Office of Regulatory Activities

Thrift Bulletin

Handbook: Compliance Activities
Subject: Bank Secrecy Act

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TB 6-1

February 16, 1989

Treasury Clarifies Currency Reporting Rules and Defines "Structuring"

Summary: The U.S. Department of the Treasury has made two amendments to its Bank Secrecy Act regulations (31 CFR Part 103). These amendments are effective on February 22, 1989. The first amendment clarifies that a person conducting currency transactions for another person must provide the name of the person on whose behalf the transaction was conducted for reporting on Currency Transaction Report Form 4789. The second amendment adds a definition of "structuring" to 31 CFR 103.53.

For Further Information Contact:
The FHLB District in which you are located, or the Compliance Programs Division of the Office of Regulatory Activities, Washington, D.C.

Thrift Bulletin 6-1

Clarification of Reporting Requirement

By amending certain language in 31 CFR 103.27, the Treasury has clarified that an institution must obtain the identity of and other required information about the person for whom a currency transaction was conducted. According to the Treasury, this is not intended to be, and is not, a new requirement; institutions should have been routinely obtaining this information and placing it in Part II of Form 4789, the Currency Transaction Report (CTR).

The public comments on Treasury's proposed version of this rule raised a number of questions and requests for examples describing what the amendment means. The *Federal Register* material which accompanies the amendment (copy attached) provides several simple examples that illustrate various ways of performing transactions for others and an institution's corresponding Bank Secrecy Act responsibilities.

Definition of "Structuring"

The Treasury has amended the anti-structuring provisions of 31 CFR 103.53 to include a definition of "structuring." These regulatory provisions implement statutory prohibitions against structuring transactions contained in the Money Laundering Control Act, Subtitle H of the Anti-Drug Abuse Act of 1986.

Section 5324 of that law prohibits structuring for the purpose of evading the currency transaction reporting requirements, and also prohibits a person, for the same purpose, from causing or attempting to cause an institution to fail to file a CTR or to file a CTR that contains a material omission or misstatement of fact. In addition, Section 5324 clarifies that all currency transaction structuring schemes designed to evade the reporting requirements are unlawful, regardless of whether the $10,000 threshold is met at a single financial institution on a single day. The Treasury's amendment to 31 CFR 103.53 merely codifies its existing interpretation of "structuring" and is responsive to concerns by financial institutions that neither the law nor the regulations heretofore set forth a formal definition of "structure" or "structuring." The actual regulatory language, as well as further guidance and examples of some activities that would be considered "structuring," are contained in the Attachment to this bulletin.

The Treasury indicates that this amendment places no additional recordkeeping or tracking responsibilities on institutions. Further, there is no need to establish separate tracking systems to detect currency transactions that aggregate to more than $10,000 over more than one business day because institutions are required to file CTRs only when a currency transaction is conducted which exceeds $10,000 on one business day.

If an institution suspects, however, either because of the personal knowledge of its employees or because of its computer or other recordkeeping system, that structuring is taking place, it should check its records to ascertain whether currency transactions have taken place that must be reported pursuant to 31 CFR 103.22(a), and should report its suspicion that structuring has taken place to the local office of the IRS Criminal Investigation Division. (Information provided to the IRS should be given within the confines of section 1103(c) of the Right to Financial Privacy Act). In addition, institutions should complete Federal Home Loan Bank Board Form 366 - Criminal Referral Form, when struc-

turing activity is either known or suspected.

Effective Date

The attached *Federal Register* notice states that these amendments are effective on or before February 22, 1989. The Treasury has informed us that the notice is incorrect and that both of the amendments are effective *on* February 22, 1989.

Attachment

Darrel W. Dochow

— *Darrel W. Dochow, Executive Director*

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Domestic Currency Transactions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Two amendments are being made to the Bank Secrecy Act regulations, 31 CFR Part 103. The first amendment to 31 CFR 103.27 clarifies that a person conducting currency transactions for another person must report on the Currency Transaction Report (Form 4789, the "CTR") the name of the person on whose behalf the transaction was conducted. The second amendment adds a definition of "structuring" to the anti-structuring provision of 31 CFR 103.53, which prohibits a person from structuring or assisting in structuring, or attempting to structure or assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements.

