

FEDERAL RESERVE BANK
OF NEW YORK

ATCIR No 9917
September 5, 1985

**Amendment to Treasury Regulations Implementing the
Currency and Foreign Transactions Reporting Act**

*To All State Member Banks and Edge Corporations
in the Second Federal Reserve District:*

Printed on the following pages is the text of an amendment to Treasury Regulations implementing the Currency and Foreign Transactions Reporting Act. The amendment establishes a new regulatory procedure through which the Secretary of the Treasury may prescribe reporting rules, in the form of regulations, requiring certain financial institutions in the United States to submit reports of financial transactions with "foreign financial agencies," as defined in 31 CFR 103.11, as amended, on page 5 of this circular.

The amendment, which has been reprinted from the *Federal Register*, does not require any financial institution to file a new report at this time. Notice of any future reporting requirements will be published in the *Federal Register*, or the affected financial institutions will be notified directly.

Questions regarding this matter may be directed to our Bank Examinations Department (Tel. No. 212-791-7946).

E. GERALD CORRIGAN,
President.

31 CFR Part 103

Amendments to Implementing Regulations Currency and Foreign Transactions Reporting Act

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: This final rule establishes a regulatory procedure through which the Secretary of the Treasury, exercising the authority conferred by 31 U.S.C. 5314, can require financial institutions in the United States to submit reports of financial transactions with foreign financial agencies. When the Secretary issues a reporting requirement in the nature of a regulation in accordance with the procedure established by this final rule, such regulation will specify the transactions, the time period, and the classes of financial institutions required to report.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., Office of the Assistant Secretary (Enforcement & Operations), (202/566-8022).

SUPPLEMENTARY INFORMATION:

Background

The Currency and Foreign Transactions Reporting Act (Pub. L. 91-508, Title II (Oct. 26, 1970), as amended, codified in 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep certain records and file certain reports. The reporting requirements are described in general terms in the statute. Title 31, United States Code, section 5313, authorizes the Secretary to require reports of domestic transactions involving monetary instruments or domestic currency. Section 5314 authorizes the Secretary to require reporting of accounts in, and transactions with, foreign financial agencies. Section 5316 authorizes the Secretary to require reports of exports or imports of monetary instruments exceeding \$10,000.

Since implementing regulations first became effective in 1972, reporting of currency transactions under section 5313 has been limited to filing by domestic financial institutions of reports on transactions exceeding \$10,000. (See 31 CFR 103.22.) The only reporting requirement imposed under section 5314 has been the disclosure of foreign financial accounts. (See 31 CFR 103.24.) The reports of exported or imported monetary instruments exceeding \$10,000

required by section 5316 call for the disclosure of limited information only. (See 31 CFR 103.23.)

In the thirteen years since these reporting requirements were drafted, there has been a significant growth in international business dealings, including an enormous increase in the amounts of narcotics and other controlled substances smuggled into the United States, and the international transportation of funds that are profits of these illegal activities and serve to finance them. The government's responsibility to enforce the laws respecting these and other illegal activities demands the development of new regulatory techniques to provide necessary information without unduly burdening commerce.

The Secretary is authorized by 31 U.S.C. 5314 to require reports not only of accounts in, but also of transactions with, foreign financial agencies. Section 5314(a) authorizes the Secretary, to the extent he deems necessary, to require such reports to contain:

- (1) The identity and address of participants in a transaction or relationship;
- (2) The legal capacity in which a participant is acting;
- (3) The identity of real parties in interest; and
- (4) a description of the transaction.

In requiring such reports, however, the Secretary is directed to consider the need "to avoid impeding or controlling the export or import of monetary instruments and . . . to avoid burdening unreasonably a person making a transaction with a foreign financial agency." To this end, subsection 5314(b) authorizes the Secretary to prescribe:

- (1) A reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;
- (2) A foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;
- (3) The magnitude of transactions subject to a requirement or a regulation under this section;
- (4) The kind of transactions subject to or exempt from a requirement or a regulation under this section; and
- (5) Other matters the Secretary considers necessary to carry out this section or a regulation under this section.

In recognition of limits on the government's current ability to monitor adequately international transactions with foreign financial agencies, the Treasury Department published a notice of proposed rulemaking in the Federal Register on April 5, 1984, proposing a regulatory amendment to 31 CFR Part 103. (See 49 FR 13548.) That amendment, as adopted by this final rule, establishes a new procedure, authorized by 31 U.S.C. 5314, under which the Secretary may issue reporting requirements, in the nature of regulations, requiring limited classes of financial institutions to report limited numbers of financial transactions. Notice of such reporting requirements will either be published in the Federal Register or will be served personally upon members of the affected classes of financial institutions to provide actual notice in compliance with 5 U.S.C. 553.

