

FEDERAL RESERVE BANK
OF NEW YORK

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February 25, 1987

AMENDMENT TO THE BANK SECRECY ACT

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

Effective October 27, 1986, the Anti-Drug Abuse Act of 1986 was signed into law. This legislation makes significant changes in the Bank Secrecy Act ("Act").

One of the amendments to the Act [Title 31, United States Code, Chapter 53, Subchapter II, paragraph 5318, subsection (f)] requires additional information concerning the qualification for exemption from reporting requirements. Specifically, a financial institution must prepare and maintain a statement signed by the customer, that describes in detail the reasons why a customer is qualified for exemption. Signed statements are required for all customers granted exemptions after October 27, 1986.

The Federal regulations that implement the Bank Secrecy Act were expanded effective December 17, 1986. The regulations describe the type of information to be included in signed statements of exempt customers. The responsibility of the financial institution to evaluate customer account activity in order to determine proper exemption amounts also is covered by the regulations. A copy of the Federal Register notice is attached for your information.

Questions regarding this matter may be directed to Elizabeth Irwin-McCaughey, Supervising Examiner, Specialized Examinations Department (Tel. No. 212-720-7946).

GEORGE R. JUNCKER,
Chief Compliance Examiner.

Office of the Secretary

31 CFR Part 103

Amendment to the Bank Secrecy Act Regarding the Granting of Exemptions to the Reporting Requirements by Banks

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Anti-Drug Abuse Act, Pub. L. No. 99-570, which the President signed into law on October 27, 1986, sets forth a number of statutory provisions relating to the fight against money laundering and drug trafficking. These provisions include an amendment to the Bank Secrecy Act that requires a financial institution to obtain from a customer who wishes to be placed on its exemption list, a signed statement, describing why transactions with that customer qualify for exemptions from the Bank Secrecy Act reporting requirements for large cash transactions. This final rule merely incorporates that statutory requirement into the regulations that implement the Bank Secrecy Act.

EFFECTIVE DATE: December 17, 1986.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.* and 31 U.S.C. 5311 *et seq.*), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. The Secretary also has the authority to prescribe appropriate exemptions from these reporting requirements. Treasury regulations implementing the Act, 31 CFR Part 103, require a variety of financial institutions to file reports of large currency transactions. The present regulations also permit banks to exempt the deposit and withdrawal transactions of certain customers from the reporting requirements and to apply to Treasury for special exemptions for other customers.

Subtitle H of Title I of the Anti-Drug Abuse Act of 1986, the "Money Laundering Control Act of 1986," contains amendments to, among other statutes, the Bank Secrecy Act. Section 1356 of Subtitle H makes several substantive changes in 31 U.S.C. 5318. The statutory authority of the Secretary to prescribe exemptions from the reporting requirements is substantively unchanged, but renumbered as section 5318(a)(5). Among the new additions to section 5318, effective upon enactment, is new section 5318(f):

(f) No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

Pursuant to present Treasury regulations, the only financial institutions eligible to grant exemptions are banks as defined in 31 CFR 103.11. This final rule does not extend to other financial institutions the authority to grant exemptions.

Present Treasury regulations, at 31 CFR 103.22, state the circumstances under which banks may exempt the currency transactions of certain customers from the reporting requirements. Exemptions that banks may not unilaterally grant under the regulations may be authorized by the Secretary upon application by the bank. The present regulations require neither a detailed statement of reasons for the exemption, nor a signed statement by the customer seeking the exemption.

The revised regulation below will require that for all exemptions granted after October 27, 1986, the effective date of section 1356 of the Anti-Drug Abuse Act of 1986, the financial institution must prepare a detailed statement of reasons, signed by the customer. The statement must explain why the exemption is sought, and what transactions and amounts of transactions are covered by the exemption, and state certain identifying information concerning the customer that the current regulations already require. The signature of the customer, which should also indicate the signer's title and position, will attest to the accuracy of the information concerning

the nature of the customer's business. Once the statement is signed, the customer may be held liable under 18 U.S.C. 1001 if he has provided false information on the statement. The regulation requires a statement by the customer attesting that the information provided is true and correct to the best of the customer's knowledge and belief, and that this information will be read and relied upon by the Government. Banks should not merely adopt without question the information a customer provides regarding usual amounts of cash transactions, but should independently evaluate the customer's account activity to determine proper exemption amounts. This evaluation should include a review of past cash transactions for their frequency and the dollars amounts of the type of cash transactions to be exempted.

