

**FEDERAL RESERVE BANK
OF NEW YORK**

A-Cin No 10358-A
July 17, 1990

BANK SECRECY ACT REGULATIONS

**\$3,000 Identification Requirement
Effective August 13, 1990**

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

A number of additional recordkeeping and record retention responsibilities under the Bank Secrecy Act will become effective on August 13, 1990. These responsibilities, which relate to the maintenance of records identifying purchasers of bank checks and drafts, cashier's checks, money orders, and traveler's checks, were announced by the Department of the Treasury on May 15, 1990 in an amendment to the Treasury's Bank Secrecy Act Regulations (31 CFR Part 103).

Printed on the following pages is the text of the Treasury's final rule in this matter, which has been reprinted from the *Federal Register*. Also included in this package is the text of the Treasury's Administrative Ruling 89-5, which provides guidance with respect to obtaining information from bank customers regarding third parties on whose behalf large currency transactions may be conducted.

Summary of New Regulation

The amendment to the Bank Secrecy Act requires financial institutions to verify the identity of individuals who purchase \$3,000 or more in traveler's checks, bank checks, money orders, or cashier's checks with cash. The purpose of the regulation is to deter money laundering through the practice of purchasing monetary instruments of less than \$10,000 at one or more financial institutions to evade the currency transaction reporting requirements.

In summary, the amendment requires that all financial institutions:

- Maintain a monthly chronological log or logs of their sales of traveler's checks, bank checks and drafts, money orders or cashier's checks to customers who purchase these instruments with currency in amounts of \$3,000 to \$10,000 inclusive;
- Implement strict verification procedures for identification of accountholders and nonaccountholders; information required to be obtained from nonaccountholders is more detailed;
- Record multiple sales and contemporaneous sales, if there is knowledge on the part of the financial institutions that such sales have taken place;

- Centralize logs at one location by the fifteenth of the month following the month for which the logs have been compiled; and
- Refuse to conduct transactions with customers who do not provide "acceptable" identification. Exemptions from the recordkeeping requirements will be granted only on a particularized basis upon request to the Department of the Treasury.

Federal Reserve examiners will be conducting reviews for compliance with this new regulation in all Bank Secrecy Act compliance examinations beginning August 13, 1990.

Please direct any questions or concerns you may have regarding this or any other Bank Secrecy Act matter to our Compliance Examinations Department (Tel. No. 212-720-5914).

JAMES K. HODGETTS,
Chief Compliance Examiner.

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, November 18, 1988, prohibits financial institutions from issuing or selling cashier's checks, traveler's checks, money orders and bank checks in amounts of \$3,000 or more in currency unless the financial institution verifies and records the identity of the purchaser as the Secretary of the Treasury shall prescribe in regulations. This is in addition to Treasury's authority in 31 U.S.C. 5313 to prescribe reports on domestic coins and currency. By this Final Rule, Treasury is requiring that financial institutions record this identifying information and maintain a chronological log or logs of the sales of these instruments.

EFFECTIVE DATE: This Final Rule is effective on August 13, 1990.

ADDRESSES: Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney-Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: Section 6185(b) of title VI of the Anti-Drug Abuse Act of 1988 added a new section 5325 to the Bank Secrecy Act:

Section 5325. Identification required to purchase certain monetary instruments

(a) In general.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of \$3,000 or more unless—

(1) The individual has a transaction account with such financial institution and the financial institution—

(A) Verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) Records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) The individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to Secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction Account Defined.—For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

The legislative history indicates that Congress clearly felt that there was a need for heightened scrutiny over the sales of bank checks, cashier's checks, money orders and traveler's checks because money launderers commonly purchase these instruments for amounts under \$10,000. The House Committee Report noted that the only identification records required for persons who conduct currency transactions in amounts under \$10,000 are these needed to open an account, thus permitting nonaccount-holders to conduct currency transactions below \$10,000 without having to identify themselves. The Committee indicated that it expected affected financial institutions to be "fully cooperative and responsive to this law enforcement effort." H. Rep. No. 100-716, 100th Cong., 2d Sess. 7.

