



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551

DIVISION OF BANKING  
SUPERVISION AND REGULATION

**SR 00-12 (SUP)**

**July 5, 2000**

**TO THE OFFICER IN CHARGE OF SUPERVISION  
AT EACH FEDERAL RESERVE BANK**

**SUBJECT: Revised Examination Guidelines for the New  
Procedures for Financial Institutions to Exempt  
Transactions of Certain Businesses from the  
Requirement to Report Transactions in Currency in  
Excess of \$10,000**

As of July 1, 2000, new Treasury exemption procedures allowing financial institutions to exempt transactions of certain businesses from the requirement to report transactions in currency in excess of \$10,000 (Currency Transaction Report (CTR)) become fully effective. After July 1, 2000, only exemptions granted pursuant to the new exemption procedures will be valid.

The requirement that financial institutions report currency transactions in excess of \$10,000 by their customers is a cornerstone of the Bank Secrecy Act. The information provided on CTRs is often vital to law enforcement investigators. At the same time, the reporting requirement includes recurring transactions by legitimate cash intensive businesses that generally are of little interest to law enforcement. The adoption of the final rules that set forth the new exemption procedures, as described below, is an attempt to encourage financial institutions to take the necessary steps to significantly reduce repetitive currency reporting on these types of transactions.

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) began the implementation of the new exemption rules with the publication of a final rule for "Phase I" exemptions in the Federal Register on September 8, 1997 (Attachment 1). This was followed by the publication of a final rule for "Phase II" exemptions in the Federal Register on September 21, 1998 (Attachment 2). Together, the final rules for Phase I and Phase II now form the new rules that must be followed for any exemptions from the CTR reporting requirements after July 1, 2000.<sup>1</sup>

Under these new rules, transactions involving customers that fall within one of the classes of exempt persons defined by these rules may be exempt from CTR requirements. The new procedures eliminate the requirement that financial institutions determine whether the daily transactions of a customer exceed a predetermined exemption amount and also eliminate the requirement that financial institutions obtain signed exemption statements from each exempt customer. Under the new procedures, a financial institution seeking to exempt transactions of a customer, as defined in Phase I, from the CTR requirements need only make a one-time filing of a "Designation of Exempt Person" form that identifies the exempt customer and the exempting financial institution.<sup>2</sup> (Refer to Attachment 3.) For financial institutions seeking to exempt transactions of a customer, as defined in Phase II, from the CTR requirements, a "Designation of Exempt Person" form must be filed every two years. Under the new exemption procedures, a financial institution is not liable for the failure to file a CTR

with respect to a transaction in currency by an exempted customer, unless the financial institution knowingly provides false or incomplete information or has reason to believe that the customer does not qualify as an exempt customer.

A financial institution must make the designation of exempt person within 30 days after the first otherwise reportable transaction has been exempted by the financial institution. A holding company or one of its subsidiaries may make a single designation of exemption on behalf of all of the holding company's bank and thrift subsidiaries so long as the designation lists each subsidiary to which the designation applies.

Under the new rules, an "exempted person" as defined in Phase I includes:

- A bank to the extent of its domestic operations;<sup>3</sup>
- A department or agency of the United States, of any State, or of any political subdivision of any State;
- Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;
- Any entity, referred to in the regulations as a "listed business," other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate "Nasdaq Small-Cap Issues" heading); and
- Any subsidiary, other than a bank, of any "listed business" that is organized under the laws of the United States or of any State and at least 51 per cent of whose common stock or analogous equity interest is owned by the listed entity.

Under the new Treasury rules, a business that is not an "exempted person" under Phase I, because it does not meet the definition of a "listed business," may be an "exempted person" as defined in Phase II as a "non-listed business" or payroll customer. A non-listed business is defined as an enterprise that: (i) has maintained a transaction account at a bank for at least 12 months; (ii) frequently engages in transactions in currency in excess of \$10,000; and (iii) does business in the United States. Similarly, a payroll customer is defined as a person that: (i) has maintained a transaction account at a bank for at least 12 months; (ii) regularly withdraws more than \$10,000 in order to pay its United States employees in currency; and (iii) does business in the United States. In addition, a business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues per year is derived from one or more of the business activities that are ineligible to be exempted (e.g., a grocery store that devotes only part of its business to cashing checks on behalf of its customers would be eligible for treatment as a non-listed business). Ineligible business activities are:<sup>4</sup>

- Serving as financial institutions or agent for financial institutions

- of any type;
- The purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes;
- The practice of law, accountancy, or medicine;
- The auctioning of goods;
- Chartering or operation of ships, buses, or aircraft;
- Pawn brokerage;
- Gaming of any kind (other than licensed pari-mutuel betting at race tracks);
- Investment advisory services or investment banking services;
- Real estate brokerage;
- Title insurance and real estate closings;
- Trade union activities; and
- Any other activity that may, from time to time, be specified by FinCEN.

The obligation to identify and report, consistent with existing regulations, suspicious or criminal activity is not diminished by the new exemption rules. For those customers whose transactions will be exempted under the new rules, financial institutions are still required to have programs in place that allow for the identification and timely reporting of suspicious and criminal activity. In addition, for non-listed businesses and payroll customers (Phase II), financial institutions must evidence that they have established and are maintaining a monitoring system that is reasonably designed to detect, for each account of those customers, those transactions in currency that would require the financial institutions to file a Suspicious Activity Report. Further, the financial institutions must certify every two years that they have applied, at least annually, such monitoring systems to each account of those exempted customers.

In exempting customers under the new exemption procedures, a financial institution must take such steps that a reasonable and prudent financial institution would take in other instances, such as protecting itself from loan or other fraud based on a misidentification of a person's status, to assure itself that the customer meets the definition of an "exempt person." Financial institutions should document the basis for decisions to exempt customers from the CTR requirements and maintain such documents for five years. Financial institutions should review their exemption determinations and verify the continued accuracy of the information regarding their exempted customers at least once a year.

While the new exemption procedures have significantly simplified the exemption process, should reduce the burden to financial institutions and, if used, will reduce the number of CTR filings, the exemption procedures are not mandatory. Financial institutions may choose to continue to file a CTR for each transaction in currency in excess of \$10,000 instead of adopting the new exemption procedures.

The attached examination procedures revise the current examination procedures in the Bank Secrecy Act Examination Manual with regard to the review of the exemption process. (Refer to Attachment 4.) These revised procedures should be used for any Bank Secrecy Act examination conducted after July 1, 2000. Reserve Banks should distribute this letter and attachments to financial institutions under their jurisdictions.

Should you have any questions regarding the attached, please contact Ms. Pamela Johnson, Senior Anti-Money Laundering Coordinator, Special Investigations Section, Division of Banking Supervision and Regulation at (202) 728-5829. Additional information concerning exemptions as well as copies of the attachments may be found at FinCEN's general website at: <http://www.treas.gov/fincen/index.html>.

Richard Spillenkothen  
Director

#### Attachments

Attachment 1 - final rule for "Phase I" exemptions

Attachment 2 - final rule for "Phase II" exemptions

Attachment 3 (102 KB PDF) - "Designation of Exempt Person" form

Attachment 4 (8 KB PDF) - Examination procedures

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#### Notes:

1. The new exemption procedure rules can be found at 31 CFR 103.22(d).
2. The "Designation of Exempt Person" form is Treasury form "TD F 90-22.53," a copy of which is attached.
3. A "Designation of Exempt Person" form is not required to exempt transactions with a Federal Reserve Bank.
4. However, such a business may be treated as an exempt person if it meets the definition of another class of exempt person. For example, a casino that has stock listed on the New York Stock Exchange may be exempted under Phase I, even though gaming is an ineligible business for purposes of exemptions.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA11

**Financial Crimes Enforcement Network; Amendment to the Bank  
Secrecy Act Regulations--Exemptions From the Requirement To Report  
Transactions in Currency**

AGENCY: **Financial Crimes Enforcement Network**, Treasury.

ACTION: Final rule.

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SUMMARY: This document contains a final rule amending the **Bank Secrecy Act** regulations. The amendment will eliminate the requirement to report

transactions in currency in excess of \$10,000 between depository institutions and certain classes of ``exempt persons'' defined in the rule. It will modify (and, as modified, will supersede), an interim rule on the same subject, to reflect the comments that were requested when the interim rule was published.

There appears elsewhere in today's edition of the Federal Register a notice of proposed rulemaking that would further modify the rules for granting exemptions from the currency transaction report filing requirements. The final rule and the notice of proposed rulemaking are additional steps in a process intended to achieve the reduction set by the Money Laundering Suppression **Act** of 1994 in the number of **Bank Secrecy Act** currency transaction reports required to be filed annually by depository institutions.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905-3819; Charles Klingman, **Financial** Institutions Policy Specialist, FinCEN, (703) 905-3602; Stephen R. Kroll, Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, and Albert R. Zarate, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905-3590.

SUPPLEMENTARY INFORMATION:

## I. Statutory Provisions

The **Bank Secrecy Act**, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring **financial** institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the **Bank Secrecy Act** (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the **Bank Secrecy Act** has been delegated to the Director of FinCEN.

The reporting by **financial** institutions of transactions in currency in excess of \$10,000 has long been a major component of the Department of the Treasury's implementation of the **Bank Secrecy Act**. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coins and currency transactions.

Four new provisions (31 U.S.C. 5313(d) through (g)) concerning exemptions were added to 31 U.S.C. 5313 by the Money Laundering Suppression **Act** of 1994 (the ``Money Laundering Suppression **Act**''), Title IV of the Riegle Community Development and Regulatory Improvement **Act** of 1994, Pub. L. 103-325 (September 23, 1994). According to

subsection (d)(1), the Treasury must exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and the following categories of entities:

(A) Another depository institution.

(B) A department or agency of the United States, any State, or any political subdivision of any State.

(C) Any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision.

(D) Any business or category of business the reports on which have little or no value for law **enforcement** purposes.

Subsection (d)(2) requires the Treasury to publish at least annually a list of entities whose currency transactions are exempt from reporting under the mandatory rules. The companion provisions of 31 U.S.C. 5313(e) authorize the Secretary to permit a depository institution to grant additional, discretionary, exemptions from the currency transaction reporting requirements. Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either

subsection (d) or subsection (e) and provides for the coordination of any exemption with other **Bank Secrecy Act** provisions, especially those relating to the reporting of suspicious transactions. Subsection (g) defines ``depository institution'' for purposes of the new exemption provisions.

The enactment of 31 U.S.C. 5313 (d) through (g) reflects a congressional intention to ``reform \* \* \* the procedures for exempting transactions between depository institutions and their customers.'' See H.R. Rep. 103-652, 103d Cong., 2d Sess. 186 (August 2, 1994).\1\ The administrative exemption procedures at which the statutory changes are directed are found in 31 CFR 103.22 (b)-(g).

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\1\ Section 402(b) of the Money Laundering Suppression **Act** states simply that in administering the new statutory exemption procedures

the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 \* \* \* by at least 30 percent of the number filed during the year preceding [September 23, 1994,] the date of enactment of [the Money Laundering Suppression **Act**].

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Several reasons have been given for the administrative exemption

system's lack of success in eliminating routine currency transactions from operation of the **Bank Secrecy Act** rules. The first is the retention by banks of liability for making incorrect exemption determinations. The second is the complexity of the administrative exemption procedures. Finally, advances in technology have made it less expensive for some banks to report all currency transactions than to incur the administrative costs and risks of exempting customers and then administering the terms of particular exemptions properly.

II. The Interim Rule

On April 24, 1996, an interim rule (the ``Interim Rule'') adding a new paragraph (h) to the currency transaction reporting rules in 31 CFR 103.22 was published in the Federal Register. See 61 FR 18204. The Interim Rule exempted, from the requirement to report transactions in currency in excess of \$10,000, transactions occurring after April 30, 1996, between banks \2\ and

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customers who fall into one of five classes of exempt persons:

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\2\ The Interim Rule used the term **bank** to define the class of

**financial** institutions to which the Interim Rule applied. As defined in 31 CFR 103.11(c), that term includes both commercial banks and other classes of depository institutions at which the language of 31 U.S.C. 5313 is directed.

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1. Banks, to the extent of their banking operations and transactions within the United States; \3\  

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\3\ The broad definition of ``United States'' in section 103.11(nn) applies.  

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2. Departments and agencies of the United States and of states and their political subdivisions;

3. Any entity established under the laws of the United States \4\ or of any state or its political subdivisions, or under an interstate compact, that exercises governmental authority on behalf of the United States or any such state or political subdivision;  

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\4\ Again, the broad definition of ``United States'' applies.  

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4. ``Listed corporations,'' that is, corporations whose common stock is listed on the New York Stock Exchange or the American Stock Exchange or has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market; \5\  
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\5\ The NASDAQ category did not include stock listed under the separate ``Nasdaq Small-Cap Issues'' category.  
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5. Subsidiaries of listed corporations that are consolidated with such corporations for federal income tax purposes.

See 31 CFR 103.22(h)(2) (i)-(v). The first three categories of exempt persons specified above are those to whom an exemption is required to be granted by 31 U.S.C. 5313(d)(1) (A)-(C). The final two categories are those entities who are exempted pursuant to the authority contained in 31 U.S.C. 5313(d)(1)(D).

To treat a customer as exempt under the Interim Rule, a **bank** must file a single form (the same form now used by banks to report a transaction in currency) that identifies the exempt person and the **bank** involved and must generally take such steps to assure itself that a person is an exempt person that a reasonable and prudent **bank** would take to protect itself from loan or other fraud or loss based on misidentification of a person's status. Treatment of a customer as an

exempt person under the Interim Rule protects a **bank** generally from any penalty for failure to file a currency transaction report with respect to the exempt person's currency transactions, but it does not affect the obligation of banks to file suspicious activity reports. Currency transactions, like other transactions, between a **bank** and an exempt person remain subject to the suspicious activity reporting requirements of 31 CFR 103.21, as well as the suspicious activity reporting requirements of the federal **bank** supervisory agencies. See also 12 CFR 21.11 (Office of the Comptroller of the Currency); 12 CFR 208.20 (Federal Reserve System); 12 CFR 353.3 (Federal Deposit Insurance Corporation); 12 CFR 563.180 (Office of Thrift Supervision); 12 CFR 748.1 (National Credit Union Administration).

