AT 10164

FEDERAL RESERVE BANK
OF NEW YORK

April 21, 1987

AMENDMENTS TO THE TREASURY'S IMPLEMENTING REGULATIONS UNDER THE BANK SECRECY ACT

To All State Member Banks, Edge Corporations,
and Branches and Agencies of Foreign Banks
in the Second Federal Reserve District, and Others Concerned:

The Bank Secrecy Act 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. In that regard, after consideration of more than 300 comments from the public, the Treasury has issued implementing regulations under the Bank Secrecy Act in order to ensure the collection of needed information and strengthen the enforcement of the Act. Enclosed — for member banks, Edge Corporations, and for branches and agencies of foreign banks in this District — is a copy of the text of the final amendments to those regulations, as published in the *Federal Register* of April 8, 1987. Copies will be furnished to others upon request directed to the Circulars Division of this Bank (Tel. No. 212-720-5215 or 5216).

In addition to providing a clarification of certain of the regulation's terms and requirements, the amendments introduce a 15-day filing requirement for *Form 4790* when currency or monetary instruments are received from outside of the United States. The amendments also establish a uniform minimum retention period of five years for transaction account records, and permit banks to exempt from the currency transaction reporting requirement deposits by certain public utilities and commercial passenger carriers.

The effective date for several of the amendments to the Treasury's regulations is July 7, 1987; the remainder of those amendments are effective *May 8, 1987.* Please refer to the enclosed copy of the *Federal Register* for more specific information.

Questions regarding the Bank Secrecy Act or the implementing Treasury regulations may be directed to Elizabeth Irwin-McCaughey, Supervising Examiner, Specialized Examinations Department (Tel. No. 212-720-7946).

GEORGE R. JUNCKER,
Chief Compliance Examiner.

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Part III

Department of the Treasury

Office of the Secretary

31 CFR Part 103

Amendments to Implementing Regulations Under the Bank Secrecy Act; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 103

Amendments to Implementing Regulations Under the Bank Secrecy Act

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule.

SUMMARY: The Bank Secrecy Act, Public Law No. 91–508 (12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, 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. On August 25, 1986, Treasury published in the **Federal Register** (51 FR 30233) a series of proposed changes to the Bank Secrecy Act regulations in 31 CFR Part 103 in order to ensure the collection of needed information, and to strengthen enforcement of the Act.

After review of the many comments received, Treasury is issuing a final rule encompassing all but three of the original proposals. One proposal, regarding exempt list customer certification statements, was enacted as part of the Anti-Drug Abuse Act of 1986 and was incorporated into Part 103 by final rule dated December 17, 1986 (51 FR 45108); two proposals, dealing with the purchase of more than $3,000 in monetary instruments, are still under consideration by Treasury and will be the subject of a separate notice to be issued within the next few months.

EFFECTIVE DATE: July 7, 1987 for those amendments to 31 CFR 103.11(e), 103.26(b)(2), 103.27, 103.33(b), 103.34(b)(13), and 103.37. All other changes to Part 103 made by this final rule are effective May 8, 1987.

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 Ave., NW., Washington, DC 20220, (202) 566–8022.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

Over 300 comments, many quite detailed, were received from individuals and financial institutions. Many general comments concerned the burden on financial institutions and the costs of compliance posed by the proposed amendments. The proposals to which commenters objected most frequently concerned the reporting of cash purchases of more than $3,000 in monetary instruments, and for new recordkeeping requirements placed on the purchase of monetary instruments. Because an initial review of the comments on these proposals indicates that further review of the issue is needed prior to promulgation of any final rule, the proposals relating to the cash purchase of more than $3,000 in monetary instruments, the certification requirement relating to those purchases, and the new recordkeeping requirements on the purchase of monetary instruments are being held in abeyance at this time and are not included in this final rule. Treasury anticipates issuing a notice on this issue in the near future.

Several commenters also asserted that the proposed rule, if adopted, would be considered a "major rule" within the meaning of Executive Order 12291. In their view, the proposed rule would create significantly increased operational costs, high implementation costs, and an ultimate cost burden that would be imposed on consumers. Many of the comments on this issue failed to present any substantial evidence to support the assertion, and apparently misunderstood the extent of the burdens the proposed rule would place upon financial institutions. The only new major substantive requirements that this final rule imposes pertain to records maintained by currency dealers and exchangers, and the majority of those records are ordinary business records. Moreover, a number of provisions in the proposed rule have been modified after review of the comments received, and other provisions (such as the monetary instruments purchase provisions) will be treated separately in a future regulatory proposal. Finally, Treasury emphasizes that no provision in this final rule will obligate financial institutions to purchase computer hardware or software to comply with the revised regulations. In view of these considerations, it is the Department's position that any cost created by this final rule will be far below the 100 million dollar threshold for a Regulatory Impact Analysis under Executive Order 12291.

A general discussion of the comments and Treasury decisions on the various proposals is presented below.