Advance Notice of Proposed Rulemaking

On December 23, 1988 (53 FR 51846), Treasury published an Advance Notice of Proposed Rulemaking to solicit comments from the public on how best to implement this provision. In the Advance Notice, Treasury suggested that the best way to implement this new

identification requirement might be by requiring a chronological log or logs of the purchase of bank checks, cashier's checks, money orders and traveler's checks. One hundred fifty six (156) comments were received from the public, primarily affected financial institutions, on how best to put this provision into effect.

Notice of Proposed Rulemaking

After review of the comments received in response to the Advance Notice, Treasury published a Notice of Proposed Rulemaking on August 22, 1989 (54 FR 34791). Treasury proposed that a new section, "Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks" be added to the Bank Secrecy Act regulations, 31 CFR part 103. The proposed section would require that all financial institutions subject to the Bank Secrecy Act regulations maintain a monthly chronological log or logs of their sales of bank checks and drafts, cashier's checks, money orders and traveler's checks to customers who purchase these instruments with currency in amounts of \$3,000-\$10,000 inclusive. The proposal also differentiated between transaction account holders and non-transaction accountholders. Under the proposal, if the purchaser had a transaction account (as that term is defined in § 103.11(p)) with the financial institution where the transaction is being conducted, only the following information would be required on the log:

- (1) The name of the purchaser;
- (2) The number of the purchaser's account;
- (3) The date of purchase;
- (4) The branch where the purchase occurred; and
- (5) The type(s), serial number(s), and the dollar amount(s) of each of the instrument(s) purchased in currency.

In addition, the proposed rule would require financial institutions to verify that the individual is a transaction accountholder, either through a signature card on file or other record at the financial institution, if the accountholder's identity was verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record. The method of verification used would be noted on the log, such as "checked computerized customer file system," or "checked signature card #124-890."

The proposal further provided that if the transaction accountholder's identity had not been verified previously, then the purchaser would have to be treated as a non-transaction accountholder for

purposes of verification of identity only. The financial institution in that case would have to verify the accountholder's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying information on the log (e.g., state of issuance and number of driver's license). Because a credit card normally does not contain a name and address of the credit card holder, a credit card alone would not be an adequate form of identification. Under the proposed regulation, the financial institution then could add that identifying information to its records so that the accountholder would not be required to produce identification for subsequent purchases of these instruments.

If the purchaser is not a transaction accountholder, it was proposed that the financial institution record the following information on the log:

- (1) The name and address of the purchaser;
- (2) The social security number of the purchaser, or if the person is an alien without a social security number, the purchaser's alien identification number;
- (3) The date of birth of the purchaser;
- (4) The date of purchase;
- (5) The branch where the purchase occurred;
- (6) The type(s), serial number(s) and dollar amount of the instrument(s) being purchased;
- (7) For cashier's checks and bank checks or drafts, the payees on the instrument(s) purchased;
- (8) The amount of the purchase in currency; and
- (9) If the individual is purchasing the instrument for a third person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party if the third person is an accountholder at the institution. If the third person is not an accountholder, then the name, address and social security number, taxpayer identification number or alien identification number of the third party shall be noted on the log.

In addition, the proposal provided that for all purchasers who are not holders of transaction accounts, the financial institution must verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying

information on the log (e.g., State of issuance and number of driver's license). Again, because a credit card normally does not contain a name and address of the credit card holder, a credit card alone would not be an adequate form of identification.

As proposed, contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more would be treated as one purchase. Contemporaneous was defined in the proposal to mean originating, existing or happening at the same time. In addition, Treasury proposed to use its general Bank Secrecy Act authority under 31 U.S.C. 5313 to propose that multiple purchases during the same business day by the same person be treated as one purchase if an individual employee, officer, director or partner of the financial institution has knowledge that the purchases have taken place or there is knowledge on the part of the financial institution's computer system that the purchases have occurred. Under the proposal, financial institutions would not have to purchase new hardware or software computer systems to comply with this requirement. They could, but would not be required to, change any of their computer programs or manual systems presently in place.