Because the Interim Rule implemented certain provisions of the **Bank Secrecy Act** and granted significant relief from existing regulatory requirements, it was made effective on May 1, 1996, less than 30 days after its publication date. The Interim Rule was, however, accompanied by a request for comments on the Rule's terms.

It appears that the Interim Rule did not immediately have the intended effect of reducing the number of routine currency transactions filed by depository institutions. This may have been attributable, at least in part, to banks' reluctance to use the new exemption procedures until the Interim Rule and proposals for the projected second stage of currency transaction filing relief (as to which comments were solicited by the preamble to the Interim Rule) were made final. Deferral of a change in a **bank**'s procedures would permit the automated systems on

which many institutions rely to be altered to take account of all the revised currency transaction filing rules at one time. Unfamiliarity with and uncertainty about the meaning of certain provisions of the Interim Rule may also have initially retarded the Rule's use.\6\  
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\6\ FinCEN has already issued a notice, FinCEN Notice 97-1, to deal with one such uncertainty. That notice makes clear that an institution may decide, after August 15, 1996, that it wishes to adopt the new exemption system for particular customers, even if it did not do so, for existing customers, before that date, so long as the necessary exemption identifications are filed within 30 days of the first transaction in currency that is sought to be exempted under the new exemption procedures.  
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Statistics based on the first half of this year indicate that banks are making the transition to the new, streamlined exemption procedures set forth in the Interim Rule. The number of CTR filings for each of the months of February, March, April, May, and June of 1997 is less than the number of filings for those same months in 1996. (FinCEN does not yet have complete information concerning CTR filings for July 1997.) Thus, it appears that the Interim Rule is beginning to have some effect on decreasing the number of CTR filings. FinCEN anticipates that

banks will continue to make the transition to the new exemption procedures as they become better acquainted, and more comfortable, with the terms of the new procedures. FinCEN also hopes that the clarifications contained in this document will continue to aid in that transition.

### III. Summary of Comments and Revisions

#### A. Comments on the Notice--Overview

FinCEN received fifty-eight written comments on the Interim Rule. Of these, forty-four comments were submitted by banks or **bank** holding companies, six by banking trade associations, four by credit unions, one by a credit union trade association, and one each by a compliance consulting firm, an accounting firm, and a law firm, each on its own behalf.

The commenters generally applauded FinCEN's efforts to improve the exemption process. One **bank** commenter, for example, noted with approval ``the scope and aggressiveness of the Interim Rule'' and found the Rule ``a major step in reducing the **Bank Secrecy Act**'s burden on **financial** institutions without compromising the BSA's effectiveness'' because it permitted banks to eliminate the cost of reporting ``large denomination, repetitive transactions with public entities and major corporations engaged in legitimate retail activity.'' At the same time, the commenters suggested a number of ways in which the Interim Rule

might be improved, and they raised several operating issues that banks had encountered in applying the Interim Rule.

Comments on the Interim Rule focused primarily on five subjects: the definition of an exempt subsidiary of a listed corporation; other aspects of the definition of exempt person; the time frame within which a **bank** was permitted to designate an existing customer as an exempt person; the need to clarify the relationship between the provisions of paragraph (h) and the terms of the administrative exemption provisions of 31 CFR 103.22(b)-(g); and the interplay between the Interim Rule and previous regulatory guidance provided by the Department of the Treasury with respect to the currency transaction reporting requirements. The specifics of the comments and an explanation of resulting modifications to paragraph (h) are outlined below.

After full and careful consideration of all the comments, 31 CFR 103.22(h), as contained in the Interim Rule, is modified, and, as modified, is adopted as a final rule.

## B. Final Rule

The format and substance of the final rule and the Interim Rule are generally the same. The final rule reflects the

following significant modifications to the Interim Rule:

1. The definition of exempt person has been clarified to make clear that banks are eligible to be treated as exempt persons because they are banks, and then only with respect to their domestic operations; a **bank** that is, or is a subsidiary of, a listed company does not for that reason obtain a second ground for exemption;

2. The definition of exempt person has been amended to treat as a ``listed entity'' and entity, rather than just a corporation, whose common stock or analogous equity interests are listed on an applicable stock exchange;

3. The definition of exempt person has been amended to include any subsidiary of a listed entity that is organized under the laws of the United States or a state and at least 51 percent of whose common stock is owned by the listed entity as shown in a reasonably authenticated corporate officer's certificate, a reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule), or in the Annual Report or Form 10-K that is filed by the listed entity with the Securities and Exchange Commission;

4. The definition of exempt person has been amended to make clear that an exempt person includes a **financial** institution, other than a **bank**, that is a listed entity or a subsidiary of a listed entity, but only to the extent of such entity's domestic operations;

5. The time frame for designating a customer as an exempt person has been clarified to provide that a designation may be made, for any customer, by the close of the 30-day period beginning after the day of

the first reportable transaction in currency with that person that is sought to be exempted from reporting under the terms of paragraph (h);

6. Examples of entities exercising governmental authority have been added to the Interim Rule; and

7. A paragraph has been added to make clear that, absent knowledge of a loss of an exempt person's status as such, a **bank** satisfies its obligations under paragraph (h) by verifying the continued status of exempt persons at least annually.

The changes adopted in the final rule are intended to improve, clarify, and refine the rule's provisions in light of the objectives FinCEN outlined when the Interim Rule was published. Those objectives are reducing the burden of currency transaction reporting, requiring reporting only of information that is of value to law **enforcement** and regulatory authorities, and, perhaps most importantly, creating an exemption system that is cost-effective and that works. See 61 FR 18205.

#### IV. Specific Comments and Explanation of Revisions

A discussion of the significant comments on the Interim Rule appears below. As noted, many of the comments raised questions about the interaction between the terms of paragraph (h) and various operating requirements of the administrative exemption system.

A. 31 CFR 103.22(h)(1)--Transactions in Currency of Exempt Persons With Banks

Paragraph (h)(1) states that general rule that no report is required under 31 CFR 103.22(a)(1) with respect to any transaction in currency between an exempt person and a **bank**. The only changes made to this paragraph are ministerial: the phrase ``currency transactions'' in the title of paragraph (h)(1) has been revised to read ``transactions in currency,'' and the phrases ``occurring after April 30, 1996,'' in the title of paragraph (h) and in the title of paragraph (h)(1), and ``that is conducted after April 30, 1996,'' at the end of paragraph (h)(1), have been deleted as unnecessary in a final rule.\7\ For consistency, the phrase ``occurring after April 30, 1996'' has also been deleted as unnecessary in paragraph (a)(1).

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\7\ Deletion of the reference to a specific date is not intended in any way to alter the effective date of this change in the **Bank Secrecy Act** regulations.

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It should be noted that the exemption language of the final rule is fundamentally different from that of the administrative exemption system. Sections 103.22(a)(1) and 103.22(h)(1) state affirmatively that the reporting requirements of the section do not apply to the

transactions described in paragraph (h). In contrast, the administrative exemption provision, 31 CFR 103.22(b)(2), simply states that a **bank** ``may exempt'' transactions described in that paragraph from reporting. Although, as noted in the preamble to the Interim Rule, see 61 FR 18206, the provisions of paragraph (h)(1) do not affirmatively prohibit banks from continuing to report routine currency transactions with exempt persons (and the requirement that exempt persons be designated as such provides banks with operational discretion to determine whether or not to recognize the new provisions), banks that continue to report such routing transactions are supplying the government with information that is not required under the **Bank Secrecy Act** regulations.

#### 1. Use of Word ``**Bank**'' Rather Than ``Depository Institution''

FinCEN received no comment on its use of the term ``**bank**'' instead of ``depository institution'' to define the class of **financial** institutions, subject to the **Bank Secrecy Act**, that are exempted from the requirement to report transactions in currency by paragraph (h)(1), and the final rule continues to use the former term. Although 31 U.S.C. 5313(d) refers to mandatory exemptions for certain transactions in currency with ``depository institutions,'' the broad definition of **bank** contained in 31 CFR 103.11(c) appears to include all categories of institutions included in the statutory ``depository institution'' definition, so that a change in terminology was neither necessary nor advisable (in view of the **Bank Secrecy Act** regulations' general use of

the work ``**bank**'' for the classes of institutions involved).

## 2. Coverage of all ``Transactions in Currency''

At least one commenter asked whether paragraph (h), intended to exempt from reporting all ``transactions in currency'' between exempt persons and banks, despite the fact that the administrative exemption system rules of 31 CFR 103.22(b)(2) (i)-(ii) permit banks to exempt from currency transactions reporting only deposits and withdrawals, of currency from existing and specified accounts.\8\ The use of the broader term is intentional, as paragraph (h) seeks to eliminate all transactions in currency between exempt persons and banks from the reporting rules of section 103.22 (subject to the limitation on exemption for transactions carried out by an exempt person as an agent for another person, as set forth in paragraph (h)(5)). As noted in more detail below, however, the changes made to section 103.22 have no impact on the requirement to report suspicious transactions under 31 CFR 103.21, and the fact that an exempt person wishes to conduct a transaction other than a deposit or withdrawal, or a transaction that does not involve an existing account with the **bank** involved, may merit further investigation, and perhaps reporting, under the rules of section 103.21.

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\8\ Banks are permitted by 31 CFR 103.22(b)(2)(iii) to grant a broader exemption for transactions by government agencies.

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### 3. Transactions by Exempt Persons With **Financial** Institutions Other Than Banks

At least one commeter sought to broaden the scope of subsection (h) to include transactions between exempt

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persons and **financial** instituons other than banks. No such change has been made. Although, as noted below, banks are permitted, in a change from prior practice, to recognize ``listed'' non-**bank financial** institutions as exempt persons, a general grant of automatic exemption for all transactions in currency in excess of \$10,000 between exempt persons, on the one hand, and, for example, brokers and dealers in securities, money transmitters, or currency exchange houses, on the other, is neither within the Money Laundering Suppression **Act** statutory mandate nor justified by the realities of the operation of those businesses.

#### B. 31 CFR 103.22(h)(2)--Definition of Exempt Person

Paragraph (h)(2) continues to contain the definition of those classes of ``exempt persons'' whose transactions in currency with banks are exempt from reporting under the final rule.

## 1. Banks

The Interim Rule defines an exempt person to include a **bank**, to the extent of the **bank's** domestic operations. One commenter asserted that the treatment of banks as exempt persons ``to the extent of their domestic operations'' is less broad than the present exemption provided for banks by section 103.22(b)(1)(ii). However the language of paragraph (h)(2)(i) is simply a restatement of the language of section 103.22(b)(1)(ii), when the latter definition is read together with the definition of ``domestic'' in section 103.11(k).

The final rule revises paragraphs (h)(2)(iv) and (h)(2)(v) to make clear that a **bank** is eligible to be treated as an exempt person only with respect to its domestic operations; a **bank** that is a listed entity or a subsidiary of a listed entity does not for that reason obtain a second ground for exemption.

## 2. Subsidiaries or Affiliates of Banks

At least one commenter asked whether the exempt person definition included subsidiaries or affiliates of banks (so that a transaction in currency between a **bank** subsidiary and a second **bank** would be exempt from reporting in the same manner as a transaction between the subsidiary's **bank** parent and the second **bank**.) The **bank Secrecy Act** regulations do not generally treat **bank** subsidiaries as falling within the definition of **bank** for purposes of the regulations, and until that basic concept is re-evaluated, it is premature to extend automatic relief for currency transaction reporting purposes to non-**bank** subsidiaries and affiliates of banks.

3. Government Entities

Paragraph (h)(2)(ii), which treats various federal, state, and local government departments and agencies as exempt persons, is unchanged.

Several commenters asked about the status of tribal governments and tribal enterprises under paragraph (h). The definition of ``United States'' in section 103.11(nn) includes ``the Indian lands (as that term is defined in the Indian Gaming Regulatory **Act**),'' \9\ so that tribal governments are eligible to be exempt persons under paragraph (h); whether particular enterprises conducted on tribal lands, for example tribal casinos, are themselves exempt depends upon the manner in which they are organized and operated. Thus, a tribal casino that is operated as a department of a tribal government would generally qualify as an exempt person, but an independently operated management company for such a casino, or a corporation of which the tribe was a shareholder, would likely not so qualify. While FinCEN would be pleased to provide further guidance on that question on the basis of the facts of a particular situation, it is not feasible on the current state of the record do so in the **Bank Secrecy Act** regulations themselves.

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\9\ The term Indian Gaming Regulatory **Act** is itself defined in Sec. 103.11(rr).

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One commenter argued that the definition of government agency in paragraph (h)(2)(ii) would exclude exemption for agencies of the District of Columbia. That is not the result of the definition, since the definition of ``United States'' in section 103.11(nn) includes the District of Columbia.

#### 4. Entities That Exercise Governmental Authority

Paragraph (h)(2)(iii), which treats as exempt persons entities established by federal, state, or local governments, or by interstate compact, that exercise governmental authority, also is unchanged.

#### 5. Listed Entities

The Interim Rule defines an exempt person to include corporations listed on national securities exchanges. Several commenters suggested that the definition of exempt person be broadened to include partnerships and other non-corporations listed on those exchanges. One commenter pointed out that the rationale FinCEN gave for exempting listed corporations--i.e., the scale of enterprises listed on the nation's largest securities exchanges, and the variety of internal and external controls to which they are subject, make their use for money laundering sufficiently unlikely to permit relaxation of the current transaction reporting rules--applies to any listed entity regardless of its form. After consideration of such comments, Treasury has amended the Interim Rule to expand the definition of an exempt person in paragraph (h)(2)(iv) to include any entity listed on an applicable national securities exchange.