(1) *Expand the definition of "bank" to include Edge Act corporations:* An "Edge" or "Agreement" corporation, as defined by 12 U.S.C. 611 *et seq.*, is a corporation organized in the United States for the purpose of engaging in international or foreign banking, or other foreign financial operations; such institutions are supervised by the Board of Governors of the Federal Reserve System. This amendment would clarify that the regulations include these entities. (Amendment #2.)

As this is merely a clarification that comports with Treasury's interpretation of the present regulations, there was no substantial discussion of this issue by the commenters; it will stay as drafted.

(2) *Add a new definition of "common carrier":* This new definition would clarify the reporting responsibilities for currency and monetary instruments that are transported into or out of the United States. (Amendment #2.)

Many commenters desired further clarification and expressed a desire to have armored car services, such as Brinks, and private messenger services covered within the definition. Several also suggested that the term "undertaken to do so [supply services] indiscriminately for all persons" be deleted so that companies that supply services only to banks could be covered. The definition will be clarified to include institutions such as Brinks and businesses that limit their clientele to banks. Private messenger services are not covered by the definition of "common carrier."

(3) *Revise the definition of "financial institution" in light of recent case law, and to include certain selling agents of traveler's checks, money orders and similar instruments:* This revision would modify the definition to comport with recent case law defining financial institutions for Bank Secrecy Act purposes, and expand the definition to include selling agents of certain monetary instruments and all transmitters of funds. (Amendment #2.)

Five major issues were raised: (a) Many commenters felt that the proposed definition of "check casher" was so broad that it would cover any business which cashed a check, even if only an incidental part of its business, thus putting the concept of exempt lists in jeopardy; (b) some commenters wanted to know what a person "subject to State or Federal banking supervision" meant and whether it covered nonbanking subsidiaries of banking institutions; (c) some commenters wanted a clarification of the term "transmitter of funds;" (d) some commenters wanted to know what were "similar instruments" to money orders not already listed; and (e) some commenters wanted to know the significance of including "agents" in the definition. In response to these comments, Treasury notes that (a) the term "check casher" has been defined further as someone engaged in the business of cashing checks; (b) coverage

of those persons under "State or Federal banking supervision" was meant to cover all other banking institutions subject to examination by State or Federal banking supervisory authorities not already covered within the term "financial institution;" but the term does not include nonbanking subsidiaries, even if approval for the subsidiary initially must be given by the Federal or State banking authority; (c) "transmitter of funds, including telegraph companies" will be replaced by language that more closely tracks the relevant statute, 31 U.S.C. 5312; (d) the term "similar instruments" will be deleted; and (e) the term "agent" was added in order to make this definition consistent with the others in section 103.11.

(4) *Clarify and expand the definition of "monetary instruments" to include promissory notes, checks made out to fictitious payees, and certain other types of checks:* These substantive changes were proposed because enforcement experience indicated that certain cashier's checks and checks made out to fictitious payees were being used for money laundering, but arguably were not subject to current reporting requirements. Other amendments to the definition were intended to clarify the regulations. (Amendment #2.)

The major issues raised were (a) the use of the term "fictitious payee" and the near impossibility of a bank to determine when a check is made out to a "fictitious payee;" (b) the use of the term "promissory note" and concern as to its scope; (c) a request that the term "traveler's checks" be clarified to describe the different ways that a traveler's check could be considered to be in bearer form; and (d) clarification of the term "endorsed without restriction." Treasury has changed the definition in the final rule to clarify that the term "fictitious payee" is applicable only for the purposes of § 103.23. The issue would arise only in the rare case where a bank has to file a report under § 103.23, such as when the bank sends or receives funds from outside the United States by other than common carrier, and the bank knew at the time it filed the report that the payee was fictitious. The term "promissory note" refers to the UCC definition of that term. Treasury has not changed the definition of "traveler's check" because the definition of "monetary instrument" clearly states that the instrument in question, whether personal check, traveler's check, etc., must be in such a form that title would pass upon delivery; accordingly, that definition need not include separate descriptions of the circumstances in which these instruments could be considered to be in bearer form. The term "endorsed without restriction" is included as an example of how an instrument can be considered to be in bearer form; it does not need to be clarified further. The final rule also clarifies in the definition the difference between incomplete instruments and negotiable instruments, a distinction that previously was not as clear.

(5) *Add a new definition for "transition account" and insert it in place of the deleted term "demand deposit account" wherever it appears in the Part:* This new term would combine currently covered demand deposit accounts with recently developed money market and NOW accounts, which have many of the same characteristics as demand deposit accounts. (Amendments #2 & 3.)

There were few comments. One commenter requested clarification of the status of accounts that are not subject to withdrawal by check. As long as withdrawals are by some form of negotiable order, the accounts are covered under this definition. The proposal is adopted as drafted without change.

(6) *Add a new definition for "business day":* This amendment would provide that the term "business day" for banks means banking day. (Amendment #2.)