This final rule does not require any financial institution to file any new report. Rather, it describes (i) the procedure for issuing future regulations containing reporting requirements, (ii) the classes of financial institutions that may be subject to future reporting requirements; (iii) the universe of information that may be subject to reporting requirements; (iv) the reasons for the new reporting requirements; (v) the authority for the issuance of the reporting requirements; and (vi) the limitations upon the scope and use of such future reporting requirements.

Future reporting requirements will be issued in response to money-flow and banking patterns of criminal, tax or regulatory interest to the Treasury.

Notice and Comment

The Treasury Department's notice of proposed rulemaking invited comments on the proposed rule for 60 days ending on June 4, 1984. The Department received 27 comments in response to that notice from 17 individual financial institutions, seven banking industry associations, one credit card company, the Department of Justice and the President's Commission on Organized Crime. Although several of these comments were received a few days after the close of the comment period, the Department has considered all of the comments received in formulating the final rule. The following summarizes the comments and sets forth Treasury's responses.

Cost of Compliance

Comment: Many commenters feared that complying with future reporting requirements would create onerous

administrative costs either because new recordkeeping would have to be implemented or existing recordkeeping would have to be revised. This was especially felt to be the case as to reporting information not routinely recorded during the normal course of business. In addition, retrieving discrete information from a voluminous ongoing flow of data was argued to be prohibitively expensive.

Response: In light of these comments, Treasury has reviewed its anticipated information reporting needs and has decided to delete the authority under (proposed) 31 CFR 103.25(b) requiring the reporting of credit card charges. Otherwise, Treasury finds that there is a need to retain the authority to require reporting of the other types of information listed in new § 103.25(b).

Treasury has a statutory obligation in fashioning reporting requirements to consider the need to "avoid burdening unreasonably" international financial transactions. The Department notes that this final rule lists the universe of information for which reports may be required; however, ordinarily, only a few items from that list will be included in any given reporting requirement, as necessary. Moreover, Treasury anticipates that most of the information it selects already will be recorded by the financial institution during its normal course of business. Further, Treasury stands ready to work with the banking community to develop convenient and mutually acceptable reporting methods.

Because each reporting requirement will be tailored to specific information needs, no standard reporting form has been prepared. When the Secretary promulgates a reporting requirement, he may prescribe the manner in which the required information is to be reported. However, in response to comments received concerning the possible administrative burden on reporting institutions, Treasury has added a provision to the final rule that authorizes the Secretary to permit a designated institution to report in a different manner from that prescribed if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution; that a report in a different form will provide Treasury with all the information the Secretary deems necessary; and that submission of the information will not unduly hinder the effective administration of this Part.

As a result, the administrative cost of responding to any given future reporting requirement promulgated pursuant to

this new procedure will not be unreasonably burdensome.

Treasury notes that the Department must take those steps it deems necessary to combat the rapidly increasing use of international financial transactions to further money laundering, narcotics trafficking and tax evasion. Any administrative burden that may be imposed on the banking community by reports required under this new procedure is reasonable in light of these important concerns.

Comment: Comments also were received to the effect that compliance costs would put those financial institutions required to report at a competitive disadvantage in relation to financial institutions not required to report.

Response: Since Treasury anticipates that its reporting requirements will be for discrete information over very limited periods of time, the resulting administrative cost will not be so great as to place responding institutions at a competitive disadvantage.

Over time, most financial institutions engaging in substantial international financial transactions probably will be subjected to one or more reporting requirements. Consequently, the costs of compliance will be shared by like competitors. To the extent that financial institutions are not subjected to reporting requirements it probably will be due to their lack of international activity. Such institutions will not receive a competitive advantage because they do not compete for international financial business.

Comment: Several commenters sought reimbursement from the government for the administrative costs of complying with future reporting requirements.

Response: The Currency and Foreign Transactions Reporting Act does not authorize the Treasury Department to expend public funds for such reimbursement. However, as indicated above, Treasury stands ready to work with the banking community to develop convenient and mutually acceptable reporting methods to mitigate the administrative burden on financial institutions.

Privacy Considerations

Comment: Many commenters felt that the future reporting requirements would violate the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*) by requiring the disclosure of individually identifiable account information.

