

FEDERAL RESERVE BANK
OF NEW YORK

AT 10388
October 2, 1990

PROPOSED AMENDMENTS TO THE TREASURY'S BANK SECRECY ACT REGULATIONS
Mandatory Aggregation of Currency Transactions
and Magnetic Media Filing of Currency Transaction Reports
(Comments due December 5)

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

The Department of the Treasury has requested comment on two proposed amendments to the Bank Secrecy Act regulations relating to (1) the mandatory aggregation of currency transactions by certain financial institutions, and (2) the mandatory filing by magnetic media of Currency Transaction Reports.

Currently, financial institutions are not required to purchase new computer software or hardware in order to aggregate currency transactions. However, if they have computer systems that are able to aggregate transactions, they must use those systems to comply with the Bank Secrecy Act. The first of the Treasury's proposed changes would *require* banks with deposits of over \$100 million to put into place systems and procedures that would track and capture multiple currency transactions that exceed \$10,000, and which are conducted by or on behalf of the same accountholder and affect an account during any one business day. In addition, currency dealers and exchangers (including check cashers) and transmitters of funds, regardless of asset size, would also be required to maintain manual or computerized systems and procedures to aggregate currency transactions that are conducted by or on behalf of any one person during a business day.

The second proposal would *require* financial institutions that file more than 1,000 Currency Transaction Reports a year to do so by the use of magnetic media. The present magnetic media filing program is voluntary.

Printed on the following pages is the text of the Treasury's notice, which has been reprinted from the *Federal Register*. The notice lists particular issues on which the Treasury would like to receive information and comments, but also invites comments on other aspects of the proposals. Comments should be submitted by December 5, 1990 to:

Amy G. Rudnick, Director
Office of Financial Enforcement
Office of the Assistant Secretary (Enforcement)
Department of the Treasury
Room 4320
1500 Pennsylvania Avenue, NW
Washington, DC 20220

For additional information regarding the proposals, you may contact Julie Stanton, Supervisory Bank Secrecy Act Specialist, Office of Financial Enforcement, Department of the Treasury, at the above address, or by telephone (202-566-8022).

JAMES K. HODGETTS,
Chief Compliance Examiner.

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Mandatory Aggregation of Currency Transactions for Certain Financial Institutions and Mandatory Magnetic Media Reporting of Currency Transaction Reports

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury is issuing this Notice of Proposed Rulemaking to solicit comments on two related proposed regulations. The first proposed regulation would require: (1) That banks with deposits of over \$100 million be required to maintain systems to aggregate currency transactions that, at a minimum, are conducted by or on behalf of accountholders at the bank and that affect an account during a business day; and, (2) that currency dealers and exchangers (including check cashers) and transmitters of funds, regardless of asset size, also be required to maintain systems and procedures to aggregate currency transactions that are conducted by or on behalf of customers at the financial institution during a business day. The second proposed regulation would require financial institutions that file more than 1,000 Currency Transaction Reports a year to file by use of magnetic media.

DATES: Comments are due on December 5, 1990.

ADDRESSES: Comments should be sent to Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-8022.

FOR FURTHER INFORMATION CONTACT: Julie Stanton, Supervisory Bank Secrecy Act Specialist, Office of Financial Enforcement, (202) 566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Public Law No. 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951, *et seq.*, and 31 U.S.C. 5311-5326), authorizes 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 or regulatory matters. Pursuant to 31 U.S.C. 5313 and the regulations thereunder, financial institutions are required to file reports on IRS Form 4789, the Currency Transaction Report ("CTR"), that occur

on transactions in currency in excess of \$10,000 "by, through or to such financial institution." 31 CFR 103.22(a). In addition, § 103.22(a)(1) provides that 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 totaling more than \$10,000 during any one business day." Financial institutions at the present time are not required to purchase new software or hardware in order to aggregate currency transactions. If they do not have an automated or manual system for aggregating transactions, they must rely upon the personal knowledge of their employees, officers, directors or partners to determine if reportable multiple transactions have taken place.

