cent coin minted and issued by the Secretary of the Treasury pursuant to 31 U.S.C. 5112(a)(6).

(c) "Export" means to remove, send, ship, or carry, or to take any action with the intent to facilitate a person's removing, sending, shipping, or carrying, from the United States or any place subject to the jurisdiction thereof, to any place outside of the United States or to any place not subject to the jurisdiction thereof.

(d) "Person" means any individual, partnership, association, corporation, or other organization, but does not include an agency of the Government of the United States.

(e) "Treat" or "treatment" means to smelt, refine, or otherwise treat by heating, or by a chemical, electrical, or mechanical process.

§ 82.4 Penalties.

(a) Any person who exports, melts, or treats 5-cent coins or one-cent coins of the United States in violation of § 82.1 shall be subject to the penalties specified in 31 U.S.C. 5111(d), including a fine of not more than

\$10,000 and/or imprisonment of not more than 5 years.

(b) In addition to the penalties prescribed by 31 U.S.C. 5111(d), a person violating the prohibitions of this part may be subject to other penalties provided by law, including 18 U.S.C. 1001(a).

Dated: December 12, 2006.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 06-9777 Filed 12-15-06; 12:41 pm]

BILLING CODE 4810-02-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Docket No. BPD GSRS 06-02]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Customer Confirmation Reporting Requirement Threshold Amount

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") is issuing in final form an amendment to 31 CFR part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds) that raises the customer confirmation reporting requirement threshold amount from \$500 million to \$750 million. Beginning on December 31, 2006, any customer awarded a par amount of \$750 million or more in a Treasury marketable securities auction must send us a confirmation of its awarded bid(s) by 10 a.m. on the day following the auction. This final rule also clarifies that customer confirmations may now be sent by e-mail as well as by fax or hand delivery.

DATES: *Effective Date:* January 1, 2007.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at <http://www.treasurydirect.gov> or from the Electronic Code of Federal Regulations (e-CFR) Web site at <http://www.gpoaccess.gov/ecfr>. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.