Many commenters wanted further clarification of the proposed definition, pointing out that the hours the bank is open to the public are not necessarily the same as the hours the bank might be open for other purposes. Several commenters suggested that the definition refer to the day that the transaction is posted to the customer's account. Treasury has adopted that suggestion, and has revised the definition of "business day" to mean that day, as normally communicated to depository customers (such as by teller window sign), on which the bank routinely posts a particular transaction to its customer's account.

(7) *Clarify that financial institutions must report multiple, same-day currency transactions of which they are aware that total more than $10,000:* This amendment would codify the CTR Form 4789 instruction that currently requires financial institutions to report multiple, same-day transactions of which they are aware that are by or on behalf of any person and total more than $10,000. As indicated above, this would not impose any new burden on financial institutions to adopt or purchase systems to reveal the existence of multiple, same-day transactions. (Amendment #4.)

A majority of the comments expressed concern about this proposal. These comments were devoted largely to two issues: the meaning of the term "aware" in discussing the scienter element in reporting transactions; and the extent to which banks would have to adopt or purchase new systems to capture currency transaction data if their present systems cannot do so. In order to clarify the requirement, Treasury has changed the term "is aware" to "has knowledge." This term means knowledge on the part of a partner, director, officer or employee of a financial institution, or on the part of any existing system at the institution that permits it to aggregate transactions.

"Knowledge," as used in the final rule, clearly includes the concept of "willful blindness" as well. *See United States* v. *Jewell,* 532 F. 2d 697 (9th Cir.), *cert. denied,* 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge; that is, "if a person has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge." *Jewell* at 700. If a financial institution suspects someone may be structuring transactions in order to avoid the filling out of a record or report, but deliberately refuses to ask questions because it wishes to remain ignorant and therefore, "innocent," the financial institution will be deemed to have knowledge for purposes of assessing liability under the Bank Secrecy Act.

Treasury emphasizes that this regulation does not require institutions to adopt or purchase new systems; however if and when financial institutions are considering the purchase of new computer systems, software or recordkeeping methods, Treasury urges that they consider the systems' ability to aggregate. Therefore, if a bank's existing system provides its officers or employees with information on transactions that may require reporting as aggregated transactions, that bank must make use of that system to comply with the reporting requirements of the Bank Secrecy Act, but need not adopt or purchase enhancements to increase that system's capability to identify multiple related transactions.

The commenters also raised the question of deposits and withdrawals accomplished through the use of night depository slots or automatic teller machines (ATM's). Treasury realizes that there is not a teller physically present when these transactions take place; however, when these transactions are later processed by a teller, if the teller (or the system) has knowledge that

an aggregated deposit or withdrawal has taken place, then there is a duty to file a Form 4789 under this section. Commenters also wished to know whether the term "by or on behalf of any person" in the aggregation requirement required institutions to track multiple transactions to one specific account, even if made by more than one person, or to track transactions by one person making deposits/withdrawals in reportable amounts to or from several accounts. As long as "a transaction in currency of more than $10,000" has occurred, it does not matter if it was done by one person with one account, several persons with the same account, or one person with several accounts. Examples of reportable transactions would be two people depositing more than $10,000 in one account, though neither deposited a reportable amount, or one person making a deposit of more than $10,000, but depositing the money in more than one account. Obviously, the regulations cover more than activity tied to a particular account. Reportable transactions need not, and often do not, involve an account at all. Finally, Treasury also wishes to reiterate that "cash in or cash out totalling more than $10,000" means the total of all deposits *or* the total of all withdrawals. Deposits *and* withdrawals are not to be aggregated together for purposes of the Bank Secrecy Act. However, the total of all deposits or the total of all withdrawals during a particular business day should be aggregated in order to determine if a reportable deposit or withdrawal limit has been reached.

(3) *Require banks to obtain signed statements from their customers attesting to the basis for their exemption from the currency transaction reporting requirements:* (Amendment #4.)

Subtitle H of Title I of the Anti-Drug Abuse Act of 1986 (Pub. L. No. 99–570), the "Money Laundering Control Act of 1986," contained an amendment substantially similar to this proposal. By final rule dated December 17, 1986 (51 FR 45108), the Treasury Department issued a final rule incorporating this statutory requirement into Part 103 for all exemptions granted after October 27, 1986, the effective date of the legislation.

(9) *Permit banks to exempt from the currency transaction reporting requirement deposits by certain public utilities and commercial passenger carriers:* This proposed amendment to the exemption procedure would permit banks to exempt cash deposits by certain public utilities and commercial passenger carriers. (Amendment #4.)

Most commenters approved of the proposal, and requested that the restrictions be lifted which limited the public utilities to governmentally supervised utilities, and the passenger carriers to those whose stock is publicly traded. After consideration, Treasury is dropping the restrictions and expanding the exemption to include all passenger carriers and public utilities.

(10) *Clarify the prohibition on exempting automobile, boat and airplane dealerships:* This proposed amendment would clarify that no motor vehicle dealership (including, but not limited to, motorcycle, recreational vehicle, and farm equipment dealers), may be exempted from the currency reporting requirements. (Amendment #4.)