Treasury will not issue a model or prescribed form for the customer's signed statement. Accordingly, each bank may develop its own format for the required statement so long as it includes all of the categories of information specified in the revised regulation, and the attestation statement signed by the customer. Each bank will retain this statement as long as the exemption remains in effect, and for a period of five years following the removal of the customer from the exempt list. When a bank requests authority for a special exemption from Treasury, a copy of the statement signed by the customer must accompany the request. The revised regulation also includes the new address for requesting such exemptions.

By Notice of Proposed Rulemaking, 51 FR 30233, August 25, 1986, Treasury proposed certain amendments to the Bank Secrecy Act regulations with a 90-day comment period to end on November 24, 1986. The comment period has now been extended to December 24, 1986. The proposed amendments included amendments to 31 CFR 103.22 (d) and (e) that would require banks to obtain signed statements from their customers on a Treasury-prescribed form, attesting to the basis for their exemption from the currency transaction reporting requirements. The passage of section 1356 of the Anti-Drug Abuse Act and the promulgation of this final rule supersede the proposed revision to 31 CFR 103.22 (d) and (e). As a consequence, commenters should no longer direct comments to this aspect of the proposed rulemaking. Treasury will

continue to receive comments on the remainder of the proposed regulations until December 24, 1986.

Finally, the Office of Financial Enforcement welcomes any written comments or questions from banks concerning their experiences in implementing this regulation. Please direct your written comments to the Office of Financial Enforcement at the address listed above.

Applicability of Notice and Effective Date Requirements

Because this amendment merely conforms the present regulations to a recent statutory change, and because that statutory change was effective upon signature, for such good cause found, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and a delayed effective date pursuant to 5 U.S.C. 553(d)(3) are impracticable and unnecessary.

Executive Order 12291

This rule 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, or innovation, or on the ability of United States based-enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

This document is not subject to the provision of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604. That Act does not apply to any regulation (such as this) for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or by any other statute.

Paperwork Reduction Act

The information collection requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. (OMB Control No. 1505-0063.)

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement), Department of the Treasury. However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority Delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

For the reasons set forth in the preamble, 31 CFR Part 103 is amended to read as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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

Authority: Sec. 21 of the Federal Deposit Insurance Act, Pub. L. No. 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. No. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5324).

2. Section 103.22 paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g) respectively; newly redesignated paragraph (e) is revised; new by redesignated paragraph (g) is amended by changing "paragraph (e)" to "paragraph (f)" and a new paragraph (d) is added to read as follows:

§ 103.22 Reports of currency transactions.

* * * * *

(d) After October 27, 1986, a bank may not place any customer on its exempt list without first preparing a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption. The statement shall include the name, address, nature of business, taxpayer identification number, and account number of the customer being exempted. The signature, including the title and position of the person signing, will attest to the accuracy of the information concerning the name, address, nature of business, and tax identification number

of the customer. Immediately above the signature line, the following statement shall appear: "The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government." The bank shall indicate in this statement whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption for both deposits and withdrawals. The bank also shall indicate whether the exemption is limited to certain types of deposits and withdrawals (e.g., withdrawals for payroll purposes). In each instance, the exempted transactions must be in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer. The bank is responsible for independently verifying the activity of the account and determining applicable dollar limits for exempted deposits or withdrawals. The bank must retain each statement that it obtains pursuant to this subparagraph as long as the customer is on the exempt list, and for a period of five years following removal of the customer from the bank's exempt list.

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

(e) A bank may apply to the Commissioner of Internal Revenue for additional authority to grant an exemption to the reporting requirement, not otherwise permitted under paragraph (b), if the bank believes that circumstances warrant such an exemption. Such requests shall be addressed to: Chief, Currency and Banking Reports Branch, Exemption Review Staff, IRS Data Center, Post Office Box 32063, Detroit, Michigan 48232, and must be accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer required by paragraph (d).

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Dated: December 2, 1986.

Francis A. Keating, II,
Assistant Secretary (Enforcement).
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