Under the proposed rule, a financial institution could keep a single centralized chronological log or maintain individual chronological logs by branch. A separate chronological log for each type of instrument sold or issued also would be permissible. If the financial institution maintained individual logs by branch, it was proposed that the financial institution be required to send those logs to a central location by the fifteenth day after the end of the calendar month for which the log was compiled. The logs would not need to be integrated with each other; they merely would be kept in one place. This would make it easier for both the financial institution and the Treasury Department when the Department requested information from the financial institution about its sales of these instruments.

Finally, the proposed regulation stated that the Treasury Department may request the information on the logs at any time, and that the financial institution must provide the information, whether the log is at the central location or still at the branch, even though the information would not be required to be forwarded to the centralized location until fifteen days after the close of the calendar month.

Discussion of the Comments

One hundred and four (104) comments were received in response to the Notice of Proposed Rulemaking, and they have been carefully considered in drafting this Final Rule.

Accounts Covered

The proposed rule provided that financial institutions that sell the instruments covered by the rule to holders of transaction accounts only have to record limited information on the log: name of purchaser, number of the purchaser's account, date of purchase, branch where purchase occurred, and the types, serial numbers and dollar amount of each of the instruments purchased in currency. With regard to all other sales, it was proposed that additional information must be obtained, such as the social security number and date of birth of the purchaser, payees for cashier's checks and bank checks, and information on third parties. Many of the commenters pointed out that the term "transaction account" does not include savings accounts and other time deposits, and that it seemed unfair and extremely burdensome to the financial institution to have to obtain additional information from only some of their accountholders. They requested that the Final Rule make the less extensive recording requirements for transaction accountholders applicable to all accountholders.

Treasury has considered this issue very carefully and has decided to use its authority to prescribe exemptions from requirements of the Bank Secrecy Act under 31 U.S.C. 5318(a)(5) in this matter. Under the regulations, banks will not be required to apply the nonaccountholder logging and identification procedures to purchases by customers who hold "deposit accounts" as defined in the regulations. Deposit accounts would include all transaction accounts, savings accounts and other time deposits.

Aggregation

The proposed regulation would be applicable to all contemporaneous purchases of all types of the instruments listed in the proposed regulation as required by section 5325. Contemporaneous means occurring in the same period of time. This means that currency purchases totaling between \$3,000 and \$10,000 inclusive that occur at the same time of the same type of instrument (e.g., two \$2,500 currency purchases of traveler's checks) would be included as well as purchases that occur at the same time of different types of instruments totaling between \$3,000 and

\$10,000 inclusive (e.g., a \$5,000 currency purchase of a \$2,500 cashier's check and \$2,500 in traveler's checks).

In addition, in the Notice of Proposed Rulemaking, Treasury used its authority under 31 U.S.C. 5313 to propose that the regulation also cover currency purchases of instruments totaling between \$3,000 and \$10,000 inclusive within the course of a business day if a financial institution has knowledge of the multiple purchases. The reason for proposing this additional requirement is to prevent purchasers from easily evading the identification requirements by simply purchasing bank checks and drafts, cashier's checks, money orders and traveler's checks at amounts below \$3,000 in currency during the course of a business day at the same financial institution. The proposal did not require a financial institution to purchase computer systems, or purchase additional hardware or software systems for their existing computers in order to comply with the new requirements. However, it indicated that it expected financial institutions that had systems and procedures in place that aggregate transactions to use them. If the financial institution does not have a computer or manual system in place that would capture that information, the financial institution may change its systems. In any event, financial institutions will have to rely on the knowledge of individual employees, officers, directors or partners of multiple purchases.

Many commenters requested clarification of the aggregation requirement and the knowledge element involved. Commenters wondered how far the financial institution had to go to obtain knowledge of multiple sales and whether it had to review each log each day or once a month and contact a customer for additional information. Many questioned whether they would be required to purchase new systems in order to comply with the requirement.