There was considerable confusion about use of the term "conveyance." After consideration of the comments, it is being dropped from the final rule, since it seemed to confuse the issue more than clarify it. Several comments were received concerning other exempt issues. Several commenters wanted the exemption privilege extended to other entities such as retail sellers of services or foreign businesses. Others wished the governmental entity exemption to be clarified, and some wished deletion of the requirement to report transactions with foreign correspondent banks. The question of expansion of the exemption privilege was not a matter at issue in this proposal. Also, Treasury feels that the governmental entity exemption is sufficiently clear as written. However, Treasury is clarifying the exemption privilege as it applies to check cashing services in order to resolve an internal inconsistency in § 103.22. Finally, some commenters raised operational difficulties with the requirement that a centralized exempt list be maintained. These commenters should be aware that the requirement to maintain a centralized list is not a new requirement, as it is presently required under 31 CFR 103.22(f).

(11) *Revise the procedures for filing all reports and for recording foreign financial accounts:* This amendment would update and clarify the procedures for filing all reports, and for keeping records of interests in foreign financial accounts. All reports previously subject to filing within 30 days would be filed within 15 days of the reportable event or the request for the report, whichever is applicable. (Amendments #5, 6 & 8.)

Many commenters wanted a universal 30 day filing date; a few commenters were under the mistaken impression that the CTR filing deadline was presently 30 days instead of 15. Many complained about the retention of original records, not copies, of the Form 4789. Some commenters also wanted the forms published for comments. The only changes proposed for 31 CFR 103.26 were to change the date for filing the Form 4790 (CMIR) to 15 days after receipt of the currency or monetary instruments, and to require that any exempt list information requested by Treasury under 31 CFR 103.22(g) be submitted within 15 days. After review of the comments, Treasury is retaining the proposal as originally drafted. As for publishing forms for public comment, information contained on the forms originally is specified in regulations which have been published for notice and comment. There is no need to publish proposed forms and request comments on an issue for which comment had already been solicited. Treasury, however, always is open to any written comments from institutions that may have difficulty dealing with a specific Treasury form.

A few questions were raised about the foreign financial report itself; one bank wanted an assurance that employees authorized to sign *ex officio* on accounts were not required to file the reports. Another commenter wanted to assure that its international interbank transfer accounts ("nostro accounts") also were not included. Employees authorized to sign on accounts are not required to file a report unless they have a personal financial interest in the account. Additionally, nostro accounts are not subject to the foreign financial account report, but are subject to the Forms 4789 and 4790 requirements.

(12) *Require that customer identification be verified by document examination:* This amendment would address a compliance problem Treasury identified with financial institutions that reported insufficient information on Forms 4789 to show proper identification of customers. This amendment would require financial institutions to exercise no less care in identifying the individuals conducting reportable transactions than they do when identifying nondepositors cashing checks. Signature cards alone would not satisfy the identification requirement. (Amendment #7.)

This was a major target for commenters, centering mainly on the proposal's impact on customer services and customer relations problems. Many banks said that they verify the identity of a customer when opening an account, and that they therefore should be permitted to rely on a signature card when filling out a Form 4789. Other commenters raised the issue of whether

they must refuse a transaction if the customer refuses to supply the identification, while others wanted to know to what extent the bank could rely on the identification actually produced. Finally, some commenters wanted clarification of when a report "may be required" for purposes of obtaining the required information. After review of the comments, Treasury has altered the original proposal to permit banks that have obtained sufficient identifying information from the customer when opening the account, and that have noted that specific informaton on the signature card, to refer to the customer's signature card in filling out the Form 4789. Only specific identifying information, *i.e.*, a driver's license or credit card number, may be used on the Form 4789; the notation "known customer" or "signature card on file" still is not permitted. A conforming amendment provides that the signature card need not be consulted prior to conducting the transaction. Other foreign identity requirements are being clarified by specifying a foreign driver's license with a listed residence as an example of an acceptable document proving identity. The term "may be required" has been deleted. While Treasury has not taken the position that a financial institution must refuse a transaction if a customer refuses to supply sufficient identifying information, it reminds financial institutions that § 103.26(a) of the regulations already obligates a financial institution to file complete and accurate Forms 4789 on all reportable transactions. Financial institutions should treat the identification of persons conducting reportable transactions, whether or not account holders, with as much care as they would treat the identification of nondepositors who cash checks.

(13) *Limit financial institution recordkeeping requirements to extensions of credit exceeding $10,000 instead of $5,000:* This amendment would eliminate this recordkeeping requirement since it is no longer justified by the usefulness of the information retained. (Amendment #9.)

There was no dissent on this point. The proposal will stay as originally drafted.

(14) *Expand financial institution recordkeeping requirements to include incoming as well as outgoing transactions with persons, accounts or places outside the United States:* This amendment was proposed to respond to increasingly sophisticated international financial schemes, and would require that recordkeeping cover incoming as well as outgoing transactions, including transactions that are later cancelled or not completed for any reason. (Amendment #9.)