A number of commenters cited the difficulty of determining whether a customer was listed on one of the three cited stock exchanges or was a subsidiary of a company so listed. As noted in the preamble to the Interim Rule, it is impossible to reduce the volume of currency transaction reports to the extent that the Interim Rule tries to do without creating some temporary inconvenience as the terms of the system change. The determinations required are straightforward and are to be based on easily available information, especially for **financial** professionals. FinCEN continues to believe that the degree of effort involved in researching whether a company's stock is listed as a national stock exchange, or whether a corporation is a subsidiary of a public company, is well within the scope of what a prudent **bank** should know about its customers and their activities.

There is no limit on the ``listed entity'' definition based on the nature of a particular company's business. Thus, for example, a listed company that is a gaming enterprise or that issues traveler's checks or money orders or engages in a money remittance business as a principal is not for that reason denied exempt status. See, however, the limitation on exemption for transactions carried out by an exempt person as an agent for another person, as set forth in paragraph (h)(5).

## 6. Subsidiaries of Listed Entities

The Interim Rule treats as an ``exempt'' subsidiary any subsidiary that is included in the consolidated federal income tax return of a

listed corporation. FinCEN sought alternative formulations that **bank** employees would find easy to apply and that would accomplish the goals of the Interim Rule more effectively than the consolidated return formulation. At least one commenter stated that an entity that is listed as a subsidiary on a listed entity's SEC report 10K or an annual report should be considered an exempt person. After consideration of these comments, FinCEN has amended the definition of an exempt subsidiary to include any subsidiary that is organized under the laws of the United States or of any state and at least 51 per

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cent of whose common stock is owned by the listed entity. Evidence of such ownership may be shown by any of the ways listed in paragraph (h)(4)(iv), including reliance upon a listed entity's Annual Report or Form 10-K, filed in each case by the listed entity with the Securities and Exchange Commission.\10\  
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\10\ Several commenters suggested that non-profit corporations generally be added to the list of exempt persons. FinCEN does not believe that a blanket provision of this sort would be workable or in keeping with the balance of objectives outlined in 31 U.S.C. 5313 (d)-(g), given the variety of organizations that can claim non-profit status.

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## 7. **Financial** Institutions Other Than Banks

New paragraph (h)(2)(vi), which relates to **financial** institutions other than banks, has been added to the Interim Rule. This new paragraph clarifies that non-**bank financial** institutions that are, or are subsidiaries of, listed entities, are exempt persons only to the extent of their domestic operations.

### C. 31 CFR 103.22(h)(3)--Designation of Exempt Person

Paragraph (h)(3) sets forth the procedures for designating an exempt person. A few commenters sought clarification of the time frame in which a **bank** could designate an exempt person. At least one commenter stated that the Interim Rule could be interpreted as precluding a **bank** from designating an existing customer as an exempt person after August 15, 1996. After consideration of such comments, FinCEN has amended the Interim Rule, in accord with FinCEN Notice 97-1, to make clear that a **bank** can designate any customer as an exempt person by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person that is sought to be exempted from reporting under the terms of paragraph (h).

At least one commenter also requested that FinCEN amend the Interim Rule to allow banks, when designating exempt persons, to file a list of

its domestic **bank** customers instead of filing a form that identifies such a customer as an exempt person. As set forth in new paragraph (h)(3)(iii), a **bank**, when designating an exempt person, may either file an Internal Revenue Form 4789 in which line 36 is marked appropriately or filed, in such a format and manner as FinCEN may specify, a current list of its domestic **bank** customers.

At least one commenter further suggested that it would be efficient for banks simply to file designations for all their government customers (as well as their **bank** customers), regardless of whether those customers engage in transactions in excess of \$10,000. FinCEN will consider making such a change to paragraph (h) for government entities at an appropriate time in the future.

#### D. 31 CFR 103.22(h)(4)--Operating Rules for Designating Exempt Persons

Paragraph (h)(4) continues to state general operating rules for designating exempt persons. Changes to the details of the operating rules are outlined below.

##### 1. General Standard

A number of commenters asked for greater specificity about the manner in which the determination that a customer is an exempt person should be made and documented. Specific questions included, for example, whether a **bank** was required to keep an ``exemption list'' of exempt persons, whether a signed customer statement was required for each exempt person, whether paper copies of filings designating exempt

persons should be maintained by a **bank**, and how long records relevant to the exemption determination must be retained.

The language of paragraph (h)(4)(i) has been revised to make explicit the general requirement, implicit in the original language, that a **bank** must document, in the manner that a reasonable and prudent **bank** would do, its determination that a customer is eligible to be treated as an exempt person, in compliance with the terms of paragraph (h). A new paragraph (h)(4)(v), discussed below, has been added to deal specifically with record retention.

FinCEN believes that specific additional language is unnecessary and would be contrary to the spirit of the changes in the currency transaction filing rules that FinCEN is working with the banking industry to make. Because the situation of each **bank** is different, any uniform set of rules can only stifle creativity and efficiency in building whatever record an individual **bank's** situation and determinations warrant. Thus, for example, it would certainly be prudent for a **bank** to maintain, or to be able to retrieve, in a central location a list of the customers that it treats as exempt persons; but whether the list is separately maintained, or simply retrievable from general records upon need, is a matter for each **bank** to determine. Similarly many institutions, as a general rule, retain copies of documents filed with the Treasury Department; however, whether forms filed magnetically must be converted into paper copies for examination purposes is a matter that should be decided in accordance with general

**bank** policies, rather than in a universal regulatory document.

As in other situations, FinCEN believes that too much attention has in the past been paid to mechanical compliance with particular ``check list'' requirements, rather than to the spirit of compliance and the monitoring necessary effectively to deter or detect money laundering at the nation's **financial** institutions. Thus, it hesitates, in attempting to re-engineer the currency transaction reporting system, to recreate the defects of the system being replaced. FinCEN intends to communicate the policy determinations behind the changes in the rules to the federal **financial** institution supervisory agencies, whose authority includes the authority to examine for compliance with **Bank Secrecy Act** requirements, to assure, insofar as possible, that the expectations of compliance examiners are in accord with the terms and spirit of the new rules.

At least one commenter suggested that FinCEN should bear the burden of listing all the entities falling within the classes of exempt persons set forth in paragraph (h)(2). This suggestion has not been adopted in the final rule. The list requirement is a flexible one and is amply met by reliance on publicly-available sources. For FinCEN to publish a list of particular exempt customer ab initio would amount to a licensing requirement that would neither be efficient nor feasible.

At the same time, as indicated in the preamble to the Interim Rule, see 61 FR 18208, FinCEN is exploring the possibility of producing a nationwide list of exempt persons from filed designations. FinCEN also is exploring the possibility of linking its own Web Site to those of

the national securities exchanges.

## 2. Governmental Entities

A few commenters requested that FinCEN provide examples of those entities established under U.S., state, or local law, under an interstate compact, that exercise governmental authority. A sentence has been added to paragraph (h)(4)(ii) to cite the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey as examples of entities that exercise governmental authority.

## 3. Listing Information

Language has been added to paragraph (h)(4)(iii) to make it clear that a **bank** may rely, in determining whether a company is a listed company,

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on information available from the ``Edgar'' electronic information system maintained by the Securities and Exchange Commission (<http://www.sec.gov/edgarhp.htm>), and on information contained in the Web Sites maintained by the New York Stock Exchange (<http://www.nyse.com>), the American Stock Exchange (<http://www.amex.com>), and the National Association of Securities Dealers (<http://www.nasdaq.com>).

## 4. Subsidiary Status

Paragraph (h)(4)(iv) has been amended to provide banks with the additional options, when determining whether a person is exempt as a subsidiary of a listed entity, of relying upon the listed entity's

Annual Report or Form 10-K (filed with the Securities and Exchange Commission) for designation of the listed entity's subsidiaries.

## 5. Records Maintenance

New paragraph (h)(4)(v) has been added to the Interim Rule to make clear that records maintained by a **bank** to document its administration of the rules of this paragraph (h) must be maintained in accordance with the terms of 31 CFR 103.38, which, inter alia, requires that records be maintained for a period of five years.

### E. 31 CFR 103.22(h)(5)--Limitation on Exemption

Paragraph (h)(5) states that the exemption from reporting contained in paragraph (h)(1) does not apply to a transaction carried out by an exempt person as an agent of another person who is the beneficial owner of the funds that are the subject of a transaction in currency. At least one commenter requested that FinCEN eliminate this limitation. This requested change has not been adopted in the final rule. Such a change would allow an exempt person to lend its status to any person's transactions, thereby circumventing the purposes of carefully defining the classes of exempt persons.

At least one commenter noted a difficulty involved in tracking deposits from large grocery stores, because some of the deposits involved may be monies sent to holding accounts for money order or traveler's check companies for which the grocery stores **act** as agent.

Although FinCEN recognizes that distinguishing between the two (or more) sources of deposits represents an additional effort, it believes that the holding accounts are ultimately relatively easy to distinguish from the store's own operating accounts and do not commingle operating funds and funds used to pay for money service products sold by grocery stores as agents for other concerns. To the extent that the industry still finds that the limitation set forth in paragraph (h)(5) will result in unnecessary inconvenience, FinCEN will consider additional comments on this subject when it considers comments to the notice of proposed rulemaking on exemptions that appears elsewhere in today's edition of the Federal Register.

#### F. 31 CFR 103.22(h)(6)--Effect of Exemption: Limitation on Liability

Paragraph (h)(6) continues to state the general rule that once a **bank** has complied with the terms of paragraph (h), it is protected from any penalty for failure to file a currency transaction report concerning a transaction in currency by an exempt person. The language set forth in paragraph (h)(6)(i) of the Interim Rule has been deleted in the final rule; the issue of when a **bank** must designate customers it has previously treated as exempt, is addressed in the notice of proposed rulemaking regarding exemptions.

At least one commenter expressed the concern that the ``automatic revocation'' provisions of paragraph (h)(8), in effect, force banks to maintain a constant vigil of the status of entities they have

designated as exempt persons. New paragraph (h)(6)(ii) has been added to clarify that, absent specific knowledge of any information that would be grounds for revocation, a **bank** is required to verify the status of those entities it has designated as exempt persons only once each year.

A **bank** may, at present, elect to treat a person as exempt under either the administrative exemption system rules of sections 103.22(b)-(g) or the rules of section 103.22(h). As outlined in the Interim Rule, and as confirmed above, the exemption procedures for each system are independent of the other. Thus, if a **bank** treats a person as exempt under the new exemption procedures set forth in paragraph (h), it need not place that person on its exempt list under the administrative exemption system rules, see sections 103.22(b)-(g), but, conversely, the fact that a person is on an exemption list (whether it is a **bank**, a government entity, or a listed company), does not eliminate the obligation of a **bank** that wants to adopt the new system from filing the single form designating the customer as an exempt person.

The limitation on liability set forth in paragraph (h)(6) does not apply if a **bank** chooses to exempt a person on a basis as provided by the administrative exemption system. One comment found this result slightly puzzling, since the Interim Rule is clearly designed to designate those entities whose routine transactions with banks are of little or no law **enforcement** value. However, even the Interim Rule involves some trade-off in policy outcomes, and the proper

designation of exempt persons, to provide the Department of the Treasury with a list of exempt entities, is an important part of the overall system of which the Interim Rule is a component. The statutory liability limitation of 31 U.S.C. 5313(f) does not extend to banks that continue to use the administrative exemption system during the pendency of the rulemaking that would reform that system.

One commenter on the Interim Rule argued that ``the process of exempting a business and the liability for same should be primarily borne by the customer and FinCEN.'' That is neither the scheme of the **Bank Secrecy Act** nor of this rule, and such an approach would place the Treasury Department, in effect, directly on the banking floor in dealing with a **bank**'s customers. The final rule, like the notice of proposed rulemaking also issued today, is an effort to work with the banking industry to fashion an effective and workable exemption system.

G. 31 CFR 103.22(h)(7)--Obligation to File Suspicious Activity Reports, Etc

No changes were made to this paragraph. Paragraph (h)(7) continues to state that the new exemption procedures set forth in paragraph (h) do not create any exemption, or have any effect at all, on the requirement that banks file suspicious activity reports with respect to transactions that satisfy the requirements of the rules of FinCEN, 31 CFR 103.21, and the federal **bank** supervisory agencies relating to suspicious activity reporting. Similarly, a customer's status under

paragraph (h) has no impact on other **Bank Secrecy Act** requirements relating to record retention or reporting. Thus, for example, the fact that a customer is an exempt person for purposes of the currency transaction reporting rules has no effect on the obligation of a **bank** to retain records of funds transfers by such person, to the extent required by 31 CFR 103.33(e), or to retain records in connection with an issuance or sale of **bank** or cashier's checks, money orders or traveler's checks to such person, as required by 31 CFR 103.29.

#### H. 31 CFR 103.22(h)(8)--Revocation

Paragraph (h)(8) continues to provide that the status of an exempt person automatically ceases, without any action

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or notice by the Department of the Treasury, when an entity ceases to be listed on the applicable stock exchange or a subsidiary of a listed entity ceases to have at least 51 per cent of its common stock owned by a listed entity. Paragraph (h)(8) explicitly refers back to the limitation on liability set forth in paragraph (h)(6)(ii), to make clear that absent specific knowledge that would be grounds for revocation, a **bank** is required to verify the status of those entities it has designated as exempt persons only once each year.

## I. 31 CFR 103.22(h)(9)--Transitional Rule

New paragraph (h)(9) states the transitional rule for applying new paragraph (h)(2)(vi). The rule provides that during the period ending May 1, 1998, no penalty will be imposed on a **bank** that treats as an exempt person a non-**bank financial** institution, to an extent beyond that institution's domestic operations, that is a listed entity or a subsidiary of a listed entity.