A financial institution does not have to institute changes to its procedures or its computer systems or purchase new systems in order to capture multiple sales; however, if the financial institution's computer system does produce information relating to multiple sales, then the financial institution may not ignore that information and must complete the log entry using whatever information the financial institution has at hand. In addition, if a teller or other employee knows that someone has made several purchases on the same business day, either because she serviced the customer, directly observed the customer coming into the financial

institution several times during one business day, or was told by the customer that he had made several purchases in one business day, then the financial institution will be deemed to have knowledge of the multiple purchases, and it must complete a log entry.

The financial institution may use information that it maintains in its records to assist in completing the log for multiple purchases. Moreover, the financial institution may contact the purchaser after the purchases have been completed in order to obtain missing required information. In addition, financial institutions are not required to review each log at the end of the day in order to obtain knowledge of multiple transactions unless it does so as part of its internal procedures or aggregation system.

Identification Concerns

Many commenters expressed concerns about the identification process. Many commenters noted that their particular institutions did not maintain signature cards or other account verification records at the teller window, and thus would prefer to identify all purchasers falling within the scope of the regulation by using the non-deposit accountholder identification procedures; i.e., by reviewing a piece of identification with a name and address that is accepted by the financial institution when cashing a check for a nondepositor. This would eliminate the need for the teller to either leave the window to verify the deposit accountholder status of the purchaser, or the need to purchase new systems or extensively revamp old ones so that the records would be available at the teller window. Many commenters also asked whether they may rely on information available in the records that they do have in order to fill out the form, so that the financial institution does not need to re-identify the purchaser who is a deposit accountholder each time a purchase falling within the scope of the regulation is made. Some commenters requested that Treasury clarify how far a financial institution has to go to verify the identity of the purchaser, i.e., may the financial institution rely on the identification presented to the teller.

Treasury agrees that there is merit to these comments, and therefore, is providing in the Final Rule that, for accountholders, a financial institution may either verify the fact that the customer has a deposit account at the financial institution or verify the identity of the accountholder. This will permit the financial institution to verify identity by viewing a piece of identification that

contains the customer's name and address rather than by having to leave the teller window to review a signature card or other account record. If, however, the financial institution does not know whether the person is a deposit accountholder, it must treat him as a non-deposit accountholder for all purposes, e.g., it must obtain the additional information such as social security number. A financial institution may obtain the limited information required of deposit accountholders only if the financial institution knows that the purchaser is a deposit accountholder.

Financial institutions should note that all purchasers falling within the new regulation, other than deposit accountholders who have had their identity previously verified and recorded, must be identified in the same manner, and that the identification requirements are similar to the requirements for identifying persons who conduct cash transactions exceeding \$10,000. See 31 CFR 103.28. Thus, previous Treasury interpretations of how identification is verified for currency transactions exceeding \$10,000 may be looked to for guidance. For example, financial institutions may rely on the identification presented to the teller, unless the financial institution has reason to believe that it is false. Moreover, if a financial institution has previously verified a customer's identity and included the identifying information in its records, it need not ask the same purchaser each time for the information.

Refusal of Transactions

Several commenters noted that the statutory authority for the proposed regulation stated that "no sales" of these instruments would take place until the required information was provided. The commenters raised the question of what a financial institution should do if the purchaser does not have "acceptable" identification and the financial institution does not have previously verified information; or does not have all the required information (for example, on third parties); or refuses to provide information. The commenters questioned whether in those instances the transaction had to be refused.

After review of the statutory language, Treasury has concluded that use of the term "no sales" means exactly that—if the relevant information cannot be provided by the purchaser at the window or by the financial institution's own previously verified records, then the transaction must be refused. If there are circumstances where a purchaser falling within the scope of the regulation is unable to provide sufficient

identification with a name and address such as a driver's license (for example, elderly persons who may have no identification other than a social security number and an insurance card) or some other identifying information such as a social security number (such as the Amish), then the Treasury Department's Office of Financial Enforcement should be contacted at the address noted above to inquire about particularized exemptions in special circumstances pursuant to 31 CFR 103.45(a). As for aggregated sales where the financial institution does not have knowledge of the aggregated sales until after the purchases have been completed, the financial institution must fill out the log entry as completely as it can from information that it has on hand and note on the log entry that it is an aggregated sale.