There was major opposition on the requirement to retain records on transactions later cancelled, mostly focusing on the fact that few banks recorded nonevents, and that therefore their systems would not capture this information. The regulation will be clarified in order to require that only where a record ordinarily was made of an order later cancelled should that record be retained.

(15) *Revise additional recordkeeping requirements for banks, casinos and brokers or dealers in securities to simplify the procedures for recording taxpayer identification numbers, and require those financial institutions to keep lists of all persons from whom taxpayer identification numbers have not been obtained:* This amendment would replace the current exemption provisions in §§ 103.34, 103.35 and 103.36 regarding taxpayer identification numbers (TINs) with a simpler requirement in section 103.38(c) that a list be maintained of all persons from whom a taxpayer identification number is not obtained. Similar procedures would be incorporated in the new additional recordkeeping requirements for foreign currency exchanges. (Amendments #10, 12, 13, 14 & 15.)

There was major opposition to this requirement, centering on: (a) What is considered a "financial interest" in the account for the purposes of obtaining the TIN of every person who has a financial interest in an account; (b) a conflict with the regulation in proposed § 103.38 (and present § 103.34(a)(4)) that directs adherences to IRS rules, which require the retention of one TIN; (c) the possible retroactivity of the requirement; (d) possible costly recordkeeping and computer system changes; (e) the ambiguity as to which accounts are included in the new requirement; and (f) the problem of obtaining all of the TINs when not all the parties are present at the time of the transaction. After review of the comments, Treasury has decided to retain the requirement, consistent with IRS rules, that only one TIN be obtained, instead of creating two different sets of requirements for obtaining TINs. The proposal also had eliminated the 45-day grace period to obtain the TIN. Treasury has decided to retain a grace period, but to reduce it to 30 days to be more consistent with IRS TIN rules. In addition, Treasury will retain the requirement contained in the proposal that additional identifying information be acquired from those non-resident aliens subject to the TIN rules, and to use the TIN rules for securities and brokers as a guide to formulating TIN rules for currency dealers and exchangers.

(16) *Clarify that additional recordkeeping requirements for banks include deposit slips and credit tickets:* This amendment would clarify that deposit slips and credit tickets should be retained as part of the paper trail already required by § 103.34 to be recorded, and that such records must stipulate whether transactions involve currency. (Amendment #11.). There was a great deal of opposition, centering primarily on: a) banks that do not have a currency line on their deposit slips; b) businesses that merely submit a register tape with the deposit and do not individually list all items; c) retention of the original as opposed to copies or microfilm; d) the $100 minimum for retention of the deposit slips, which many banks felt was too small; and e) various storage problems.

The regulation presently in effect provides that copies may be kept of any required documents; the proposed change does not alter this. This minimum amount will stay at $100, in order to maintain the consistency and uniformity of the recordkeeping requirements for banks. Treasury again notes that the originals of these slips need not be kept; copies will suffice. The proposal that the individual deposited items be listed on the slip will be deleted. The deletion was made so that businesses that merely attach a register tape to a deposit slip to indicate the total amount deposited would not have to fill out a large number of deposit slips. The requirement that a bank be able to reconstruct a deposit has not been altered.

(17) *Require foreign currency dealers to keep certain additional records:* Treasury's enforcement experience indicates that foreign currency dealers are an increasingly important component of sophisticated money laundering and tax evasion schemes and currently are subject to little or no oversight other than under the Bank Secrecy Act. (Amendment #14.)

The comments received in response to this proposal centered on the low reporting threshold of $500, and the request for a definition of a "foreign currency dealer," with a specific exemption for banks. After review of the comments, it was decided to amend the regulation to change its heading to "currency dealer or exchanger" in order to be consistent with the statute, and to define "currency dealer or exchanger" in the definition section (31 CFR 103.11) as one engaged in business as such. Banks

will be specifically exempted, as they already are subject to detailed recordkeeping requirements under Part 103. Additionally, the threshold reporting amount will be raised to $1,000, and the term "air express" will be changed to "common carrier" in order to make the terminology consistent with the rest of the Part.

(18) *Establish a uniform minimum retention period for transaction account records:* Under present regulations, bank records required to reconstruct deposits to demand deposit accounts can be destroyed two years after the transaction. However, the constraints placed on the Department by the two-year retention period have made it extremely difficult to document violations for more than one year with deposit records. The amendment to the record retention period was proposed to alleviate this problem and make the deposit record retention period consistent with the five-year retention requirement for the other records required by Part 103. (Amendment #15.)

There was major opposition to this proposal, mainly as to the increased costs associated with compliance and storage problems. Many also questioned the law enforcement utility of an increased retention period for these deposit records. As Treasury still feels that the constraints imposed on the Department by the two-year retention period make it difficult to document Bank Secrecy Act violations and tax and related financial crimes, the regulation will remain as drafted. Additionally, some commenters also wrote of the difficulty of retention of proof tapes. The regulation does not specifically require retention of proof tapes, the preamble in the Notice of Proposed Rulemaking merely mentioned proof tapes as the type of record which might be maintained by the bank to be able to reconstruct transactions at a later date.