DATE: These amendments are effective on or before February 22, 1989.

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

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

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

The Bank Secrecy Act, Pub. L. No. 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311-5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. Pursuant to 31 U.S.C. 5313 and the regulations thereunder, financial institutions are required to file Currency Transaction Reports with Treasury on transactions in currency in excess of $10,000 "by, through or to such financial institutions." 31 CFR 103.22(a).

Two amendments were proposed to the Bank Secrecy Act regulations on June 21, 1988 (53 FR 23289). The first amendment proposed would clarify what is meant by the phrase in 31 CFR 103.27 that a financial institution shall verify the identification of "any person or entity for whose or which *account*" a transaction reportable under § 103.22 is to be effected. (Emphasis added). Two cases (*United States* v. *Murphy*, 809 F.2d 1427 (9th Cir. 1987) and *United States* v. *Gimbel*, 632 F. Supp. 713 (E.D. Wis. 1984)), have held that the Bank Secrecy Act regulations and the Currency Transaction Report do not require that the name of the person for whom the transaction is being carried out be disclosed by the person conducting the transaction. Treasury's use of the term "account" in the phrase "for whose or which account" in 31 CFR 103.27 was not meant to identify a customer account relationship with a financial institution, but always has been interpreted by Treasury to be synonymous with "on behalf of," as required by the Bank Secrecy Act itself. 31 U.S.C. 5313. Section 5313 states that "a participant acting for another person shall make the report as agent or bailee of the person and identify the person for whom the transaction is being made." Many currency transactions never involve any sort of customer bank account at all (*e.g.*, purchasing money orders with cash).

Although no other courts have adopted the holdings of *Murphy* and *Gimbel*, in order to clarify any lingering ambiguity in § 103.27, and to conform the regulation more closely to the statute, Treasury proposed to change the phrase "for whose or which account" to "on whose behalf." This change makes clear that the financial institution must obtain the identity of and other required information about the person for whom the currency transaction was conducted. This was not intended to be, and indeed is not, a new requirement; financial institutions should have been obtaining this information all along, and placing it in Part II of Form 4789, the Currency Transaction Report (CTR).

The second proposal dealt with the "anti-structuring" provision, 31 U.S.C. 5324, added by the Money Laundering Control Act, Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (October 27, 1986). Section 5324 prohibits any person from structuring or assisting in structuring, or attempting to structure or assist in structuring, transactions "for the purpose of evading" the currency transaction reporting requirements, and also prohibits a person, for the same purpose, from causing or attempting to cause a financial institution to fail to file a CTR or to file a CTR that contains a material omission or misstatement of fact. The enactment of section 5324 clarified that all currency transaction structuring schemes designed to evade the reporting requirements are unlawful, regardless of whether the $10,000 threshold is met at a single financial institution on a single day. *See* H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-20 (1986); S. Rep. No. 433, 99th Cong., 2d Sess. 21-22 (1986).

Since the structuring provision was enacted, there has been some concern by financial institutions that neither the statute itself nor the regulation gives a formal definition of "structure" or "structuring," although the only court to consider the question ruled that the absence of a definition for the term "structuring" does not render the statute unconstitutionally vague. *U.S.* v. *Scanio*, No. CR 88-64T (W.D.N.Y. Sept. 22, 1988.) Treasury has received many inquiries since this provision was passed into law in 1986 as to exactly what the term

"structuring" means. In response to these requests, Treasury proposed for inclusion in the Bank Secrecy Act regulations a definition of "structure" or "structuring," after consultation with the Internal Revenue Service, the Department of Justice and the other Bank Secrecy Act regulatory agencies. The proposed definition provided that a person structures a transaction if:

(1) Acting alone, or in conjunction with, or on behalf of, other persons;
(2) He conducts, attempts to conduct or assists in conducting;
(3) One or more transactions in currency;
(4) In any amount;
(5) At one or more financial institutions;
(6) On one or more days;
(7) In any manner;
(8) For the purpose of evading the reporting requirements of 31 CFR 103.22.