## V. Regulatory Matters

### A. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

### B. Unfunded Mandates **Act** of 1995 Statement

Section 202 of the Unfunded Mandates Reform **Act** of 1995 ('`Unfunded Mandates **Act**`'), Pub. L. 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary

impact statement is required, section 202 of the Unfunded Mandates **Act** also requires an agency to designate and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

#### C. Regulatory Flexibility **Act**

The provisions of the Regulatory Flexibility **Act** relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

#### D. Paperwork Reduction **Act**

By expanding the applicable exemptions from an information collection that has been reviewed and approved by the Office of Management and Budget (OMB) under control number 1505-0063, the final rule significantly reduces the existing burden of information collection under 31 CFR 103.22. Thus, although the final rule advances the purposes of the Paperwork Reduction **Act** of 1995, 44 U.S.C. 3501, et

seq., and its implementing regulations, 5 CFR Part 1320, the Paperwork Reduction **Act** does not require FinCEN to follow any particular procedures in connection with the promulgation of the final rule.

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law **enforcement**, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

#### Amendment

For the reasons set forth above in the preamble, the interim rule amending 31 CFR Part 103, which was published at 61 FR 18204 on April 24, 1996, is adopted as a final rule with the following changes:

#### PART 103--**FINANCIAL** RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

2. Section 103.22 is amended by revising the second sentence in paragraph (a)(1) and by revising paragraph (h) to read as follows:

Sec. 103.22 Reports of currency transactions.

(a)(1) \* \* \* Transactions in currency by exempt persons with banks are not subject to this requirement to the extent provided in paragraph (h) of this section. \* \* \*

\* \* \* \* \*

(h) No filing required by banks for transactions by exempt persons.

(1) Transactions in currency of exempt person with banks.

Notwithstanding the provisions of paragraph (a)(1) of the section, no **bank** is required to file a report otherwise required by that section, with respect to any transaction in currency between an exempt person and a **bank**.

(2) Exempt person. For purposes of this section, an exempt person is:

(i) A **bank**, to the extent of such **bank**'s domestic operations;

(ii) A department or agency of the United States, of any state, or of any political subdivision of any state;

(iii) Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises

governmental authority on behalf of the United States or any such state or political subdivision;

(iv) Any entity, other than a **bank**, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate ``Nasdaq Small-Cap Issues'' heading);

(v) Any subsidiary, other than a **bank**, of any entity described in paragraph (h)(2)(iv) of this section (a ``listed entity'') that is organized under the laws of the United States or of any state and at least 51 per cent of whose common stock is owned by the listed entity; and

(vi) Notwithstanding paragraphs (h)(2)(iv) and (h)(2)(v) of this section, any **financial** institution other than a **bank**, that is an entity described in paragraph (h)(2)(iv) or (h)(2)(v) of this section, to the extent to such **financial** institution's domestic operations.

(3) Designation of exempt persons. (i) A **bank** must designate each exempt person with whom it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person that is sought to be exempted from reporting under the terms of paragraph (h) of this section.

(ii) Except where the person sought to be exempted is another **bank** as described in paragraph (h)(2)(i) of this section, designation of an

exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked ``Designation of Exempt Person'' and items 2-14 (Part I, Section A) and items 37-49 (Part III) are completed, or by filing any form specifically designated by FinCEN for this purpose. The designation must be made separately by each **bank** that treats the person in question as an exempt person.

(iii) When designating another **bank** as an exempt person, a **bank** must make either the filing as described in

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paragraph (h)(3)(ii) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic **bank** customers. In the event that a **bank** files its current list of domestic **bank** customers, the **bank** must make the filing as described in paragraph (h)(3)(ii) of this section for each **bank** that is a new customer and for which an exemption is sought under this paragraph (h).

(iv) The designation requirements set forth in this paragraph (h)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of section 103.22(a) under the rules contained in paragraph (b) or (e) of this section.

(4) Operating rules for designating exempt persons. (i) Subject to the specific rules of this paragraph (h), a **bank** must take such steps

to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (h)(2) of this section), and to document the basis for its conclusions and its compliance with the terms of this paragraph (h), that a reasonable and prudent **bank** would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status.

(ii) A **bank** may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (h)(2)(ii) or (h)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (h)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) In determining whether a person is described in paragraph (h)(2)(iv) of this section, a **bank** may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, or any commonly accepted or published stock symbol guide,

on any information contained on the Securities and Exchange Commission ``Edgar'' System, or on any information contained in an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) In determining whether a person is described in paragraph (h)(2)(v) of this section, a **bank** may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(v) The records maintained by a **bank** to document its compliance with and administration of the rules of this paragraph (h) shall be kept in accordance with the provisions of section 103.38.

(5) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (h)(1) of this section.

(6) Effect of exemption; limitation on liability. (i) No **bank** shall be subject to penalty under this part for failure to file a report required by section 103.22(a) with respect to a transaction in currency

by an exempt person with respect to which the requirements of this paragraph (h) have been satisfied, unless the **bank**:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (h) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) Absent specific knowledge of any information that would be grounds for revocation as provided in paragraph (h)(8) of this section, a **bank** is required to verify the status of those entities it has designated as exempt persons only once each year.

(iii) A **bank** that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons. A **bank** that continues to treat a person described in paragraph (h)(2) as exempt from the reporting requirements of section 103.22(a) on a basis other than as provided in this paragraph (h) shall remain subject to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

(7) Obligation to file suspicious activity reports, etc. Nothing in this paragraph (h) relieves a **bank** of the obligation, or alters in any

way such **bank**'s obligation, to file a report required by section 103.21 with respect to any transaction, including any transaction in currency, or relieves a **bank** of any reporting or recordkeeping obligation imposed by this Part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (h)).

(8) Revocation. The status of any person as an exempt person under this paragraph (h) may be revoked by FinCEN by written notice, which may be provided by publication in the Federal Register in appropriate situation, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability set forth in paragraph (h)(6)(ii) of this section:

(i) The status of an entity as an exempt person under paragraph (h)(2)(iv) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (h)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock owned by a listed entity.

(9) Transitional rule. No penalty will be imposed for the failure to apply paragraph (h)(2)(vi) of this section, if a **bank** treats a person described in paragraph (h)(2)(iv) or (h)(2)(v) of this section as an exempt person during the period ending May 1, 1998.

Dated: August 27, 1997.

Stanley E. Morris,

Director, **Financial Crimes Enforcement Network.**

[FR Doc. 97-23643 Filed 9-5-97; 8:45 am]

BILLING CODE 4820-03-M

[Federal Register: September 21, 1998 (Volume 63, Number 182)]

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DEPARTMENT OF THE TREASURY

**Financial Crimes Enforcement Network**

31 CFR Part 103

RIN 1506-AA12

Amendment to the **Bank Secrecy Act** Regulations--Exemptions from  
the Requirement To Report Transactions in Currency--Phase II

AGENCY: **Financial Crimes Enforcement Network**, Treasury.

ACTION: Final rule.

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SUMMARY: This document contains a final rule that further reforms and simplifies the process by which depository institutions may exempt transactions of retail and other businesses from the requirement to report transactions in currency in excess of \$10,000, and restates generally, to reflect such changes, the text of the **Bank Secrecy Act** regulation requiring the reporting by **financial** institutions of transactions in currency. The final rule, as issued by the **Financial Crimes Enforcement Network** ('`FinCEN''), constitutes a further step in achieving the reduction set by the Money Laundering Suppression **Act** of 1994 in the number of currency transaction reports required to be filed annually by depository institutions, as part of a continuing program to reduce unnecessary burdens imposed upon **financial** institutions by the **Bank Secrecy Act** and increase the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury.

DATES: Effective date. October 21, 1998.

Applicability date. See Sec. 103.22(d)(11) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905-3930; Charles Klingman, **Financial** Institutions Policy

Specialist, FinCEN, (703) 905-3602; Stephen R. Kroll, Chief Counsel, Cynthia L. Clark, Deputy Chief Counsel, and Albert R. Zarate, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905-3590.

SUPPLEMENTARY INFORMATION:

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I. Statutory Provisions

The **Bank Secrecy Act**, Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, inter alia, to issue regulations requiring **financial** institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the **Bank Secrecy Act** (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the **Bank Secrecy Act** has been delegated to the Director of FinCEN.

The reporting by **financial** institutions of transactions in currency

in excess of \$10,000 has long been a major component of the Department of the Treasury's implementation of the **Bank Secrecy Act**. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coin and currency transactions.

Four new provisions (31 U.S.C. 5313(d) through (g)) concerning exemptions from the currency transaction reporting requirement were added to 31 U.S.C. 5313 by the Money Laundering Suppression **Act** of 1994 (the ``Money Laundering Suppression **Act**''), Title IV of the Riegle Community Development and Regulatory Improvement **Act** of 1994, Pub. L. 103-325 (September 23, 1994). 31 U.S.C. 5313(d) provides that the Secretary of the Treasury shall exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and four categories of entities. The requirements of that subsection are at present reflected in the terms of 31 CFR 103.22(h) (which is amended and redesignated as 31 CFR 103.22(d) by the final rule published in this document).

31 U.S.C. 5313(e) authorizes the Secretary of the Treasury to exempt a depository institution from the requirement to report transactions in currency between a depository institution and a qualified business customer of the institution. Subsection (e)(2) defines a ``qualified business customer'' as a business that

(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the **Act**) at the depository institution;

(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

Subsection (e)(3) provides that the Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under subsection (e)(1).

Subsection (e)(4)(A) provides that the Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under subsection (e). Under subsection (e)(4)(B), those guidelines may include a description of the type of businesses for which no exemption will be granted under this subsection.

Subsection (e)(5) provides that the Secretary of the Treasury shall prescribe regulations requiring each depository institution to

(A) review, at least once each year, the qualified business

customers of such institution with respect to whom an exemption has been granted under this subsection; and

(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

Subsection (e)(6) states that during the two-year period beginning on the date of enactment of the Money Laundering Suppression **Act**, the discretionary exemption rules shall be applied by the Secretary of the Treasury on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.

Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either 31 U.S.C. 5313 (d) or (e) and provides for the coordination of any exemption with other **Bank Secrecy Act** provisions, especially those relating to the reporting of suspicious transactions. Finally, subsection (g) defines ``depository institution'' for purposes of the new exemption provisions.

Section 402(b) of the Money Laundering Suppression **Act** states simply that in administering the new statutory exemption provisions:

The Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 \* \* \* by at least 30 percent of the number filed during the year preceding [September 23, 1994,] the date of enactment of [the Money Laundering Suppression **Act**].

The enactment of 31 U.S.C. 5313 (d) through (g) reflects a Congressional intention to ``reform \* \* \* the procedures for exempting transactions between depository institutions and their customers.'' See H.R. Rep. 103-652, 103d Cong., 2d Sess. 186 (August 2, 1994). The administrative exemption procedures at which the statutory changes are directed are found in 31 CFR 103.22(b)(2) and (c) through (f); those procedures have not succeeded in eliminating the reporting of routine currency transactions by businesses.

Several reasons have been given for this lack of success. These include the retention by banks of liability for making incorrect exemption determinations, and the complexity of the administrative exemption procedures (which require banks, for example, to assign dollar limits to each exemption based on the amounts of currency projected to be needed for the customary conduct of the exempt

customer's lawful business, and which increase the risk of liability to banks that grant exemptions). Finally, advances in technology have made it less costly for some banks simply to report all currency transactions rather than to incur the administrative costs (and risks) of exempting customers and then administering the terms of particular exemptions properly.

The problems created by the prior administrative exemption system also include that system's failure to provide the Treasury with information needed for thoughtful administration of the **Bank Secrecy Act**. Although banks are required to maintain a centralized list of exempt customers and to make that list available upon request, see 31 CFR 103.22(f) and (g), there is no way short of a **bank-by-bank** request for lists (with the time and cost such a request would entail both for banks and government) for Treasury to learn the extent to which routine transactions are effectively screened out of the system or (for that matter) the extent to which exemptions have been granted in situations in which they are not justified.

In crafting the 1994 statutory provisions relating to mandatory and discretionary exemptions, Congress sought to alter the burden of liability and uncertainty that the administrative exemption system created. The statutory provisions embraced several categories of transactions that were either already partially exempt or plainly eligible for

exemption under the prior administrative exemption system.<SUP>1</SUP>

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\1\ As noted below, transactions in currency between domestic banks were already exempt from reporting, see 31 CFR 103.22(b)(1)(ii), and ``[d]eposits 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'' were one of the categories of transactions specifically described as eligible for exemption by banks. See 31 CFR 103.22(b)(2)(iii).

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## II. Phase I--Final Rule

On September 8, 1997, a final rule revising paragraph (h) of 31 CFR 103.22 was published in the Federal Register. See 62 FR 47141. The final rule modified (and as modified, superseded) an interim rule on exemptions (collectively, ``Phase I'') that FinCEN published with

request for comments in April 1996. See 61 FR 18204. The Phase I final rule exempted from the requirement to report transactions in currency in excess of \$10,000, transactions between banks <SUP>2</SUP> and (i) other banks operating in the United States; (ii) government departments and agencies, and entities that otherwise exercise governmental authority; (iii) entities listed on certain national stock exchanges; and (iv) certain subsidiaries of those listed entities.

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\2\ The Phase I interim and final rules, as well as the notice of proposed rulemaking to which the final rule contained in this document relates, used the term ``**bank**'' to define the class of **financial** institutions to which the rules respectively applied. As defined in 31 CFR 103.11(c), that term includes both commercial banks and other classes of depository institutions at which the language of 31 U.S.C. 5313 is directed. The final rule contained in this document continues to use the term ``**bank**,'' rather than depository institution.

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As FinCEN explained when the Phase I interim rule was published, the transactions in currency of **bank** customers in those categories were

either required to be exempt from reporting by statute, were already effectively exempt from reporting under the terms of 31 CFR Part 103, or, in the case of listed entities and certain of their subsidiaries, involved enterprises whose routine currency transaction reports are of little or no value to law **enforcement** officials. Recognition of exemption under the Phase I interim and final rules required simply the filing of a single document identifying the exempt person and the depository institution that exempts it. Transactions in currency, like other transactions, remained subject to the requirement that banks report suspicious transactions.