(19) *Clarify the overall Bank Secrecy Act enforcement and compliance authority of the Assistant Secretary (Enforcement); replace references to "Administrator" of the NCUA with "Chairman of the Board;" delegate certain examination authority to the Commissioner, Internal Revenue Service; specify the criminal investigatory responsibilities of the Commissioners of Customs and Internal Revenue; and specify the requirement for periodic reports to the Assistant Secretary (Enforcement):* These amendments would: (1) Restate the overall responsibility of the Assistant Secretary for implementation and administration of Bank Secrecy Act reporting and recordkeeping requirements; (2) update regulatory language to reflect the recent change in the Assistant Secretary's title from "(Enforcement & Operations)" to "(Enforcement);" (3) correct a technical error in the delegations of Bank Secrecy Act compliance responsibility; (4) delegate to the Commissioner of Internal Revenue responsibility for the criminal investigation of all violations of Part 103 other than section 103.23; (5) restate existing delegations of investigatory responsibility; and (6) restate the requirement of periodic reports to the Assistant Secretary by agencies to which BSA compliance responsibility has been delegated. (Amendment #16.)

No real substantive issues were raised, although one commenter questioned changing the term "responsibility for assuring compliance" to "authority for assuring compliance." Further clarification is being accomplished in the final rule by changing the introductory wording in § 103.46(b) to "Authority to examine institutions to determine their compliance with the provisions of this part is delegated as follows:". New language also is being added to the section to incorporate the clarification in the Anti-Drug Abuse Act concerning what documents may be reviewed in a Bank Secrecy Act investigation. Finally, the Department's exclusive authority to impose civil penalties under the Bank Secrecy Act will be specifically stated, as will an assurance that a bank supervisory agency may report specific violations of the Act to the Department at any time.

(20) *Correct the civil penalty amount that can be assessed for willful violations of the recordkeeping requirements of this Part:* This amendment corrects a technical error in the regulations that implemented the increase in civil penalty amount made by the Comprehensive Crime Control Act of 1984. (Amendment #17.)

In order to keep the regulations as current as possible, the amendments to the civil penalty amounts now reflect civil penalties applicable to pre-1984 violations, civil penalties applicable to violations between October 1984 and October 1986 under the Comprehensive Crime Control Act, and civil penalties for violations after October 1986 under the Anti-Drug Abuse Act of 1986. A few commenters wished to have Treasury announce a "safe harbor" of allowable civil violations of the regulations prior to assessing penalties. Treasury has been given the authority and responsibility to enforce the Bank Secrecy Act, and intends to do so to the fullest extent possible. There will be no "safe harbor" of allowable violations.

(21) *A new section is being added to reference the new violation relating to the structuring of transactions:* This amendment merely incorporates into the regulations the new statutory violation of structuring currency transactions in order to avoid the reporting requirements of the Bank Secrecy Act. An addition also is being made to the civil penalty section to reference civil penalties for structuring transactions. (Amendments #17 & 18.)

In addition, readers should note that due to the passage of the Government Securities Act, Pub. L. 99-571, October 28, 1986, the Securities Exchange Act of 1934 has been amended to require government securities brokers and dealers to register with the Securities and Exchange Commission beginning July 25, 1987. Those government securities brokers and dealers presently not registered with the SEC will be required to do so, and therefore also will be subject to Part 103 Bank Secrecy Act regulations by virtue of the definition of "broker or dealer in securities" in 31 CFR 103.11(b).

Finally, because of the changes in the Bank Secrecy Act regulations that this final rule will effect, financial institutions may recognize some inconsistencies between the provisions of the regulations, as revised, and the instructions on the current version of Form 4789. Although Treasury will need to revise the Form 4789 instructions to take the regulatory changes into account, financial institutions are advised in the interim that in the event of conflict or inconsistency between a provision of the regulations and the Form 4789 instructions, the regulatory provisions shall control.

Executive Order 12291

This final 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, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is hereby certified that this

final rule will not have a significant economic impact on a substantial number of small entities. Most of the recordkeeping and reporting requirements imposed by this final rule concern information already found in routine business records. To the extent an affected financial institution has prudent record retention practices, it will already be retaining a substantial portion of the information identified in this proposed regulation.

Paperwork Reduction Act

The collection of information requirements mandated by this final rule have been reviewed and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1505–0063.)

Drafting Information

The principal authors of this document are the Office of the Assistant General Counsel (Enforcement), and the Office of Financial Enforcement, Department of the Treasury.

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.

PART 103—[AMENDED]

Amendment

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, 1951–9); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–24).

2. Section 103.11 is revised to read as follows:

§ 103.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commerical bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State;

(8) a bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).

(b) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(c) *Common carrier.* Any person engaged in the business of transporting individuals or good for a fee holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(d) *Currency.* The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(e) *Currency dealer or exchanger.* A person who engages as a business in dealing in or exchanging currency, except for banks which offer such services as an adjunct to their regular services.