Mandatory Aggregation

As noted above, financial institutions currently are not required to purchase new computer software or hardware in order to aggregate currency transactions. However, if they have computer systems which aggregate transactions, they must use those systems to comply with the Bank Secrecy Act. Thus, while many financial institutions have sophisticated computer systems or less sophisticated manual systems to enable them to track and aggregate currency transactions during the business day, others have opted instead to rely on the personal knowledge of the employees, officers, directors or partners of the institution in aggregating transactions.

While it is true that the number of CTR's filed rises each year, many transactions continue to go unreported by financial institutions because automated or manual systems and programs are not being used to track and aggregate multiple currency transactions. At some smaller financial institutions within limited cash activity, it is possible for the employees, officers, directors or partners to notice when multiple transactions are being conducted by or on behalf of the same person. That is not generally true with the larger multi-branch financial institutions which have large numbers of customers coming into the financial institution every day.

In addition, as many banks have become increasingly more expert in detecting possible structuring activity directed against them, many people seeking to evade the CTR reporting requirements have turned to non-bank financial institutions, particularly

transmitters of funds and currency dealers and exchangers (including check cashers), to structure currency transactions.

These institutions generally do not have the Bank Secrecy Act training and compliance programs which are found at banks, generally are not subject to regular Federal or State regulatory oversight and examination, and may not have employees, officers, partners or directors who are as knowledgeable about possible money laundering schemes as employees, officers, partners or directors at banks.

Therefore, Treasury is proposing that certain financial institutions be required to put into place systems and procedures to capture multiple transactions conducted by or on behalf of the same person that exceed \$10,000 during any one business day. Banks, as defined in 31 CFR 103.11(b), with deposit assets over \$100 million would be required to put into place systems and procedures to track and capture, at a minimum, multiple currency transactions that exceed \$10,000 by or on behalf of the same accountholder that affect an account during any one business day (*i.e.*, deposits and withdrawals). In addition, all currency dealers and exchangers (including check cashers) and transmitters of funds, regardless of asset size, also would be required to put into place aggregation systems and procedures that track and capture currency transactions by or on behalf of any one person during one business day. These systems and procedures may be manual or computerized.

Treasury arrived at the \$100 million figure for banks by reviewing the present top filers of CTR's and these filers' asset sizes. It also considered the fact that many \$100 million banks have multiple branches. After review of the comments, the \$100 million figure may be adjusted, either up or down.

Treasury feels that a multi-branch bank that does not have an aggregation system in place should be required to take sufficient steps to detect multiple transactions and to prevent possible structuring activity. Banks must take measures to know their customer's cash transaction activity and protect themselves from being used by individuals who are able to structure their transactions at one institution by merely going from branch to branch. Banks which do not have systems linking their branches are unable to determine if multiple transactions totaling more than \$10,000 have

occurred by or on behalf of the same person on the same business day. Commenters should note that, with respect to banks only, this provision does not require the aggregation of transactions occurring at a bank by or on behalf of non-accountholders, or by or on behalf of accountholders that do not affect an account (e.g., cash sale of a traveler's check). However, Treasury would encourage all banks to aggregate such transactions if they have systems that can do so.

In addition, non-bank financial institutions such as transmitters of funds and currency dealers and exchangers which are especially susceptible to possible abuse by money launderers need to be particularly sensitive to that possibility and take extra precautions to prevent it. Thus, it is in their own interest for these financial institutions to have a system for determining whether multiple currency transactions exceeding \$10,000 have taken place by or on behalf of a person at their institutions. Commenters should note that this particular part of the proposal applies only to limited categories, not all, of the non-bank financial institutions subject to the Bank Secrecy Act regulations. For example, the proposal is not applicable to securities brokers and dealers, the Postal Service and casinos.

Finally, Treasury encourages all financial institutions to have aggregation systems and, to the extent possible, to have systems to track all currency transactions by or on behalf of all persons, whether or not they affect one account or multiple accounts.