Response: The Right to Financial Privacy Act was enacted to prohibit government access for law enforcement purposes to information held by financial institutions without, in most cases, first providing notice and an opportunity to contest such access to the individual whose records were being sought. However, this prohibition does not apply to the disclosure of information "required to be reported in accordance with any Federal statute or rule promulgated thereunder." 12 U.S.C. 3413(d). Information reported pursuant to this new procedure clearly fits within the section 3413(d) exception.

Nevertheless, Treasury believes it would be inappropriate to use the reporting provisions of 31 U.S.C. 5314 to gather information to further ongoing law enforcement investigations of particular individuals. In such cases, those information collection procedures addressed by the Right to Financial Privacy Act would continue to apply. Treasury believes those procedures better balance the rights due individuals involved in disputes with the government and the legitimate demands of society that its laws be enforced.

Information collected under the new procedure should help uncover suspicious financial patterns that then can be investigated by way of established information collection procedures. In recognition of this purpose, the new procedure explicitly prohibits the imposition of future reporting requirements intended to further ongoing investigations of individuals.

Comment: Several commenters were concerned that future reporting requirements might violate the privacy laws of foreign countries, and that compliance would put financial institutions in violation of those laws, or drive financial business overseas to shield transactions from disclosure to the United States government.

Response: This regulatory procedure authorizes the reporting of information about transactions between domestic financial institutions and foreign financial agencies. It is not concerned with wholly foreign transactions. To the extent foreign financial agencies wish to conduct transactions that either originate or culminate within the United States, they are obliged to conduct such transactions in compliance with United States law. Treasury finds the nominal burden placed on such transactions to be justified by the strong national interests served by this regulatory procedure.

Treasury disagrees that the threat of future reporting requirements will have a deleterious effect on the ability of domestic financial institutions to compete with foreign financial agencies in the international financial market. No empirical substantiation for this concern has been offered. To the contrary, Treasury has perceived no impact on foreign business activity in the United States due to existing recordkeeping and reporting requirements, and sees no reason to believe that foreign businessmen or bankers will now forsake the American market out of fear of these limited reporting requirements.

Comment: Several comments suggested that internal bank customer privacy guidelines would require the disclosure of any future reporting requirements to affected customers which, in turn, would frustrate the purpose of the reporting requirements.

Response: Treasury anticipates that future reporting requirements will have limited durations commencing immediately upon receipt by the affected financial institutions. Consequently, even if internal privacy guidelines require notice to customers of these reporting requirements, such notice normally should not reach the customers until well into the short periods covered by the reporting requirements. The reporting periods should be short enough to minimize the likelihood that customers will find it worthwhile to disrupt their patterns of financial activity in order to avoid such reporting requirements.

Rulemaking Sufficiency

Comment: Several commenters argued that the proposed rule did not afford a meaningful opportunity to comment upon the scope of future reporting requirements.

Response: Treasury believes that this rulemaking process provided ample opportunity to comment on the scope of future reporting requirements. The notice of proposed rulemaking clearly specified the universe of information proposed to be subject to future reporting requirements, and that universe has not been altered in this final rule except to delete certain categories of information, as discussed above.

In order to comply with the statutory mandate to avoid needless or unreasonable burdens on reporting institutions, the proposed rule contemplated that future information requests would be limited to discrete subsets of the universe of persons and

transactions potentially subject to reporting. Narrowing future reporting requirements as contemplated by this rulemaking is consistent with the statutory mandate, but precludes a precise description of reporting requirements, because their nature depends on future events and conditions prevailing at the time of issuance. Merely because a given reporting requirement may be imposed on a narrower class of persons or transactions than could otherwise be subject to the reporting requirement does not make the notice of proposed rulemaking impermissibly vague. As a result, Treasury believes that this rulemaking process has given sufficient description of those persons and transactions that are subject to future reporting requirements.

Moreover, the adequacy of the notice of proposed rulemaking to air relevant issues concerning the scope of future reporting requirements is confirmed by the ample comments that were received in response to the notice of proposed rulemaking. Concerns were raised with regard to the breadth of information potentially subject to a reporting requirement, anticipated operational difficulties, costs, privacy issues, burdens on commerce, etc. Treasury discerns no difference between the concerns that have been expressed over the instant regulatory procedure and the concerns that might arise over future reporting requirements. They are one and the same, and have been adequately addressed through this rulemaking process.