(f) *Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(g) *Financial Institution.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A currrency dealer or exchanger, including a person engaged in the business of a check casher;

(4) An issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of such instruments within any given 30-day period;

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds;

(6) A telegraph company;

(7) (i) A casino or gambling casino licensed as a casino or gambling casino by a State or local government and having gross annual gaming revenue in excess of $1,000,000.

(ii) A casino or gambling casino includes the principal headquarters and any branch or place of business of the casino or gambling casino.

(8) A person subject to supervision by any state or federal bank supervisory authority.

(h) *Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(i) *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.

(j) *Investment security.* An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in enterprise or evidences an obligation of the issuer.

(k) *Monetary instruments.* (1) Monetary instruments include:

(i) Currrency;

(ii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's

checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), traveler's checks, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of section 103.23), or otherwise in such form that title thereto passes upon delivery;

(iii) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), traveler's checks, and money orders) signed but with the payee's name omitted; and

(iv) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(l) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

(m) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(n) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. § 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(o) *Transaction in currency.* A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

(p) *United States.* The various States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(q) *Business day.* Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

3. Part 103 is amended by removing the phrase "demand deposit account" wherever it appears and inserting in its place the phrase "transaction account".

4. Section 103.22 is revised to read as follows:

§ 103.22 Reports of currency transactions.

(a)(1) Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000. Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(2) Each casino shall file a report of each deposit, withdrawal, exchange of currency, gambling tokens or chips, or other payment or transfer, by, through, or to such casino which involves a transaction in currency of more than $10,000. Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any twenty-four hour period.

(3) A financial institution includes all of its domestic branch offices for the purpose of this paragraph's reporting requirements.

(b) Except as otherwise directed in writing by the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue:

(1) This section shall not require reports:

(i) Of transactions with Federal Reserve Banks or Federal Home Loan banks;

(ii) Of transactions between domestic banks; or

(iii) By nonbank financial institutions of transactions with commercial banks (however, commercial banks must report such transactions with nonbank financial institutions).

(2) A bank may exempt from the reporting requirement of paragraph (a) of this section the following:

(i) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. For the purpose of this subsection, a retail type of business is a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency, except that dealerships which buy or sell motor vehicles, vessels, or aircraft are not included and their transactions may not be exempted from the reporting requirements of this section.

(ii) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, regularly scheduled passenger carrier or any public utility.

(iii) Deposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities.

(iv) Withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than $10,000 in order to pay its employees in currency.

(c) In each instance the transactions exempted under paragraph (b) of this section must be in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer, or in the case of transactions with a local or state govenment or the United States or any of its agencies or instrumentalities, in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality. This section does not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local governments), nor will additional exemption authority be granted for such transactions (except transactions by other check cashers).

(d) After October 27, 1986, a bank may not place any customer on its exempt list without first obtaining 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.

(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) of this section, if the bank believes that circumstances warrent 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) of this section.

(f) A record of each exemption granted under this section and the reason therefor must be kept in a centralized list. The record shall include the names and addresses of all banks referred to in paragraph (b)(1)(ii) of this section, as well as the name, address, business, taxpayer identification number and account number of each depositor that has engaged in currency transactions which have not been reported because of the exemption provided in paragraph (b)(2) of this section. The record concerning the group of depositors exempted under the provisions of paragraph (b)(2) of this section shall also indicate whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption.

(g) Upon the request of the Assistant Secretary (Enforcement) or the Commissioner of Internal Revenue, a bank shall provide a report containing the list of the bank's customers whose transactions have been exempted under this section and such related information as the Assistant Secretary or Commissioner shall require, including copies of the statements required in paragraph (d) of this section. The report must be provided within 15 days of the request. Any exemption may be rescinded at the discretion of the requesting official, who may require the bank to file reports required by paragraph (a) of this section with respect to future transactions of any customer whose transactions previously were exempted.

(Approved by the Office of Management and Budget under control number 1505–0063)

5. The first sentence of § 103.24 is revised to read as follows:

§ 103.23 Reports of foreign financial accounts.

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons.

* * *

6. Section 103.26 is revised to read as follows:

§ 103.26 Filing of reports.

(a)(1) A report required by § 103.22(a) shall be filed by the financial institution within 15 days following the day on which the responsible transaction occurred.

(2) A report required by § 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report.

(3) A copy of each report filed pursuant to §103.22 shall be retained by the financial institution for a period of five years from the date of the report.

(4) All reports required to be filed by § 103.22 shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 103.23(a) shall be filed at the time of entry into the United States or at the time of depature, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs.

(2) A report required by § 103.23(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 103.23 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs. Reports required by § 103.23(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 103.23(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20226.

(c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial acccounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by §§ 103.22, 103.23 or 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by §§ 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 103.23 may be obtained from the U.S. Customs Service.

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7. Section 103.27 is revised to read as follows:

§ 103.27 Identification required.