Mandatory Magnetic Media Filing

On March 30, 1987, the Department of the Treasury issued a Notice stating that it was conducting a voluntary pilot program for financial institutions which preferred to file required CTR's on magnetic media. 52 FR 10183. Prior to that time, only paper reporting was permitted by the Secretary. After evaluating the pilot program, Treasury made the voluntary magnetic media filing program permanent. (52 FR 49567, December 31, 1987).

CTR's are required to be filed at the time and in the manner prescribed by the Secretary. 31 U.S.C. 5313, 31 CFR 103.27. Since 1970, the number of CTR's being filed by financial institutions has steadily increased, with approximately 6 million CTR's filed in 1989. However, at the present time, less than one percent (1%) of all CTR's are filed magnetically.

All information required on a CTR form must be reported regardless of whether a financial institution files CTR's on paper or by magnetic media. In addition, the magnetic tape must be accompanied by a transmittal document containing the signature of an official of

the financial institution attesting to the completeness and accuracy of the information transmitted. Both paper CTR's and CTR's filed by magnetic media are sent to the Internal Revenue Service ("IRS") Detroit Computing Center.

Treasury has studied this issue and believes that mandatory magnetic media filing would be of benefit to both Treasury and the financial institutions. The advantages to Treasury include the receipt of more complete and accurate information as well as more timely access to, and thus quicker analysis of, CTR information.

Rapid analysis of CTR information is especially important in money laundering, drug and other investigations. In addition, IRS has found that there is a 90 percent reduction in original filing errors on magnetically filed CTR's. Moreover, IRS estimates that the average time before a magnetic document is available for use by investigative personnel is reduced from an average of about 45 days for a paper CTR to approximately 18 days for a magnetically filed CTR.

The benefits to the financial community include: (1) Immediate acknowledgment of receipt of the tape by Detroit, thus helping the financial institution to account for filings; (2) reduced costs for preparation, correction and storage of documents once a financial institution's program is in operation; and (3) an ability to ensure better compliance with the Bank Secrecy Act regulations, thereby preventing misuse of the financial institutions by narcotics traffickers, money launderers and other criminals.

Therefore, Treasury is proposing that financial institutions filing over 1,000 CTR's a year be required to file by magnetic media. After consideration of the comments, the 1,000 number may be lowered or increased. Magnetic media could be accomplished by filing by magnetic tape or diskettes. It is estimated that the 1,000 CTR's a year threshold for mandatory filing would affect approximately 740 financial institutions, less than 2.65 percent of the approximately 30,000 financial institutions filing CTR's per year, yet would represent approximately 57 percent of the annual volume of reports received by Treasury. Of course, if mandatory aggregation systems are required for all currency dealers and exchangers (including check cashers) and transmitters of funds, and for banks with more than \$100 million in deposits, the number of filers reaching the 1,000 CTR's threshold probably will increase.

Treasury envisions that financial institutions filing more than 1,000 CTR's a year for 1990 would be required to begin filing magnetically by July 1, 1991.

Those financial institutions that reach the 1,000 CTR's in a year subsequent to 1990 would have six months from the beginning of the following year to begin filing magnetically. For example, a financial institution filing 950 CTR's in 1990 and 1,150 CTR's in 1991 would be required to begin filing magnetically by July 1, 1992. Once a financial institution is filing magnetically, it will continue to do so, even if the financial institution's filings fall below 1,000 in a subsequent year.

In addition, those filers with fewer than 1,000 CTR annual filings could, and are encouraged to, file magnetically, but would not be required to do so. Filers who would like more information about the magnetic media filing program should address inquiries to: Chief, Currency and Banking Reports Division, Internal Revenue Service Computing Center, 1300 John Lodge Drive, Detroit, MI 48226, Attention: Roger Hatcher, CTR Magnetic Filing Coordinator.