Third Party Transactions

Many commenters requested clarification about obtaining information on purchases on behalf of third parties and whether there was a duty to inquire each time if the purchase was taking place on behalf of a third party.

A financial institution must obtain information on third parties only when the person actually purchasing the bank check, cashier's check, money order or traveler's check does not have a deposit account at that institution. A financial institution may rely on the information provided to it by the purchaser unless the financial institution has reason to believe otherwise. As for a duty to inquire, financial institutions should follow the advice given by Treasury with respect to transactions on behalf of other persons involving currency transactions exceeding \$10,000, as outlined in BSA Administrative Ruling 89-5, issued December 21, 1989, and published in the *Federal Register* on January 11, 1990, at 55 FR 1021. It is the responsibility of the financial institution to develop internal controls and procedures to ensure the accurate completion of the logs required under the Final Rule. Generally, the only way that the financial institution will be able to obtain information on third parties involved in the transaction will be to ask the person conducting the purchase at the financial institution whether he is acting for himself or on behalf of another person.

Log Completion Issues

Many commenters raised questions about the practicalities of the log requirement, raising such issues as whether a negative report was required when no sales occurred falling within the scope of the regulation; whether a

paper log was required or whether it could be kept in a computerized form; whether any exemptions would be permitted to the logging requirement; whether a financial institution was required to review the material for completeness prior to centralization; and whether extraneous material had to be deleted prior to furnishing the log to Treasury. Several commenters also questioned the entire idea of a log, saying that there were better ways of recording the information. Some commenters also requested information on the procedures that Treasury would follow in requesting the material so that financial institutions could take that into account in deciding how to design and index their logs.

Treasury has carefully considered the commenters' concerns. A negative report is not required if there are no sales of these instruments falling within the scope of the regulation. Moreover, the log need not be retained in paper form, as long as it is accessible, in readable form, upon request by Treasury. For example, logs may be maintained in a paperless form such as on magnetic tape or diskette.

In addition, Treasury has decided that no other routine exemptions will be granted from these provisions. Treasury sees no need to establish an exemption system at this time. Should a financial institution nevertheless feel that there is a need for an exemption in a specific situation, then it should use the procedures in 31 CFR 103.45(a) to request an individual exemption.

On the question of review of logs, financial institutions should remember that to the same extent that they are responsible for ensuring that CTR's are completed fully and accurately, they also should have compliance procedures in place to assure that the logs are maintained fully and accurately.

On the question of leaving extraneous material on the log, Financial institutions subject to the Right to Financial Privacy Act may report all information required by law or regulation to the Federal government. 12 U.S.C. 3413(d). To the extent that information not required by Treasury is included on the log, it would not be required by law and should be deleted prior to submission to Treasury.

In requesting copies of the logs, Treasury anticipates that generally, it will ask for logs by date of purchase, not by the names of purchasers.

After considering various alternatives, Treasury has decided to require a log or logs, because it is the most efficient way to maintain and access the information. It would be very difficult, in response

to a request for information, a financial institution produced many different records, instead of one, when information is requested on purchases of the instruments covered in this regulation. However, to minimize delays in selling these instruments and to prevent holding up customer lines, the required information may be noted on a copy of the instrument or other record associated with the instrument, and later transferred to a log after the purchase is concluded, at the end of the day, or, if kept at a branch, at the end of the month before the logs are sent to the centralized location. For example, many banks sell cashier's checks and require the purchaser to fill out an application prior to issuing the check. The required information could be noted on the application. After the customer leaves, the information could then be transferred to the log. Or, if it is a branch bank that maintains its own log and sends its logs to a centralized location, it could prepare the log at the end of the month prior to forwarding it to the bank's centralized location.