The phrase "in any manner" is defined to include, but is not limited to, all schemes involving the breaking down of sums of currency larger than $10,000 into sums, including sums at or below $10,000, or through the conducting of a series of related currency transactions, including transactions at or below $10,000, at one financial institution or multiple financial institutions on one or more days. The definition also states that "[t]he transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition." This makes it clear that structuring is not limited to multiple transactions conducted on the same day at a single financial institution.

Discussion of Comments

Forty comments were received in response to the Notice of Proposed Rulemaking. Many of the comments were negative, but the issues the comments focused on indicated a need for clarification of the responsibilities under these amendments, rather than a need to change the proposals themselves.

Proposed Amendment to §103.27

New Obligations

There was much confusion on the part of the commenters on this particular proposal. On an initial note, many seemed to feel that a new obligation was being proposed.

In response to these comments, Treasury stresses at the outset that this amendment does not impose a new obligation upon any financial institution; it merely clarifies the regulation to state more clearly the statutory requirement that "a participant acting for another person shall make the report as agent or bailee of the person and identify the person for whom the transaction is being made." 31 U.S.C. 5313. Treasury always has intended, and consistently has stated, that the phrase "of any person or entity for whose or which account such transaction is to be effected" refers to all transactions conducted by one person for another, *i.e.*, as an agent or bailee, not just those that are run through accounts. Many transactions conducted on behalf of others never involve an account at all. Part II of the CTR also clearly states that the financial institution must identify the individual or organization for whom a transaction is conducted. Therefore, this should not be seen as a new obligation for financial institutions, but a clarification of an existing one.

Beneficial Owner

Many questioned the use of the term "beneficial owner" and whether that meant, for example, that transactions on behalf of corporations would need to have the stockholders of the corporation listed in Part II of the CTR.

In Part II of the CTR, the financial institution identifies the individual or organization on whose behalf the transaction was conducted. The definition of "person" for purposes of the Bank Secrecy Act regulations, 31 CFR 103.11(l), should be consulted for guidance:

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

Thus, if a currency transaction in excess of $10,000 is being conducted for a corporation, only the information on the corporation itself is needed for Part II of the CTR, and there is no need to determine the names of the stockholders in order to complete the CTR. In order to be consistent with the regulations, the CTR is being revised to reference the term "person."

The term "beneficial owner" was used in the Notice as merely another term to designate the person on whose behalf the transaction was conducted.

Knowledge Requirement

Many commenters questioned how a financial institution was to gain knowledge of whether a person is doing the transaction for someone else. Some commenters wondered if Treasury was imposing a positive duty to inquire of every customer if the transaction was being conducted on behalf of someone else.

The Bank Secrecy Act requires financial institutions to file complete and accurate CTR's. Section 5313 clearly requires the financial institution to ascertain the real party in interest where an agency relationship exists. Asking the customer clearly is one way of obtaining the information needed to complete the CTR. Treasury currently is considering future regulatory and administrative action to require tellers to inquire of each of their customers for the information needed to complete the CTR, if that information cannot otherwise be obtained from customer records. In the meantime, Treasury recommends that tellers ask their customers for the information they need to complete the CTR, if they do not already have that information in customer records, and to ask each customer for each transaction if he is conducting the transaction on behalf of someone else, as that information is unique to each transaction and will not appear on a customer's signature card or other records.

In addition, as Treasury has consistently stated in the past, "knowledge" clearly also includes the concept of "willful blindness" articulated in the case of *United States v. Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge. As the court stated in the *Jewell* case, "if a person has his suspicions aroused but then deliberately omits to make further inquiries because he wishes to remain in ignorance, he is deemed to have knowledge." Thus, if a financial institution suspects that someone may be either conducting currency transactions or having them conducted on his behalf, in amounts totaling more than $10,000, but deliberately refuses to ask questions because it wants to remain ignorant, and therefore "innocent," the financial institution will be deemed to have knowledge for purposes of assessing liability under the Bank Secrecy Act.