Treasury believes the notice of proposed rulemaking adequately informed interested parties of the addition of a reporting requirement for financial institutions, identified the universe of persons and transactions that could be subject to future reporting requirements, explained the reasons why reports were necessary to carry out the purposes of the Act, identified the authority for the requirement, and advised affected persons that a report would not be required until actual notice was given by Treasury. As a result, Treasury believes that this rulemaking process has given sufficient notice of the subjects and issues involved in this rule as well as any future regulations that might be issued as described in this rule.

Regulatory Impact Analysis

This regulatory amendment is not a major rule for purposes of Executive Order 12291. It is not anticipated to have

an annual effect on the economy of \$100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Consequently, a Regulatory Impact Analysis has not been prepared.

Regulatory Flexibility Analysis

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Almost all of the information that could be the subject of a reporting requirement is already being maintained in response to existing recordkeeping regulations. Given the focused nature of the contemplated reports, the clerical costs incurred by the specified group of financial institutions in filing the reports is anticipated to be relatively small. Consequently, a Regulatory Flexibility Analysis has not been prepared.

Paperwork Reduction Act

The collection of information requirements contained in the final Rule have been approved by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

(OMB Control No. 1505-0063)

Drafting Information

The principal author of this document was Terry Thiele, Office of the General Counsel, Department of the Treasury. However, personnel from other Treasury offices participated in its development.

List of Subjects in 31 CFR Part 103

Banks and banking, Currency, Electronic funds transfers, Foreign banking, Investigations, Law enforcement, Drug traffic control, Reporting requirements, Taxes.

Amendment

PART 103—[AMENDED]

31 CFR Part 103 is amended as set forth below:

1. The authority citation for Part 103 is revised to read as follows:

Authority: Sec. 21 of the Federal Deposit Insurance Act, Pub. L. 91-508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829b, 1951-1959); and the Currency and Foreign Transactions

Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5322).

2. A new definition is added to 31 CFR 103.11 after the definition of *Foreign bank* to read as follows:

§ 103.11 [Amended]

* * * * *

Foreign bank. * * *

Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

* * * * *

3. Sections 103.25 and 103.26 are renumbered as sections 103.26 and 103.27 and, a new § 103.25 is added to read as follows:

§ 103.25 Reports of transactions with foreign financial agencies.

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the Federal Register, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b).

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on

respondent financial institution— including the following information:

- (i) Name of maker or drawer;
- (ii) Name of drawee or drawee financial institution;
- (iii) Name of payee;
- (iv) Date and amount of instrument;
- (v) Names of all endorsers.

(2) Wire or electronic fund transfers received by respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency—including the following information:

- (i) Name of foreign financial agency;
- (ii) Name, address and account number of account being credited or debited by respondent financial institution;
- (iii) Name of respondent financial institution;
- (iv) Date and amount of each transfer;
- (v) Any other information normally appearing on respondent financial institution's internal wire or electronic fund transfer entries.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

- (i) Name of borrower;
- (ii) Name of person acting for borrower;
- (iii) Date and amount of loan;
- (iv) Terms of repayment;
- (v) Name of guarantor;
- (vi) Rate of interest;
- (vii) Method of disbursing proceeds;
- (viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:

- (i) Name of maker;
- (ii) Date and amount of paper;
- (iii) Due date;
- (iv) Certificate number;
- (v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:

- (i) Name of corporation;
- (ii) Type of stock;
- (iii) Certificate number;
- (iv) Number of shares;
- (v) Date of certificate;
- (vi) Name of registered holder;
- (vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:

- (i) Name of issuer;
- (ii) Bond number;
- (iii) Type of bond series;

- (iv) Date issued;
 - (v) Due date;
 - (vi) Rate of interest;
 - (vii) Amount of transaction;
 - (viii) Name of registered holder.
- (7) Certificates of deposit received or shipped by respondent financial institution—including the following information:

- (i) Name and address of issuer;
- (ii) Date issued;
- (iii) Dollar amount;
- (iv) Name of registered holder;
- (v) Due date;
- (vi) Rate of interest;
- (vii) Certificate number;
- (viii) Name and address of issuing agent.

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.

(e) *Limitations.* (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining

individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an

investigation for possible violation of any other Federal law.

(3) The Secretary shall not issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions that were both completed and reflected in its records prior to the date it received

notice of the reporting requirement.
(Approved by the Office of Management and Budget under Control No. 1505-0063)

Dated: May 31, 1985.

John M. Walker, Jr.,
Assistant Secretary (Enforcement and Operations).

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