Financial institutions are reminded that Treasury has the right to request this information at any time. Thus, if Treasury requests information on sales of these instruments at an institution that records the information initially on another type of record and then transfers it to a log at a later date, the financial institution will have to be able to retrieve that information at any time after the purchase, even if it is not yet entered on the log.

The record retention period for these records is five years, the same retention period for all Bank Secrecy Act records. 31 CFR 103.38(d).

Centralization Issues

For those financial institutions that keep branch log or logs, the logs may be kept at the branch during the calendar month. The logs must be sent to the financial institution's centralized location within fifteen (15) days after the end of the month. Several commenters questioned the need for centralization.

After considering the issue, Treasury has decided to retain the idea of a central storage place for these logs. It not only will ensure quicker access to the logs when requested by Treasury, it also will enable the financial institutions to strengthen their internal compliance controls to make sure that all logs are readily accessible. Banks already are required to maintain a centralized list of customers granted exemptions from the CTR reporting requirements. For financial institutions that have branches all over the country, such as a telegraph

or traveler's check company or a national securities dealer, the financial institution may centralize the logs by State, as opposed to one place for the entire country. However, a list of all such locations must be made available to the Treasury Department upon request. If there are financial institutions that operate in different States which have organizational structures set up along lines other than by State (for example, a seller of money orders that divides the country up into regions rather than by State, and maintains records only by region) and their business operations would be severely disrupted by having to maintain logs by State, the financial institution may take advantage of the process contained in 31 CFR 103.45 which provides for requesting an exemption from provisions of part 103.

Miscellaneous Issues

The Notice of Proposed Rulemaking had requested comments on how much time financial institutions would need to implement the Final Rule. Estimates ranged from 90 days to six months or longer. After consideration, Treasury has decided to establish an effective date 90 days from today's date of publication in the **Federal Register**.

Treasury encourages financial institutions to report suspicious activity by persons that the financial institution believes may be taking actions to evade the reporting requirements of § 103.22 or the identification requirements of this regulation. Some examples of activity that might be considered suspicious include a reluctance on the part of the customer to produce identification, a customer taking back part of the currency to reduce the purchase to below \$3,000, or a customer coming into the same institution on consecutive or near-consecutive business days, as observed by an employee of the financial institution, and purchasing bank checks, cashier's checks, traveler's checks or money orders in amounts of less than \$3,000. See BSA Administrative Ruling 88-1, dated June 22, 1988, printed at 53 FR 40062 (October 13, 1988). Financial institutions do not want to be abused by the money launderer or the tax evader; Treasury urges financial institutions to know their customers to avoid becoming involved inadvertently in illegal activity.

Finally, Treasury is renumbering the Final Rule as § 103.29 instead of proposed § 103.28, because the geographic targeting Final Rule of August 16, 1989 (54 FR 33675) renumbered sections of part 103.

Conclusion

Treasury is adopting the rule as proposed, with the changes noted above.

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. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h) under control number 1505-0063). The estimated average annual burden associated with the collections of information contained in this Final Rule is .33 hour per respondent and 7.5 hours per recordkeeper. Comments concerning the accuracy of the burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Enforcement at the address noted above and to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). 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.

Amendment

For the reasons set forth below in the preamble, 31 CFR part 103 is amended as set forth below:

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

1. The authority citation for part 103 continues to read as follows:

Authority: Public Law 91-508, title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Public Law 91-508, title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. Section 103.11 is amended by redesignating paragraphs (g) through (t) as (h) through (u), and adding a new paragraph (g) to read as follows:

§ 103.11 Meaning of terms.

• • • • •
(g) *Deposit account.* For purposes of § 103.29 of this part, deposit accounts include transaction accounts described in paragraph (q) of this section, savings accounts, and other time deposits.