### III. Phase II--Notice of Proposed Rulemaking

On the same day the Phase I final rule was published in the Federal Register, FinCEN published a notice of proposed rulemaking (the ``Notice'') to further reform and simplify the process by which banks may exempt, from the requirement to report transactions in currency in excess of \$10,000, transactions involving certain of their customers. See 62 FR 47156. As FinCEN stated in the Notice, the objective of the second stage reform (``Phase II'') was to provide, to the extent possible, a blanket relief, similar to that contained in Phase I, for those categories of business enterprise that could not easily be described in a single phrase and that were not subject to the sorts of

regulatory and marketplace oversight that shape the environment of publicly-held companies. To accomplish that goal, while still providing federal authorities with the tools to monitor and prevent abuse, FinCEN proposed a pared-down exemption system.

In the Notice, FinCEN specifically proposed the following changes:

(i) The addition of two new classes of exempt persons, non-listed businesses and payroll customers; (ii) the addition of special requirements governing the exemption of non-listed businesses and payroll customers, namely, an initial projection of such exempt person's annual currency needs and an annual filing listing the aggregate currency deposits and withdrawals of such exempt person during the preceding year; (iii) the addition of five new operating rules governing the exemption of non-listed businesses and payroll customers; (iv) the deletion of paragraphs (b) through (g) of present section 103.22 (the ``prior'' administrative exemption system); (v) the redesignation of paragraph (h) (reflecting the terms of the Phase I final rule) of section 103.22 as paragraph (d) of that section; and (vi) the addition of certain conforming changes to the redesignated paragraph (d).

On November 28, 1997, FinCEN published a notice (the ``November Extension'') in the Federal Register extending the comment period for the Notice and soliciting additional comments on certain matters

relating to the Notice. See 62 FR 63298. The decision to extend the comment period and the request for additional comments resulted from discussions held at an open meeting to discuss the Notice on November 7, 1997.<SUP>3</SUP>

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\3\ FinCEN announced the public meeting in the Federal Register on October 31, 1997. See 62 FR 58909.

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In the November Extension, FinCEN stated that, in light of the comments made at the open meeting, it did not believe additional comments concerning the proposed estimation and aggregate currency reporting provisions were necessary. FinCEN did, however, indicate that it was important that alternatives to those proposals be brought forward by interested parties, and it specifically sought comments on an alternative described in the November Extension. That alternative would have required a **bank**, when designating a non-listed business or a payroll customer as an exempt person, to (i) include on its initial designation form a statement of the manner in which it applies its ``know-your-customer'' standards to customers whose currency transactions it exempts from the currency transaction report

requirements, and (ii) certify in an annual renewal of exempt status filing that during the preceding year there were no transactions involving any accounts of the person at the **bank** that would have required the filing of a suspicious activity report. FinCEN also sought comments on the impact of changing the word ``shall'' to ``may'' in proposed 103.22(d)(5)(v), to provide a **bank** with the option, but not the necessity, of exempting a customer on a **bank**-wide basis. Lastly, FinCEN repeated its request, made in the Notice, for comments relating to the treatment for exemption purposes of currency deposits that commingle funds derived from eligible business activities with funds derived from ineligible business activities.

#### IV. Summary of Comments and Revisions

##### A. Comments on the Notice--Overview

FinCEN received 70 written responses to the Notice. Of these, 51 were submitted by banks or **bank** holding companies, 8 by **financial** institution trade associations, 4 by credit unions, 2 by law firms, 2 by private individuals, and 1 by a compliance software designer.

Comments on the Notice focused primarily on the following proposed provisions: (i) The projection and annual aggregate currency reporting requirements (including possible alternatives); (ii) the twelve-month

waiting period governing the designation of non-listed businesses and payroll customers as exempt persons; (iii) the operating rule making a sole proprietorship eligible for exemption only to the extent of its business (as opposed to personal) transactions; (iv) the operating rule making certain businesses ineligible for designation as exempt persons to the extent they engage in one or more listed ineligible business activities; and (v) the limitation on exemption with respect to

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transactions carried out by an exempt person as an agent for a third party. Regarding the latter three provisions, commenters expressed particular concern over the application of those provisions to situations where their customers commingle funds derived from personal transactions or ineligible business activities with eligible business activities.

After full and careful consideration of all of the comments, 31 CFR 103.22 is revised to read as stated in the final rule.

## B. Final Rule

The format of the final rule is generally consistent with the

Notice. The terms of the final rule, however, differ from the terms of the Notice in the following significant respects:

- <bullet> Banks are not required to initially estimate and then report annually the aggregate currency deposits and withdrawals of any customer that is designated as a non-listed business or payroll customer;

- <bullet> Banks are required to renew exemptions for non-listed business and payroll customers every two years rather than every year;

- <bullet> Banks must maintain a system of monitoring the transactions in currency of each exempt customer for any and all reportable suspicious activity;

- <bullet> As part of the required biennial renewal, banks must certify that they have complied with the requirement to maintain a system of monitoring for reportable suspicious activity;

- <bullet> Banks may, but need not, treat all eligible accounts of a person at a single institution as exempt;

- <bullet> Banks are not required to segregate funds derived from non-business activities when exempting a transaction in currency of a sole proprietorship; and

- <bullet> Banks may treat a business that engages in multiple activities as a non-listed business so long as that business does not engage primarily in one or more of those activities described in

paragraph (d)(6)(viii).

The changes adopted in the final rule are intended to improve, clarify, and refine the rule's provisions in light of the objectives for implementation of 31 U.S.C. 5313(d)-(g) that FinCEN outlined when the Phase I interim rule was published. Those objectives are reducing the burden of currency transaction reporting, requiring reporting only of information that is of value to law **enforcement** and regulatory authorities, and, perhaps most importantly, creating an exemption system that is cost-effective and that works. See 61 FR 18205.

Eliminating the administrative exemption system in section 103.22 requires the deletion of the bulk of that section, paragraphs (b)-(g). Because that is so, and because the structure and many of the rules of section 103.22(h) also apply to the proposed reformed exemption system for other customers, the final rule completely restates section 103.22 so that its terms may be presented clearly.

For convenience, the redistribution of the provisions of prior section 103.22 may be summarized as follows:

Distribution Table

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Prior 103.22	New
No provision.....	103.22(a).

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103.22(a)(1):

Sentences 1-2.....	Deleted in part; 103.22(b)(1).
Sentences 3-4.....	103.22(c)(2).
103.22(a)(2)(i)-(ii).....	103.22(b)(2)(i)-(ii).
103.22(a)(2)(iii).....	103.22(c)(3).
103.22(a)(3).....	Deleted in part; 103.22(b)(1),
103.22(a)(4).....	103.22(c)(1).
103.22(b).....	Deleted, except 103.22(b)(1)(i)
103.22(b)(1)(iii).....	103.22(d)(1).
103.22(b)(2)(iv).....	103.22(d)(2)(vii).
103.22(c).....	Deleted.
103.22(d).....	Deleted.
103.22(e).....	Deleted.
103.22(f).....	Deleted.
103.22(g).....	Deleted.
103.22(h)(1) <SUP>4.....	Deleted in part; 103.22(d)
(1).	
103.22(h)(2)(i)-(iii).....	103.22(d)(2)(i)-(iii).
103.22(h)(2)(iv), (vi).....	103.22(d)(2)(iv).
103.22(h)(2)(v), (vi).....	103.22(d)(2)(v).
No provision.....	103.22(d)(2)(vi).
No provision.....	103.22(d)(2)(vii).
103.22(h)(3)(i)-(ii).....	103.22(d)(3)(i).

103.22(h)(3)(iii).....	103.22(d)(3)(ii).
103.22(h)(3)(iv).....	103.22(d)(3)(i).
No provision.....	103.22(d)(4).
No provision.....	103.22(d)(5)(i)-(ii).
103.22(h)(4)(i)-(iv).....	103.22(d)(6)(i)-(iv).
103.22(h)(4)(v).....	103.22(d)(6)(x).
No provision.....	103.22(d)(6)(v)-(ix).
103.22(h)(5).....	103.22(d)(7).
103.22(h)(6)(i).....	103.22(d)(8)(i).
103.22(h)(6)(ii).....	103.22(d)(8)(ii).
103.22(h)(6)(iii).....	103.22(d)(8)(iii).
103.22(h)(7).....	103.22(d)(9)(i).
No provision.....	103.22(d)(9)(ii).
103.22(h)(8).....	103.22(d)(10).
103.22(h)(9).....	Deleted.

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No provision.....	103.22(d)(11).
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Register on September 8, 1997. See 62 FR 47141.

## V. Section-by-Section Analysis

### A. 103.22(a)--General

Paragraph (a) continues to describe generally the scope and organization of restated Sec. 103.22. One commenter asked that FinCEN add language to this paragraph indicating that banks are not required to exempt certain transactions from the requirement to report transactions in currency in excess of \$10,000. FinCEN believes that such a change is unnecessary; the last sentence of paragraph (a) (as proposed and as adopted in the final rule) already refers to rules ``permitting'' banks to exempt certain transactions from the reporting requirement.

### B. 103.22(b)--Filing Obligations

Paragraph (b) continues to contain the blanket statement of the obligation of **financial** institutions to report transactions in currency in excess of \$10,000, as well as a separate statement describing the filing obligations of casinos.

Paragraph (b) also continues to state that the general obligation to report transactions in currency in excess of \$10,000 does not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products from the Postal Service. As stated in the Notice, this change from the administrative exemption system reflects a proposed amendment to the treatment of the Postal Service, for purposes of the **Bank Secrecy Act**, that was published as part of a set of proposed rules relating to money services businesses ('`MSBs'') on May 21, 1997. See 62 FR 27890. FinCEN received no comment on this change.

#### C. 103.22(c)--Aggregation

Paragraph (c) continues to restate the reporting rules applicable to multiple branches of **financial** institutions and multiple transactions of their customers. Those rules reflect, with one exception relating to recordkeeping facilities, the terms of prior paragraphs (a)(1) and (a)(4) of section 103.22. As an analogue to a change (discussed below) that permits affiliated banks to make a single designation of each exempt person, the Notice proposed a change clarifying that for purposes of the currency transaction reporting requirements, a **financial** institution includes not only all domestic branch offices, but also any recordkeeping facility, wherever located,

that contains records relating to the transactions of the institution's domestic branch offices. The only comment that FinCEN received concerning recordkeeping facilities stated that the change would create an excessive burden on large banks because such banks typically have central recordkeeping facilities. Given the utility of treating a recordkeeping facility as a **financial** institution, particularly in cases in which affiliated banks make a single designation of exempt person, and that the commenter did not explain how central recordkeeping could lead to an excessive reporting burden on banks, the proposal regarding recordkeeping facilities is adopted in the final rule.

#### D. 103.22(d)--Transactions of Exempt Persons

##### 1. General

Paragraph (d)(1) continues to state generally that, subject to the limitation on exemption set forth in paragraph (d)(7), no **bank** is required to file a currency transaction report otherwise required by paragraph (b) with respect to any transaction in currency between an exempt person and such **bank**.<sup>5</sup> This paragraph also adopts the language set forth in the Notice that states that a non-**bank financial** institution need not file a currency transaction report with respect to

a transaction in currency between the institution and a commercial **bank**. That provision is reflected in paragraph (b)(1)(iii) of prior section 103.22.

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\5\ FinCEN anticipates that Internal Revenue Service Form 4789 (the form currently used to file a currency transaction report) may be revised at some point to require that a **bank** check a box when it files a currency transaction report with respect to a transaction conducted by an exempt person. The purpose of such a requirement would be to provide FinCEN with a more accurate estimate of the number of currency transactions reports required to be filed under the revised exemption system.

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At least one commenter suggested that FinCEN clarify, in light of, inter alia, the Right to **Financial Privacy Act**, 12 USC 3413 et seq., that a **bank** must continue to file currency transaction reports for particular customers otherwise eligible for treatment as exempt persons if it elects not to use the reformed exemption system for those customers. The retention in paragraph (d)(1) of the phrase ``otherwise required by paragraph (b)'' is meant to convey that very point--namely,

that a **bank** is required to file a currency transaction report regarding a transaction in currency in excess of \$10,000 unless the **bank** follows the procedures set forth in paragraph (d) for designating the customer involved as an exempt person so that transactions by that customer are exempt from the currency transaction reporting requirement.

## 2. Exempt Person

The final rule adopts the two classes of exempt person introduced in the Notice--namely, non-listed businesses and payroll customers. In addition, the final rule restates, with two minor technical changes, the existing classes of exempt person (set forth in prior section 103.22(h)(2)). First, the phrase ``or analogous equity interest'' has been added after the term ``common stock'' in paragraph (d)(2)(v) to make clear that any subsidiary of any listed entity may be treated as an exempt person, regardless of whether the subsidiary has adopted the corporate form of business. Thus, any subsidiary of a listed entity may be treated as an exempt person so long as 51 per cent of the subsidiary's equity interest is owned by the listed entity. Second, the terms of prior paragraph (h)(2)(vi), stating that in the case of non-**bank financial** institutions, listed entities and their subsidiaries may be treated as exempt persons only to the extent of their domestic operations, have been incorporated into paragraphs (d)(2)(iv) and (v).

Paragraphs (d)(2)(vi) and (vii) continue to require that any business must have been a **bank** customer for twelve months before it is

eligible for exemption as a non-listed business or a payroll customer. Several commenters argued that this twelve-month period was excessive (particularly compared to the two-month minimum period that has evolved administratively under prior paragraphs (b)(2) and (d) of section 103.22) and would discourage customers from changing banks.

As stated in the Notice, the ten-month difference in time periods is justified by the elimination of virtually all of the

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other requirements of the prior administrative exemption system. Under the reformed system, a **bank** will be able to exempt the transactions in currency of a non-listed business or payroll customer simply by the one-time filing of a form that identifies the exempt person and the exempting **bank**, and by renewing that initial designation every two years. Thus, banks no longer will be confined to exempting only those transactions falling within certain ``permitted'' ranges. In addition, banks will no longer be required to prepare and submit signed exempt statements, or to maintain mandatory exemption lists. Given the removal of these time-consuming procedures, coupled with the need to keep some ``tension'' in the liberalized exemption system so that it does not become a vehicle for more efficient money laundering, FinCEN believes

that a ten-month difference is warranted.