Comments

Treasury welcomes comments on all aspects of the proposal, but in particular wishes to receive information and comments on the following issues:

Aggregation Issues

(1) For those financial institutions not currently possessing aggregation systems, a comparison of the present number of CTR's the financial institution files per year against the projected number of CTR's that would be filed if an aggregation system, whether manual or computerized, were put into place;

(2) The costs of putting in aggregation systems, whether manual or computerized, for those banks with over \$100 million in deposits; and

(3) The costs of putting in aggregation systems, whether manual or computerized, for money transmitters and currency dealers.

Magnetic Media

The costs of mandatory magnetic media filing for those financial institutions not filing magnetically at the present time.

In providing comments, it would be helpful if the financial institution commenting would indicate whether it currently aggregates and to what extent it uses the exemption provisions in 31 CFR 103.22. Estimation of costs should be as specific as possible and should include, not only the dollar amount for filing magnetically, but the costs involved in training, purchasing system enhancements and other related costs associated with mandatory aggregation systems and/or mandatory magnetic media filing that the financial institution does not presently incur. Treasury also

welcomes any alternative that commenters may wish to propose.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above.

Executive Order 12291

This proposed rule, if adopted as a 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 proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44

U.S.C. 3504(h)). Comments on the collections of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

The collections of information in this regulation are authorized by 31 U.S.C. 5313. This information is required by Treasury, and will be used, to accurately determine the number and amount of large currency transactions taking place by, through or to financial institutions. The likely respondents are financial institutions within the definition in 31 CFR 103.11(h).

Mandatory Aggregation

It is estimated that the mandatory aggregation proposal would increase the present recordkeeping and reporting burden for CTR's by 17%.

Estimated number of financial institutions that would be required to put an aggregation system into place under this proposal that do not otherwise have one in place now: 15,000 (1,000 banks and 14,000 nonbank financial institutions).

Estimated number of additional CTR's that would be filed as a result of this proposal: 1,000,000.

Magnetic Media

For those filers who would be required to file CTR's by magnetic media as opposed to paper, the estimated reporting burden per form would be 12 minutes. In contrast, the total reporting burden per form for filing by paper is 24 minutes.

It is also estimated that the average annual recordkeeping burden per respondent who would be required to file by magnetic media under this proposal as opposed to paper would decrease by 50%.

Estimated number of respondents that would be affected by this proposal: 740. The total number of filers of CTR's, by both paper and magnetic media, is approximately 30,000.

The estimated annual number of reports filed is 6.5 million. That number does not necessarily change merely because the filer is filling by magnetic media as opposed to paper.

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.

Proposed Amendment

For the reasons set forth below in the preamble, it is proposed to amend 31 CFR part 103 as set forth below:

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

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

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

2. It is proposed to amend § 103.22 by adding a new paragraph (a)(5) to read as follows:

§ 103.22 Reports of currency transactions.

(a) * * *

(5) Each bank with depository assets over \$100 million shall have in place systems and procedures that, at a minimum, capture multiple currency transactions that are by or on behalf of the same person and result in cash-in to or cash-out from an account totaling more than \$10,000 on the same business day. In addition, each transmitter of funds, and each currency dealer and exchanger (including a check casher) shall have in place systems and procedures that capture multiple currency transactions that result in cash-in or cash-out totaling more than \$10,000 on the same business day by or on behalf of the same person.

* * * * *

3. It is proposed to amend § 103.27 by adding a new paragraph (a)(5) to read as follows:

§ 103.27 Filing of reports.

(a) * * *

(5) Financial institutions that file more than 1,000 reports required by § 103.22 in 1990 shall begin filing such reports by magnetic media by July 1, 1991. Financial institutions that file more than 1,000 reports required by § 103.22 in a subsequent calendar year shall, within six months of the close of that calendar year, begin to file such reports for all subsequent calendar years by magnetic media as specified by the Secretary.

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Dated: August 23, 1990.

John P. Simpson,

Acting Assistant Secretary. (Enforcement).

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