3. A new § 103.29 is added to subpart B after § 103.28, to read as follows:

§ 103.29 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains a chronological log or logs for each calendar month on which shall be recorded the following information. The following information must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000-\$10,000 inclusive:

(1) *If the purchaser has a deposit account with the financial institution:*

- (i)(A) The name of the purchaser;
- (B) The number of purchaser's account;
- (C) The date of purchase;
- (D) The branch where the purchase occurred;
- (E) The type(s) of instrument(s) purchased;
- (F) The serial number(s) of each of the instrument(s) purchased; and
- (G) The dollar amount(s) of each of the instrument(s) purchased in currency.
- (ii) In addition, the financial institution must verify that the individual is a deposit account holder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution, if the deposit

accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record; or by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors. If the deposit accountholder's identity has not been verified previously, or if the financial institution is unable to determine whether the individual's identification had been verified previously, then the financial institution shall verify the deposit accountholder's identity by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (e.g., State of issuance and number of driver's license). The method of verification used shall be noted on the log.

(2) *If the purchaser does not have a deposit account with the financial institution:*

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, then the alien identification number;

(C) The date of birth of the purchaser;

(D) If the individual is purchasing the instrument(s) on behalf of another person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party; if there is no account number, then the name, address and social security number, as well as the taxpayer identification number, or alien identification number, of such person;

(E) The date of purchase;

(F) The branch where the purchase occurred;

(G) The type(s) of instrument(s) purchased;

(H) The serial number(s) of each of the instrument(s) purchased;

(I) The dollar amount(s) of each of the instrument(s) purchased;

(J) The payee(s) on each of the instrument(s) purchased (for cashier's checks and bank checks and drafts); and

(K) The amount of the purchase in currency.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally

is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (e.g., State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred. Multiple sales must be noted as such on the log.

(c) The financial institution may maintain a single centralized chronological log or it may maintain separate chronological logs by branch. A financial institution also may keep a separate chronological log for each type of instrument sold. If the financial institution maintains a separate chronological log or logs for each branch, all of the branch logs for a calendar month must be sent to a centralized location by the fifteenth (15th) day after the end of the calendar month for which the log was compiled. Financial institutions with branches in more than one State may centralize the logs by State. A list of the centralized locations and branches shall be available to the Secretary upon request.

(d) Chronological logs shall be retained by the financial institution for a period of five years.

(e) The chronological logs shall be available to the Secretary upon request at any time.

Dated: April 24, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

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DEPARTMENT OF THE TREASURY

ADMINISTRATIVE RULING 89-5

31 U.S.C. 5313 - Reports of domestic coins and currency transactions.

31 C.F.R. 103.27 - Identification required.

Identification of person on whose behalf transaction was conducted. Pursuant to 31 U.S.C. 5313 and 31 C.F.R. 103.22 and 103.28, financial institutions must report transactions in currency that exceed \$10,000 on IRS Form 4789, Currency Transaction Report ("CTR"). The CTR must include information about the identity of the person who conducted the transaction (Part I) and any person on whose behalf the transaction was conducted (Part II). It is the responsibility of the financial institution to develop internal controls and procedures to ensure the filing of accurate and complete CTRs. One way that financial institutions can obtain information about the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong "know your customer" or other internal policies, the financial institution is satisfied that its records contain the necessary information concerning the true identity of the person for whom the transaction is conducted, may the financial institution rely on those records in completing the CTR. The identifying information concerning the person conducting the transaction must be listed in Part I of the CTR, and the identifying information concerning the person on whose behalf the transaction is being conducted must be listed in Part II.

BSA Ruling 89-5

ISSUE

How does a financial institution fulfill the requirement that it furnish information about the person on whose behalf a reportable currency transaction is being conducted?

FACTS

No. 1

Linda Scott has had an account relationship with the Bank for 15 years. Ms. Scott enters the bank and deposits \$15,000 in cash into her personal checking account. The bank knows that Ms. Scott is an artist who on occasions exhibits and sells her art work and that her art work currently is on exhibit at the local gallery. The bank further knows that cash deposits in the amount of \$15,000 are commensurate with Ms. Scott's art sales.