The final rule also adopts in paragraph (d)(2)(vi), with one minor change, the definition of a non-listed business set forth in the Notice. The definition, based in large part on 31 U.S.C. 5313(e)(2), confines permissible exemptions to **bank** customers located in the United States that have transaction account relationships with the exempting **bank** involving the recurring use of currency in amounts exceeding \$10,000. The term ``United States'' has been added to the clause after the comma in paragraph (d)(2)(vi)(C), to make clear that a non-listed business must be incorporated or organized under the laws of the United States or a State, or must be registered as and eligible to do business within the United States or a State. The term ``United States'' is specifically defined in 31 CFR 103.11(nn) to include, among other things, the District of Columbia and the Territories and Insular Possessions of the United States.

The final rule also continues to track the structure described above in the context of defining a payroll customer. Thus, paragraph (d)(2)(vii) requires that any person must have been a **bank** customer for at least twelve months before it is eligible for exemption as a payroll customer, and limits such designation to **bank** customers who regularly withdraw more than \$10,000 to pay their United States employees. For consistency with the preceding paragraph, and in response to at least

one comment that sought clarification of the term ``U.S. resident'' in the Notice, paragraph (d)(2)(vii) has been changed to state that an exemptible payroll customer must be incorporated or organized under the laws of the United States or a State, or must be registered as and eligible to do business within the United States or a State.

### 3. Initial Designation of Exempt Persons

Paragraph (d)(3) continues to state generally that, when initially designating one of its customers as an exempt person, a **bank** must make a one-time filing (using the form now used to file a currency transaction report, until such time as FinCEN issues a form specifically for this purpose) that identifies the exempt person and the exempting **bank**. With respect to its **bank** customers who are themselves banks, the exempting **bank** will have the option in the future of filing its current list of **bank** customers in such a format and manner as FinCEN may specify.

The Notice included a provision that would have required a **bank**, when designating a non-listed business or payroll customer as an exempt person, to include a projection of the exempt person's annual currency deposits and withdrawals. Most commenters objected to this proposal. According to these commenters, any projections of currency activity would amount to ``little more than guesswork'' because banks do not have in place the systems capable of tracking currency activity in this manner. A few commenters also expressed apprehension over a **bank**

incurring liability if it should significantly underestimate the currency activity of one of its customers.

Several commenters also expressed reservations about the alternative that FinCEN outlined in the November Extension. That alternative would have required a **bank** to describe the manner in which it applies its ``know-your-customer'' standards to the tracking of currency deposits of its commercial customers. At least one commenter noted that this requirement would be superfluous, given that a **bank's** exemption process and currency tracking system is reviewed in detail during its BSA examination and that any application of a **bank's** know-your-customer policy will be monitored by **bank** examiners in any event.

Based on these comments, and mindful of the goal to create a reformed exemption system that is cost-effective and efficient, the final rule includes neither a requirement that a **bank** include in its initial designation a projection of its exempt customers' currency activity, nor a requirement that the **bank** describe in that designation the manner in which the **bank** applies its ``know-your-customer'' policies to exempt customers.

#### 4. Annual Review

Paragraph (d)(4) makes explicit the requirement that a **bank** verify, at least once each year, the status of all those entities it has designated as exempt persons. This annual review requirement was

implicit in the terms of proposed paragraph (d)(7)(iii), which would have required that, absent specific knowledge of any information that would be grounds for revocation, a **bank** verify the status of those entities it has designated as exempt persons only once each year. FinCEN notes that this requirement to annually review customers designated as exempt persons is reflected both in the terms of 31 U.S.C. 5313(e)(5) and in the administrative practice surrounding the superseded exemption system.

Paragraph (d)(4) also states that a **bank** must review at least annually the application to each account of a non-listed business or payroll customer of the monitoring system required to be maintained by paragraph (d)(9)(ii). This language has been added to help ensure that the reformed system is not exploited by criminals as a more efficient vehicle for money laundering.

#### 5. Biennial Filing With Respect to Certain Exempt Persons

The Notice would have required banks, in the case of non-listed businesses and payroll customers, to file annual updates containing a statement of the exempt person's annual currency deposits and withdrawals through all transaction accounts for the preceding year.

Many commenters argued adamantly against an annual aggregate currency reporting requirement. Those commenters stressed that banks do not have the automated systems in place to comply with such a

requirement, and that the cost of implementing such systems would be unreasonably high. Many commenters also maintained that, rather than comply with an annual aggregate currency reporting requirement, banks would choose to continue to file currency transaction reports on transactions involving exempt persons.

Several commenters also voiced their dissatisfaction with the alternative that FinCEN outlined in the November Extension. That alternative would have required a **bank** to certify that, during the preceding year, there was no transaction involving any accounts of the exempt person at the **bank** that would have required the **bank** to file a suspicious transaction report with respect to that person under 31 CFR 103.21. At least one commenter

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expressed the fear that this certification would be viewed as a warranty that no suspicious activity occurred, and that banks would be unwilling to risk civil or criminal liability by making such a statement.

In response to these comments, FinCEN has deleted the provision requiring annual statements of the aggregate currency deposits and withdrawals of non-listed businesses and payroll customers. Instead of requiring annual currency statements, the final rule requires simply

that banks maintain a system of monitoring the transactions in currency of non-listed businesses and payroll customers for suspicious activity, see paragraph (d)(9)(ii), and renew the exempt status of those customers every two years. See paragraph (d)(5)(ii). As part of that biennial renewal, banks must certify that their system of monitoring the transactions in currency of such exempt persons for suspicious activity has been applied as necessary, but at least annually, to the account of the exempt person to whom the biennial renewal applies. See *id.*

The filing required by paragraph (d)(5) need only be made once every two years. While the terms of 31 U.S.C. 5313(e)(5) contemplate an annual review, the statute does not explicitly set a time for the filing of updated information garnered as a result of that review. In light of at least a few comments suggesting that banks be required to file updated information less frequently than once a year, the final rule requires banks to renew exemption status every two years.

The date on which renewals must be filed also has changed from the Notice. At least one commenter suggested that the proposed date of February 28 be changed because it coincides with the time period in which banks must make other regulatory filings. The final rule therefore adopts the date of March 15 as the date on which biennial renewals must be filed.

Consistent with the Notice, paragraph (d)(5) states that biennial renewals also must include information about any change in control of the exempt person of which the **bank** knows or should know based on its records. At least one commenter contended that the ``should know'' standard essentially requires a **bank** to review constantly the information it possesses on each of its exempt customers, and therefore would unreasonably burden large banks where there are potentially many points of contact between the customer and the **bank**.

That the ``should know'' standard requires a **bank** to exercise some degree of due diligence when renewing the exempt status of one of its customers is wholly intentional. This concept of due diligence is entirely consistent with the language set forth in the Phase I final rule, which states that a **bank** must, when applying the terms of the reformed exemption system, take such steps that a reasonable and prudent **bank** would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status. Indeed, as one commenter noted, ``no institution would exempt a customer, either under the new or old system, without first engaging in extensive due diligence.'' Thus, the final rule requires biennial renewals to include information concerning a change in control of which a **bank** knows or should know based on its records.

## 6. Operating Rules

The final rule adopts, with a few modifications, the five operating rules introduced in the Notice relating to the Phase II rules.

a. Paragraph (d)(6)(v) states that a **bank** may aggregate all customer accounts to apply the exemption provisions to that customer. In response to several comments, the word ``shall'' in the Notice has been changed to ``may,'' to provide a **bank** with the option of exempting a customer on a **bank**-wide basis and counting all accounts to determine, for example, whether a customer's cash withdrawals or deposits exceed \$10,000. To ensure consistency in the treatment of their exempt customers by banks, a sentence has been added in the final rule that makes clear that if a **bank** elects to treat all transaction accounts of a customer as a single account, the **bank** must continue to treat the accounts as a single account for **Bank Secrecy Act** purposes thereafter.

b. Paragraph (d)(6)(vi) permits affiliated banks to make a single designation of an exempt person, that will apply to all accounts of the person at all banks within the affiliated group. The language in the Notice pertaining to projected and annual currency transaction activity has been deleted.

c. Paragraph (d)(6)(vii) states that sole proprietorships may be treated as either non-listed businesses or payroll customers if they otherwise meet the requirements for treatment as such exempt persons. The Notice included provisions that would have made certain accounts of a sole proprietorship ineligible for exemption to the extent they are

``personal'' accounts, or otherwise commingle personal and business funds. Several commenters argued against these limitations, stating that it would be difficult, if not impossible, for banks to distinguish between personal and business-related transactions in currency. Again, mindful of the goal to create a reformed exemption system that works, and given that banks are under an obligation to report suspicious activity concerning the transactions in currency of their exempt customers, including sole proprietorships, the final rule does not include a provision that would require banks to track commingled funds. However, it should be noted that only ``commercial accounts'' are eligible; nothing in the final rule permits the exemption of a sole proprietor's personal **bank** accounts.

d. Paragraph (d)(6)(viii) lists those businesses that may not be exempted under the reformed exemption system as non-listed companies (although they may qualify for exemption under the more limited payroll customer definition). The Notice sought comments on the treatment of businesses with multiple activities of which one is an activity for which an exemption is barred. In addition, both the Notice and the November Extension solicited comments on the advisability of requiring multiple-activity businesses to segregate funds derived from eligible business activity from those derived from ineligible business activity, in order to be eligible for treatment as an exempt person.

Several commenters suggested that a multiple-activity business should be eligible for treatment as an exempt person because a contrary rule would make many of its customers ineligible for treatment as exempt persons, in particular grocery stores. According to those commenters, such multiple-activity businesses, as a matter of common practice, commingle funds derived from different activities, and would not pay the cost of maintaining multiple accounts in order to avail themselves of the advantages of the reformed exemption system.

In light of these comments, the final rule simply states that a business that engages in multiple business activities may be treated as a non-listed business so long as that business does not engage primarily in one or more of those activities described in paragraph (d)(6)(viii)--i.e., no more than 50% of its gross revenues is derived from ineligible business activity. FinCEN believes that this change will benefit banks by providing them with a bright-line test (the same one, FinCEN notes, that has evolved around the administrative practice surrounding the prior exemption system) for determining

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whether to treat multi-activity businesses as exemptible non-listed businesses. To further facilitate the use of the reformed exemption

system, the final rule does not include a provision that would require a multiple-activity business to segregate commingled funds to be eligible for treatment as an exempt person.

e. Paragraph (d)(6)(ix) defines a transaction account for purposes of proposed paragraph (d) as any account described in section 19(b)(1)(C) of the **Act**, 12 U.S.C. 461(b)(1)(C). As stated in the Notice, this definition does not include any other accounts not described in 12 U.S.C. 461(b)(1)(C), such as money market accounts. Thus, the definition of a transaction account in the proposed rule is narrower than the definition of the same term that is set forth at 31 CFR 103.11(hh). Paragraph (d)(6)(ix) also provides, consistent with the Notice, that a person may be exempt either as a non-listed business or as a payroll customer only to the extent of such person's transaction accounts.

FinCEN received several comments requesting that the definition of a transaction account be broadened. Because the terms of 31 U.S.C. 5313(e)(2)(A) specifically define a transaction account by reference to 12 U.S.C. 461(b)(1)(C), the final rule adopts the definition of a transaction account set forth in the Notice. Should the above definition of a transaction account prove too difficult to apply, FinCEN will entertain requests for administrative relief from the application of that definition.

## 7. Limitation on Exemption

Paragraph (d)(7) carries over the terms of prior paragraph 103.22(h)(5) and states that the exemption from reporting contained in paragraph (d)(1) does not apply to a transaction carried out by an exempt person as an agent of another person who is the beneficial owner of the funds that are the subject of a transaction in currency.<sup>6</sup> With regard to exempt customers acting as agents for third parties, a few commenters noted that it was common practice for those customers to commingle the funds derived from their agent activities with those funds derived from their other business activities. Because of the difficulty in distinguishing between the two kinds of funds, FinCEN was asked not to adopt a rule that would require customers to segregate funds derived from agent activities to be eligible for treatment as an exempt person.

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\6\ FinCEN indicated that it would consider additional comments on this subject when it issued the Phase I final rule. See 62 FR 47141, 47146.

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Given these comments, the final rule does not require that an exempt person segregate agent-derived funds to be eligible for

treatment as an exempt person. However, the language of paragraph (d)(7)(relating to transactions carried out by an exempt person as an agent for another), has not been deleted. The exemption procedures will apply only to transactions conducted for the account of the exempt person, not for the account of a third party who is not otherwise an exempt person. See 31 U.S.C. 5313(f)(1)(B) and paragraph (d)(8)(ii) of the final rule.

It should be noted that a **bank** customer that commingles funds from, e.g., the sale of money orders or of goods sold on consignment, with its normal business receipts, for deposit purposes into its own general account engages in a transaction that is exempt or not depending upon the customer's own status, regardless of the fact that a portion of the funds are subject to a potential equitable or other lien by a third party (the issuer of the money orders or the consignor of the goods) if the customer does not pay an amount equal to the money order or consignment sales proceeds over to the issuer or consignor. If instead, the business selling the money orders or consigned goods deposits the funds directly into an account opened by the money order issuer or the goods' consignor, the eligibility of the transaction for exemption would depend upon the status of the issuer or consignor.

## 8. Limitation on Liability

Paragraph (d)(8)(i) generally states, consistent with the Notice,

that once a **bank** has complied with the requirements of paragraph (d), it is protected from any penalty for failure to file a currency transaction report concerning a transaction in currency by an exempt person.