Before concluding any transaction with respect to which a report is required under § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity for whose or which account such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature

card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a drivers license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.*, the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature care on file" on the report is prohibited.

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8. The first sentence of § 103.32 is revised to read as follows:

§ 103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account.* * *

9. Section 103.33 introductory text, (a), and (b) are revised and the OMB control number is added to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later cancelled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than $10,000 to or from any person, account, or place outside the United States.

* * * * *

(Approved by the Office of Management and Budget under control number 1505–0063)

10. Section 103.34(a) (1) introductory text and (2) are amended by removing the number "45" wherever it appears and inserting in its place the number "30", and by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 103.34 Additional records to be made and retained by banks.

(a)(1) * * * Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

* * * * *

11. Section 103.34 is further amended by revising paragraph (b)(1) and adding a new paragraph (b)(13) and the OMB control number to read as follows:

§ 103.34 Additional records to be made and retained by banks.

* * * * *

(b) * * *

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

* * * * *

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

(Approved by the Office of Management and Budget under control number 1505–0063)

12. Paragraphs (a) (1) introductory and (2) § 103.35 are amended by removing the number "45" wherever it appears and inserting in its place the number "30," and by adding a sentence at the end of paragraph (a)(1) and adding the OMB control number to read as follows:

§ 103.35 Additional records to be made and retained by brokers or dealers in securities.

(a) * * * Where a person is a non-resident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

* * * * *

(Approved by the Office of Management and Budget under control number 1505–0063)

13. Section 103.36 is amended by adding a sentence to the end of paragraph (a) and adding the OMB control number to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

(a) * * * Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

* * * * *

(Approved by the Office of Management and Budget under control number 1505–0063)

§§ 103.37 and 103.38 [Redesignated as §§ 103.38 and 103.39]

14. Sections 103.37 and 103.38 are redesignated as §§ 103.38 and 103.39, and a new § 103.37 is added to read as follows:

§ 103.37 Additional records to be made and retained by currency dealers or exchangers.

(a)(1) After July 7, 1987, each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, State, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such account through its internal recordkeeping system to its depositary institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(Approved by the Office of Management and Budget under control number 1505–0063)

15. Paragraph (c) of newly redesignated § 103.38 is redesignated as (d), a new paragraph (c) is added, and newly redesignated paragraph (d) is revised and the OMB control number is added to read as follows:

§ 103.38 Nature of records and retention period.

* * * * *

(c) the rules and regulations issued by the Internal Revenue Service under 26 U.S.C. § 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this Part shall be retained for a period of five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

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16. Section 103.46 is amended by removing paragraph (b), by redesignating paragraph (a) as paragraph (b), by revising the introductory test of newly redesignated (b) and by revising (b)(5) and (b)(8), and by adding new paragraphs (a), (c), (d), (e) and (f) to read as follows:

§ 103.46 Enforcement.

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this Part, is delegated to the Assistant Secretary (Enforcement).

(b) Authority to examine institutions to determine compliance with the requirements of this Part is delegated as follows:

* * * * *

(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.

* * * * *

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, not currently examined by Federal bank supervisory agencies for soundness and safety.

(c) Authority for investigating criminal violations of this Part is delegated as follows:

(1) To the Commissioner of Customs with respect to § 103.23;

(2) To the Commissioner of Internal Revenue except with respect to § 103.23.

(d) Authority for the imposition of civil penalties for violations of this part lies with the Assistant Secretary, and in the Assistant Secretary's absence, the Deputy Assistant Secretary (Law Enforcement).

(e) Periodic reports shall be made to the Assistant Secretary by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Assistant Secretary may direct. Evidence of specific violations of any of the requirements of this Part may be submitted to the Assistant Secretary at any time.

(f) The Assistant Secretary or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this Part.

17. Paragraph (a) of § 103.47 is revised and redesignated as (b), paragraph (b) is redesignated as (d), and new paragraphs

(a), (c), (e), (f), (g) and (h) are added to read as follows:

§ 103.47 Civil penalty.

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this Part or of any recordkeeping requirements of § 103.22, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this part or of the recordkeeping requirements of § 103.32, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 103.32, under this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

* * * * *

(e) For any willful of violation § 103.53 committed after January 26, 1987, the Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this part (except §§ 103.24, 103.25 or 103.32), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

(g) For any willful violation committed after October 27, 1986, of any requirement of §§ 103.24, 103.25, or 103.32, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 103.25 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) of the transaction, or $25,000; and

(2) In the case of a violation of §§ 103.24 or 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) equal to the balance in the account at the time of the violation, or $25,000.

(h) For each negligent violation of any requirement of this Part, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

18. Part 103 is amended by adding at the end a new § 103.53 to read as follows:

§ 103.53 Structured transactions.

No person shall for the purpose of evading the reporting requirements of § 103.22 with respect to such transaction—

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under § 103.22;

(b) Cause or attempt to cause a domestic financial institution to file a report required under § 103.22 that contains a material omission or misstatement of fact; or

(c) Structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Dated: March 30, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

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