No. 2

Dick Wallace has recently opened a personal account at the Bank. Although the bank verified his identity when the account was opened, the bank has no additional information about Mr. Wallace. Mr. Wallace enters the bank with \$18,000 in currency and asks that it be wired transferred to a bank in a foreign country.

No. 3

Dorothy Green, a partner at a law firm, makes a \$50,000 cash deposit into the firm's trust account.^{1/} The bank knows that this is a trust account. The \$50,000 represents cash received from three clients.

No. 4

Carlos Gomez enters a Currency Dealer and asks to buy \$12,000 in traveler's checks with cash.

No. 5

Gail Julian, a trusted employee of Q-mart, a large retail chain, enters the bank three times during one business day and makes three large cash deposits totalling \$48,000 into Q-mart's account. The Bank knows that Ms. Julian is responsible for making the deposits on behalf of Q-mart. Q-mart has an exemption limit of \$45,000.

LAW AND ANALYSIS

Under section 103.28 of the Bank Secrecy Act ("BSA") regulations, 31 C.F.R. Part 103, a financial institution must report on a Currency Transaction Report ("CTR") the name and address of the individual conducting the transaction, and the identity, account number, and the social security or taxpayer identification number of any person on whose behalf the transaction was conducted. See 31 U.S.C. 5313. "A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made." Identifying information about the person on whose behalf the transaction is conducted must always be furnished if the transaction is reportable under the BSA, regardless of whether the transaction involves an account.

^{1/} This type of account is sometimes called a trust account, attorney account or special account. It is an account established by an attorney into which commingled funds of clients maybe deposited. It is not necessarily a "trust" in the legal sense of the term.

Because the BSA requires financial institutions to file complete and accurate CTR's, it is the financial institution's responsibility to ascertain the real party in interest. 31 U.S.C § 5313. One way that a financial institution can obtain information about the identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong "know your customer" or other internal control policies, the financial institution is satisfied that its records contain information concerning the true identity of the person on whose behalf the transaction is conducted, may the financial institution rely on those records to complete the CTR.

No. 1

Linda Scott, an artist, is a known customer of the bank. The bank is aware that she is exhibiting her work at a local gallery and that cash deposits in the amount of \$15,000 would not be unusual or inconsistent with Ms. Scott's business practices. Therefore, if the bank through its stringent "know your customer" policies is satisfied that the money being deposited by Ms. Scott into her personal account is for her benefit, the bank need not ask Ms. Scott whether she is acting on behalf of someone else.

No. 2

Because Dick Wallace is a new customer of the bank and because the bank has no additional information about him or his business activity, the bank should ask Mr. Wallace whether he is acting on his own behalf or on behalf of someone else. This is particularly true given the nature of the transaction -- a wire transfer with cash for an individual to a foreign country.

No. 3

Dorothy Green's cash deposit of \$50,000 into the law firm's trust account clearly is being done on behalf of someone else. The bank should ask Ms. Green to identify the clients on whose behalf the transaction is being conducted. Because Ms. Green is acting both on behalf of her employer and the clients, the names of the three clients and the law firm should be included on the CTR filed by the bank.

No. 4

The currency dealer, having no account relationship with Carlos Gomez, should ask Mr. Gomez if he is acting on behalf of someone else.

No. 5

Gail Julian is known to the bank as a trusted employee of Q-mart, who often deposits cash into Q-mart's account. If the bank, through its strong "know your customer" policies is satisfied that Ms. Julian makes these deposits on behalf of Q-mart, the bank need not ask her if she is acting on behalf of someone other than Q-mart.

HOLDING:

It is the responsibility of a financial institution to file complete and accurate CTRs. This includes providing identifying information about the person on whose behalf the transaction is conducted in Part II of the CTR. One way that a financial institution can obtain information about the true identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong "know your customer" or other internal control policies, the financial institution is satisfied that its records contain the necessary information concerning the true identity of the person on whose behalf the transaction is being conducted, may the financial institutions rely on those records in completing the CTR.



Salvatore R. Martoche
Assistant Secretary
(Enforcement)

December 21, 1989

Date