Paragraph (d)(8)(ii) states that subject to the specific terms of paragraph (d), and absent any specific knowledge of any information indicating that a customer no longer meets the requirements of an exempt person, a **bank** satisfies the requirements of paragraph (d) if it continues to treat that customer as an exempt person until the date of that customer's next periodic review. This language is meant to harmonize the requirement, contained in paragraph (d)(4), that banks review the status of their exempt customers at least once a year, with the provisions relating to the revocation of a customer's exempt status that are set forth at paragraph (d)(10).

#### 9. Obligations to File Suspicious Activity Reports and Maintain a System to Monitor Transactions in Currency

Paragraph 103.22(d)(9)(i) states that the reformed exemption system does not create any exemption from, or have any negative effect at all on, the requirement that banks file suspicious transaction reports with respect to transactions that satisfy the requirements of the rules of FinCEN (31 CFR 103.21), the federal **bank** supervisory agencies, or both, relating to suspicious activity reporting. See 12 CFR 21.11 (Office of the Comptroller of the Currency); 12 CFR 208.20 (Federal Reserve

System); 12 CFR 353.3 (Federal Deposit Insurance Corporation); 12 CFR 563.180 (Office of Thrift Supervision); 12 CFR 748.1 (National Credit Union Administration). Indeed, as pointed out in the notice of proposed rulemaking, the operation of a coordinated and uniform suspicious transaction reporting system is a basis for the revision and simplification of the exemption rules contained in this final rule. In the context of the revised CTR exemption system, the indicia of suspicious activity can include both specific transactions and overall transaction volume substantially inconsistent with the sort in which the particular customer normally would be expected to engage. Thus, as stated in the text of the rule itself, anomalous transaction trends or patterns (such as a sharp increase from one year to the next in the gross total of currency transactions made by an exempt person) may trigger the obligations of a **bank** under section 103.21.

Paragraph (d)(9)(ii) has been added to make explicit that the continuing obligation to file suspicious activity reports (where appropriate) necessarily requires a **bank** to establish and maintain a monitoring system for non-listed business and payroll customers that is reasonably designed to detect those transactions in currency that would require a **bank** to file a suspicious transaction report with respect to an exempt person.<SUP>7</SUP> FinCEN purposely has not attempted to describe the exact contours of an acceptable monitoring system. Because

the situation of each **bank** and each customer are different, FinCEN believes that mandating a uniform monitoring system would be ill-advised. From FinCEN's perspective, a monitoring system meets the requirements of paragraph (d)(9)(ii) if it

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is reasonably designed to detect, for each exempt account, those transactions in currency that would require a **bank** to file a suspicious transaction report.

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\7\ The **Bank Secrecy Act** provides Treasury with the authority to condition the grant of discretionary exemptions. See 31 U.S.C. 5313(e).

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The adoption of the monitoring system requirement is intended to advance the objectives of creating an exemption system that is simple and as cost-effective as possible, while still keeping some tension in the liberalized system. FinCEN believes that an increased emphasis on suspicious activity reporting with respect to transactions in currency

of exempt persons should provide that needed tension. FinCEN further notes that maintaining a monitoring system reasonably designed to detect suspicious activity, and certifying compliance with that requirement, should not pose additional burdens on banks, because they remain subject in any event to the requirement to file reports of suspicious activity with respect to any transaction they exempt from the requirement to file currency transaction reports under the reformed exemption system. As explained above, the statement of the requirement to maintain a specific currency transaction monitoring program for accounts of exempt persons is limited to accounts of non-listed businesses and payroll customers, the classes of exempt persons with respect to which annual review requirements are specifically imposed by the final rule. However, banks are required to report suspicious transactions, including transactions in currency, in the accounts of all exempt persons (as in all other accounts) and paragraph (d)(9)(ii)'s more detailed specification does not by implication lessen the suspicious transaction reporting obligations or procedures of banks generally under paragraph (d)(9)(i) and 31 CFR 103.21.

#### 10. Revocation

Paragraph (d)(10) states that the status of an exempt person automatically ceases, without any action by the Department of the Treasury, when an entity ceases to be listed on the applicable stock exchange or a subsidiary of a listed entity ceases to have at least 51

per cent of its common stock or analogous equity interest owned by a listed entity. The phrase ``analogous equity interest'' has been added to reflect the change made to the definition of an exempt subsidiary set forth in paragraph (d)(2)(v).

#### 11. Transitional Rule

Paragraph 103.22(d)(11) states the transitional rules governing the use of the reformed exemption system. A few commenters requested that FinCEN provide ample time for banks to move from the prior administrative exemption system to the reformed system, particularly given that banks will need some time to address year 2000 computer issues. In light of these comments, the transition period stated in the Notice--that, in effect, provides banks until the end of the calendar year 1999 to make the transition to the reformed system--has been extended in the final rule to July 1, 2000. Provided that banks comply with the transition period set forth in the final rule, they may treat a customer as exempt under either the prior administrative exemption rules or the reformed exemption procedures set forth in paragraph 103.22(d) (so long as they do so consistently) during the transitional period.

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

#### VI. Unfunded Mandates **Act** of 1995 Statement

Section 202 of the Unfunded Mandates Reform **Act** of 1995 ('`Unfunded Mandates **Act**`'), Pub. L. 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates **Act** also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

#### VII. Regulatory Flexibility **Act**

FinCEN certifies that this amendment to the regulations

implementing the **Bank Secrecy Act** will not have a significant, adverse **financial** impact on a substantial number of small depository institutions. By adding two new classes of customers, non-listed businesses and payroll customers, to the list of exempt persons, the final rule represents a significant decrease in the reporting burden imposed on all depository institutions. FinCEN anticipates that the addition of these two new classes of exempt persons can contribute to at least a 2 million reduction in the number of currency transaction reports filed annually, and a cost reduction to depository institutions of \$16 million. Further, the requirements placed upon depository institutions under the reformed exemption system, as laid out in the final rule, represent a substantial net decrease in the burdens associated with the prior exemption process. For example, depository institutions will no longer be required to prepare and submit signed exemption statements, or to maintain customer exempt lists. Under the reformed system, a depository institution will be able to exempt the transactions in currency of an exempt person simply by the one-time filing of a currency transaction report form that identifies the exempt customer and the exempting depository institution, and, in the case of non-listed businesses and payroll customers, renewing the exempt status of its exempt customers every two years.

In accordance with requirements of the Paperwork Reduction **Act** of 1995, 44 U.S.C. 3501, et seq., and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information on Internal Revenue Service Form 4789 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this final rule, if used by banks, can result in at least a 2 million reduction in the number of currency transaction reports required to be filed annually, and a cost reduction to banks of \$16 million. FinCEN believes that these estimated reductions are reasonable, and probably conservative.

Title: Currency Transaction Report.

OMB Number: 1506-0004.

Description of Respondents: All **financial** institutions, except casinos.

Estimated Number of Respondents: 250,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: 10,000,000 responses. Reporting burden estimate = 3,166,667 hours; recordkeeping burden estimate = 833,333 hours. Estimated combined total of 4,000,000

hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens:

Based on \$20 per hour, the total cost to the public is estimated to be \$80,000,000.

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Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

In accordance with the requirements of the Paperwork Reduction **Act** of 1995, 44 U.S.C. 3501 et seq., and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 103.22 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this final rule will result in a reduction in hours spent complying with exemption requirements of 350,000 hours, and a reduction in cost to banks of \$7,500,000. This is a conservative estimate, based on comments and discussions with banking industry representatives of the cost of complying with the administrative exemption system requirements.

Title: Currency transaction reporting exemption recordkeeping (31 CFR 103.22).

OMB Number: 1506-0009.

Description of Respondents: All banks.

Estimated Number of Respondents: 19,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 2 hours per respondent.

Estimate of Total Annual Burden on Respondents: Recordkeeping burden estimate = 38,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on \$20 per hour, the total cost to the public is estimated to be \$760,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Extension.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law **enforcement**, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

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

PART 103--**FINANCIAL** RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

2. Section 103.22 is revised to read as follows:

Sec. 103.22 Reports of transactions in currency.

(a) General. This section sets forth the rules for the reporting by **financial** institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b) of this section. The reporting rules relating to aggregation are stated in paragraph (c) of this section. Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d) of this section.

(b) Filing obligations--(1) **Financial** institutions other than casinos. 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, except as otherwise provided in this section. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) Casinos. Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

(A) Purchases of chips, tokens, and plaques;

(B) Front money deposits;

(C) Safekeeping deposits;

(D) Payments on any form of credit, including markers and counter checks;

(E) Bets of currency;

(F) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(G) Purchases of a casino's check; and

(H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Redemptions of chips, tokens, and plaques;

(B) Front money withdrawals;

(C) Safekeeping withdrawals;

(D) Advances on any form of credit, including markers and counter checks;

(E) Payments on bets, including slot jackpots;

(F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;

(G) Cashing of checks or other negotiable instruments;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Reimbursements for customers' travel and entertainment expenses by the casino.

(c) Aggregation--(1) Multiple branches. A **financial** institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of this section's reporting requirements.

(2) Multiple transactions--general. In the case of **financial** institutions other than casinos, for purposes of this section, 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 (or in the case of the Postal Service, any one 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.

(3) Multiple transactions--casinos. In the case of a casino, 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 totaling more than \$10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) Transactions of exempt persons--(1) General. No **bank** is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such **bank**, or, to the extent provided in paragraph (d)(6)(vi) of this section, between such exempt person and other banks affiliated with such **bank**. In addition, a non-**bank financial** institution is not required to file a report

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otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial **bank**. (A limitation on the exemption described in this paragraph (d)(1) is set forth in paragraph (d)(7) of this section.)

(2) Exempt person. For purposes of this section, an exempt person is:

- (i) A **bank**, to the extent of such **bank**'s domestic operations;
- (ii) A department or agency of the United States, of any State, or of any political subdivision of any State;
- (iii) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises

governmental authority on behalf of the United States or any such State or political subdivision;

(iv) Any entity, other than a **bank**, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate ``Nasdaq Small-Cap Issues'' heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a **financial** institution, other than a **bank**, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a **bank**, of any entity described in paragraph (d)(2)(iv) of this section (a ``listed entity'') that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a **financial** institution, other than a **bank**, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations, any other commercial enterprise (for purposes of this paragraph (d), a ``non-listed business''), other than an enterprise specified in paragraph (d)(6)(viii) of this section, that:

(A) Has maintained a transaction account at the **bank** for at least 12 months;

(B) Frequently engages in transactions in currency with the **bank** in excess of \$10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(vii) With respect solely to withdrawals for payroll purposes from existing transaction accounts, any other person (for purposes of this paragraph (d), a ``payroll customer'') that:

(A) Has maintained a transaction account at the **bank** for at least 12 months;

(B) Operates a firm that regularly withdraws more than \$10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(3) Initial designation of exempt persons--(i) General. A **bank** must designate each exempt person with which it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this paragraph (d).

Except where the person sought to be exempted is another **bank** as described in paragraph (d)(2)(i) of this section, designation by a **bank** of an exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked ``Designation of Exempt Person'' and items 2-14 (Part I, Section A) and items 37-49 (Part III) are completed, or by filing any form specifically designated by FinCEN for this purpose. The designation must be made separately by each **bank** that treats the person in question as an exempt person, except as provided in paragraph (d)(6)(vi) of this section. The designation requirements of this paragraph (d)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of prior Sec. 103.22(a) under the rules contained in 31 CFR 103.22(a) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998). A special transitional rule, which extends the time for initial designation for customers that have been previously treated as exempt under such prior rules, is contained in paragraph (d)(11) of this section.

(ii) Special rules for banks. When designating another **bank** as an exempt person, a **bank** must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic **bank** customers. In

the event that a **bank** files its current list of domestic **bank** customers, the **bank** must make the filing as described in paragraph (d)(3)(i) of this section for each **bank** that is a new customer and for which an exemption is sought under this paragraph (d).

(4) Annual review. The information supporting each designation of an exempt person, and the application to each account of an exempt person described in paragraphs (d)(2)(vi) or (d)(2)(vii) of this section of the monitoring system required to be maintained by paragraph (d)(9)(ii) of this section, must be reviewed and verified at least once each year.

(5) Biennial filing with respect to certain exempt persons--(i) General. A biennial filing, as described in paragraph (d)(5)(ii) of this section, is required for continuation of the treatment as an exempt person of a customer described in paragraph (d)(2)(vi) or (vii) of this section. No biennial filing is required for continuation of the treatment as an exempt person of a customer described in paragraphs (d)(2)(i) through (v) of this section.

(ii) Non-listed businesses and payroll customers. The designation of a non-listed business or a payroll customer as an exempt person must be renewed biennially, beginning on March 15 of the second calendar year following the year in which the first designation of such customer as an exempt person is made, and every other March 15 thereafter, on such form as FinCEN shall specify. Biennial renewals must include a

statement certifying that the **bank**'s system of monitoring the transactions in currency of an exempt person for suspicious activity, required to be maintained by paragraph (d)(9)(ii) of this section, has been applied as necessary, but at least annually, to the account of the exempt person to whom the biennial renewal applies. Biennial renewals also must include information about any change in control of the exempt person involved of which the **bank** knows (or should know on the basis of its records).

(6) Operating rules--(i) General rule. Subject to the specific rules of this paragraph (d), a **bank** must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (d)(2) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this paragraph (d), that a reasonable and prudent **bank** would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (d)(9)(ii) of this section, such steps that a reasonable and prudent **bank** would take and document

to identify suspicious transactions as required by paragraph (d)(9)(ii) of this section.

(ii) Governmental departments and agencies. A **bank** may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) Stock exchange listings. In determining whether a person is described in paragraph (d)(2)(iv) of this section, a **bank** may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published

stock symbol guide, on any information contained in the Securities and Exchange Commission ``Edgar'' System, or on any information contained on an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) Listed company subsidiaries. In determining whether a person is described in paragraph (d)(2)(v) of this section, a **bank** may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(v) Aggregated accounts. In determining the qualification of a customer as an exempt person, a **bank** may treat all transaction accounts of the customer as a single account. If a **bank** elects to treat all transaction accounts of a customer as a single account, the **bank** must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as an exempt person.

(vi) Affiliated banks. The designation required by paragraph (d)(3) of this section may be made by a parent **bank** holding company or one of

its **bank** subsidiaries on behalf of all **bank** subsidiaries of the holding company, so long as the designation lists each **bank** subsidiary to which the designation shall apply.

(vii) Sole proprietorships. A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable.

(viii) Ineligible businesses. A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this paragraph (d): serving as **financial** institutions or agents of **financial** institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as

no more than 50% of its gross revenues is derived from one or more of the ineligible business activities listed in this paragraph (d)(6)(viii).

(ix) Transaction account. A transaction account, for purposes of paragraph (d) of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve **Act**, 12 U.S.C. 461(b)(1)(C). For purposes of paragraphs (d)(2)(vi) and (d)(2)(vii) of this section, a person is an exempt person only to the extent of such person's eligible transaction accounts.

(x) Documentation. The records maintained by a **bank** to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of Sec. 103.38.

(7) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (d)(1) of this section.

(8) Limitation on liability. (i) No **bank** shall be subject to penalty under this part for failure to file a report required by paragraph (b) of this section with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (d) have been satisfied, unless the **bank**:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (d) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) Subject to the specific terms of this paragraph (d), and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a **bank** satisfies the requirements of this paragraph (d) to the extent it continues to treat that customer as an exempt person until the date of that customer's next periodic review, which, as required by paragraph (d)(4) of this section, shall occur no less than once each year.

(iii) A **bank** that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(9) Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency. (i) Nothing in this paragraph (d) relieves a **bank** of the obligation, or reduces in any way such **bank's** obligation, to file a report required by Sec. 103.21 with

respect to any transaction, including any transaction in currency that a **bank** knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in Sec. 103.21(a)(2)(i), (ii), or (iii), or relieves a **bank** of any reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transaction trends or

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patterns, may trigger the obligations of a **bank** under Sec. 103.21.

(ii) Consistent with its annual review obligations under paragraph (d)(4) of this section, a **bank** shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a **bank** to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed and payroll customers does not limit the obligation of banks generally to take the steps necessary to

satisfy the terms of paragraph (d)(9)(i) of this section and Sec. 103.21 with respect to all exempt persons.

(10) Revocation. The status of any person as an exempt person under this paragraph (d) may be revoked by FinCEN by written notice, which may be provided by publication in the Federal Register in appropriate situations, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(8)(ii) of this section:

(i) The status of an entity as an exempt person under paragraph (d)(2)(iv) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(11) Transitional rule. (i) No accounts may be newly granted an exemption or placed on an exempt list on or after October 21, 1998, under the rules contained in 31 CFR 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998).

(ii) If a **bank** properly treated an account (a ``previously exempted

account') as exempt on October 20, 1998 under the rules contained in 31 CFR 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998), it may continue to treat such account as exempt under such prior rules with respect to transactions in currency occurring on or before June 30, 2000, provided that it does so consistently until the earlier of June 30, 2000, and the date on which the **bank** makes the designation or the determination described in paragraph (d)(11)(iii) of this section. A **bank** that continues to treat a previously exempted account as exempt under the prior rules, and for the period, specified in the preceding sentence, shall remain subject to such prior rules, and to the penalties for failing to comply therewith, with respect to transactions in currency occurring during such period.

(iii) A **bank** must, on or before July 1, 2000, either designate the holder of a previously exempted account as an exempt person under paragraph (d)(2) of this section or determine that it may not or will not treat such holder as an exempt person under paragraph (d)(2) of this section (so that it will be required to make reports under paragraph (a) of this section with respect to transactions in currency by such person occurring on or after the date of determination, but no later than July 1, 2000). A **bank** that initially does not designate the holder of a previously exempted account as an exempt person for periods beginning after June 30, 2000, may later make such a designation, to

the extent otherwise permitted to do so by this paragraph (d), for periods after the effective date of such designation.

Approved by the Office of Management and Budget under control number 1506-0009.)

Dated: September 14, 1998.

William F. Baity,  
Acting Director,

**Financial Crimes Enforcement Network.**

[FR Doc. 98-24969 Filed 9-18-98; 8:45 am]

BILLING CODE 4820-03-P

Designation of Exempt Person



Please type or print

1 Check appropriate box (see instructions):

a Initial Designation b Biennial Renewal

2 Check appropriate box

a Exemption Amended b Exemption Revoked

Part I Exempt Person

3 Business Name or Name of Sole Proprietor

4 Doing Business As (DBA)

5 Address (Number, Street, and Apt. or Suite No.)

6 City

7 State

8 Zip/Postal Code

9 Taxpayer Identification Number

Part II Basis for Exemption

10 Exemption Basis

a Bank b Government Agency / Governmental Authority c Listed company d Listed Company Subsidiary

e Eligible Non-listed business f Payroll Customer

11 Effective date of the exemption

M M D D Y Y Y Y

12 Has there been a change in control of the exempt person? For 10(e) and (f) only.

a Yes b No

Part III Bank Granting or Revoking Exemption

13 Name of Bank

14 Primary Federal Regulator (check only one)

a OCC b FDIC c FRS d OTS e NCUA

15 Address (Number, Street, and Apt. or Suite No.)

16 City

17 State

18 Zip/Postal Code

19 Taxpayer Identification Number

Sign Here



20 Title of approving official

21 Signature of approving official

22 Date of Signature

M M D D Y Y Y Y

23 Last name of person to contact

24 First name of person to contact

25 Telephone number

( ) -

26 For Biennial Updates ONLY (see item 1(b))

I certify on behalf of the above listed bank that its system of monitoring the transactions in currency of an exempt person for suspicious activity has been applied as necessary, and at least annually, to the account of this exempt person.

Sign Here



Signature of Approving Official

This form must be used by a bank or other depository institution to designate an eligible customer as an exempt person from currency transaction reporting rules of the Department of the Treasury (31 CFR 103.22). File this form with:

U.S. Department of the Treasury, P.O. Box 33112, Detroit, MI 48232-0112.

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective means for banks and depository institutions to exempt eligible customers from currency transaction reporting. This report is required by law, pursuant to 31 CFR 103.22. Federal law enforcement and regulatory agencies, including the U.S. Department the Treasury and other authorized authorities may use and share this information. You are not required to provide the requested information unless a form displays a valid OMB control number. Public reporting and recordkeeping burden for this form is estimated to average 70 minutes per response, and includes time to gather and maintain information the required report, review the instructions, and complete the information collection. The record retention period is five years. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Financial Crimes Enforcement Network, Attn: Paperwork Reduction Act, Suite 200; 2070 Chain Bridge Road, Vienna VA 22182-2536

## INSTRUCTIONS

### General Instructions

**Who Must File this Report:** Any bank (see definition) that wishes to designate a customer as an exempt person for purposes of CTR reporting must file this report. 31 CFR 103.22(d)(3)(i)

In addition, banks must file this form for the biennial renewal of the exempt person designation of eligible non-listed businesses and payroll customers. 31 CFR 103.22(d)(5)

A bank may, but is not required to, use this form to notify the Treasury that the bank has revoked the designation of a customer as an exempt person.

For further information, please refer to Title 31 of the Code of Federal Regulations, Part 103. See 31 CFR 103.11 for many definitions, and 31 CFR 103.22(d) for information on exemptions to CTR reporting.

**When and Where to File** - This report must be filed with the U.S. Department of the Treasury: Designation at P.O. Box 33112, Detroit MI 48232-0112. The report must be filed no later than 30 days after the first transaction to be exempted.

**Biennial Renewal (for eligible non-listed businesses and payroll customers only):** The report must be filed by March 15 of the second calendar year following the year in which the initial designation is made, and by every other March 15 thereafter.

### General Definitions

**Bank:** A domestic bank, savings association, thrift institution, or credit union. See 31 CFR 103.11(c). These may be exempted only to the extent of their domestic (i.e. US) operations.

**Biennial Renewal:** As provided for by 31 CFR 103.22(d)(5)(ii), the exemption status of all eligible non-listed businesses or payroll customers (see Item 10 e and f) must be updated once every two years, by March 15. This update is a biennial renewal of the exemption for these customers.

**Government Agency / Governmental Authority:** A department or agency of the United States, a State, or a political subdivision of a State, or (2) an entity established under the laws of the United States, of any State, or political subdivision of a State, or under interstate compact between 2 or more States, exercising governmental authority (i.e. the power to tax, police powers, or the power of eminent domain).

**Listed Company:** A business, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation System - National Market System.

See 31 CFR 103.22(d)(2) for the extent to which listed companies that are financial institutions may be exempted.

**Listed Company Subsidiary:** A subsidiary, other than a bank, which is owned at least 51%, and is controlled, by a Listed Company.

See 31 CFR 103.22(d)(2) for the extent to which listed companies' subsidiaries that are financial institutions may be exempted.

**Eligible Non-Listed business:** A business which (1) has had a transaction account at the bank for at least 12 months; (2) frequently engages in currency transactions greater than \$10,000; (3) is incorporated, or organized under the laws of the United States or a State, or is registered as and eligible to do business in the United States; and (4) is not an ineligible business.

Eligible non-listed businesses may be exempted only to the extent of their domestic (i.e. US) operations.

**Payroll Customers:** A business which (1) has had a transaction account at the bank for at least 12 months; (2) frequently withdraws more than \$10,000 in currency for payroll purposes in order to pay its employees in the US; (3) is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business in the United States.

**Ineligible Businesses:** A business engaged primarily in one or more of the following activities: serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed pari-mutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN.

A business that engages in multiple business activities is not an ineligible business as long as no more than 50% of its gross revenues is derived from one or more ineligible business activities.

**United States:** The States of the United States, the District of Columbia, the Indian lands (as defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

### EXPLANATIONS FOR SPECIFIC ITEMS

**Item 3 - Business Name or Last Name of Sole Proprietor:** List the full legal name of the business being exempted, or the complete last name of the person being exempted.

**Item 9 - Taxpayer Identification Number:** Generally, the Employer Identification Number of the Exempt Person.

**Item 14 - Primary Federal Regulator:** OCC = Office of the Comptroller of the Currency; OTS = Office of Thrift Supervision; FRS = Federal Reserve System; FDIC = Federal Deposit Insurance Corporation; NCUA = National Credit Union Administration.

**Item 23, 24, 25 - Contact:** The last and first name, and the telephone number of the person within the depository institution to be contacted for questions regarding this report.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
23. Determine whether management has implemented a high level of internal controls to minimize the risk of money laundering. These controls should include, but not be limited to, the following: <ul style="list-style-type: none"> <li>a. money laundering detection procedures</li> <li>b. identification and monitoring of non-bank financial institutions that are depositors of the institution and that engage in a high volume of cash activity (i.e. money transmitters and check cashing businesses).</li> <li>c. periodic account activity monitoring.</li> <li>d. internal investigations, monitoring and reporting of suspicious transactions.</li> </ul>			

**Exemptions**

**Advisory #5**

As of July 1, 2000, new Treasury exemption procedures allowing financial institutions to

exempt transactions of certain businesses from the requirement to report transactions in currency in excess of \$10,000 (Currency Transaction Report (CTR)) became fully effective. After July 1, 2000, only exemptions granted pursuant to the new exemption procedures will be valid.

	<i>Y</i>	<i>N</i>	<i>Comments</i>
24. Has the institution designated any “exempt persons” as defined in the regulations?  <i>If no, the examiner should waive the following steps and proceed to the next section of the Work Program. If yes, answer the following questions:</i>			
25. Does the bank have sufficient procedures related to exemptions?			
26. Does the bank have adequate and knowledgeable personnel sufficient to maintain the exemption process?			
27. Does the bank maintain appropriate and sufficient documentation to support each exemption?			

	<i>Y</i>	<i>N</i>	<i>Comments</i>
<p><i>Answer the following questions with respect to each exempt person. If the bank has more than 50 exempt persons, a reasonable sample should be selected.</i></p>			
28. Does the bank take appropriate steps to adequately determine and verify the eligibility of exemptions?			
29. Do all Phase I exemptions meet the established criteria?			
<ul style="list-style-type: none"> <li>a. Bank</li> <li>b. Government Agency</li> <li>c. Listed Business</li> <li>d. Subsidiary of a Listed Business</li> </ul>			
30. Do all Phase II “non-listed business” exemptions meet the established criteria?			
<ul style="list-style-type: none"> <li>a. Maintained a transaction account with the bank for at least 12 months?</li> <li>b. Frequently engaged in currency transactions in excess of \$10,000?</li> <li>c. Is incorporated or organized under US or State law or is registered and is eligible to do business within the US or a State?</li> </ul>			
31. Do all Phase II “payroll customer” exemptions meet the established criteria?			
<ul style="list-style-type: none"> <li>a. Maintained a transaction account with the bank for at least 12 months?</li> <li>b. Operates a firm that regularly withdraws more than \$10,000 in order to pay its US employees in currency?</li> <li>c. Is incorporated or organized under US or State law or is registered and is eligible to do business within the US or a State?</li> </ul>			
32. For each exempt person, has the bank filed a “Designation of Exempt Person” form completely and within 30 days of the first reportable transaction that was exempted?			

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	<i>Y</i>	<i>N</i>	<i>Comments</i>
33. For Phase II exemptions, has the bank filed a "Designation of Exempt Person" biennially by March 15 beginning the second calendar year following the original designation?			
34. Does the bank review and verify each exemption at least annually?			
35. Are the volumes, amounts and frequency of the large currency transactions for each exempt person consistent with what is normal and expected and commensurate with lawful activity?			
36. Does the bank have a system to monitor the currency transactions of exempt persons for suspicious activity?			
37. Is the monitoring system adequate to identify suspicious activity?			
38. Has the bank's internal audit department reviewed the exemption process?			
39. Have there been any outstanding issues involving exemptions and if so, have they been resolved?			