Practicalities of Compliance

Many comments raised questions of the practicalities of complying with the requirement. Some pointed out that this information could not be obtained if the deposit was made by use of an automated teller machine or a night depository, or handled by a courier. Some commenters asked whether they could rely on the information given to them by the person conducting the transaction and/or the information in

the file on the person on whose behalf the transaction was being conducted. Several commenters inquired what they should do if a customer either refuses to give the needed information or does not have the information to give. Treasury notes that these questions are not unique to this amendment and have been raised before with respect to the various requirements of the Bank Secrecy Act generally.

In response to these comments, Treasury notes that a financial institution may rely on the information contained in its records if the customer conducting the currency transaction does so on behalf of a person on whom the financial institution has records. Financial institutions also may rely on the information given to them by someone conducting a currency transaction on behalf of another unless the financial institution has knowledge that the information is incorrect. If the transaction is conducted by use of an automated teller machine or a night depository, or by a courier and the information on the person on whose behalf the transaction was conducted is fragmentary, then the CTR should be filled out as completely as possible, using the information accompanying the transaction and filling in what can be obtained from customer records at the financial institution. The CTR has a block to check to indicate that the transaction was conducted through a night depository, automatic teller machine, or armored car service, all of which could account for an incomplete CTR.

In transactions conducted by a courier, the information concerning the courier is placed in Part I of the CTR, and the information on the person on whose behalf the transaction is being conducted (for example, a deposit to a corporation's checking account) goes in Part II. If the courier is conducting currency transactions for more than one person, which either separately or together aggregate to more than $10,000, then the information concerning the additional persons on whose behalf the transactions are being done is entered on the back of the CTR or on an addendum to the CTR.

Several commenters raised the question of whether a financial institution must refuse a transaction if the person conducting the transaction cannot provide needed information on the person on whose behalf the transaction is being conducted, and the financial institution does not have account records on that person to supply the required information. The Bank Secrecy Act neither requires nor prohibits a financial institution to refuse a currency transaction when the financial institution cannot obtain the information necessary to complete the CTR. However, under the Act and the regulations, financial institutions are responsible for filing complete and accurate CTR's. Section 103.26 of the regulations specifically requires that all information on the CTR be furnished. The Act and regulations further provide for both criminal and civil sanctions for willful violation of any provision of the regulations. Thus, failure to obtain complete information could result in criminal and/or civil liability for financial institutions.

Examples

Finally, many commenters asked for examples of what the amendment means. While Treasury cannot compile an exhaustive list of the various ways that a person can conduct a transaction for another, listed below are several simple examples the illustrate various ways of performing transactions for others and the financial institution's corresponding Bank Secrecy Act responsibilities. While for consistency purposes, all the financial institutions listed in the examples are banks, these examples generally are applicable to other financial institutions.

—Mary Jones walks into the bank, and deposits $15,000 into her personal checking account. If she is conducting the transaction for herself, the amendment is not relevant, because Part II of the CTR does not need to be completed.

—John Stevens comes into the bank and deposits $18,000 into Mary Jones' savings account. Because this currency transaction may be on behalf of another person, Treasury recommends that the bank ask Mr. Stevens if he is conducting the transaction on behalf of another. If John Stevens is performing the transaction on behalf of someone other than himself, the identification information on him would be placed in Part I of the CTR (which asks for information concerning the person conducting the transaction with the financial institution) and the information on the person on whose behalf the transaction was conducted is placed in Part II of the CTR (which asks for information concerning the person on whose behalf the transaction was conducted).

—William Evans comes into the bank and deposits $15,000, representing fees paid to a law firm partnership, of which he is a member, into the law firm partnership's operating account. The information on Mr. Evans would go in Part I of the CTR, while the information on the law firm partnership itself (a "person" under § 103.11(1)) would go in Part II. The bank does not list all the law firm partnership's partners in Part II.

—Mr. Evans comes in the next day and deposits $25,000 into three of the law firm partnership's trust accounts on behalf of three of the law firm partnership's clients. The bank accounts are clearly labeled as trust accounts. The financial institution should list the information on Mr. Evans in Part I of the CTR, and the information on each of the law firm partnership's clients in Part II of the CTR, because the money is theirs, not the law firm partnership's. In addition, the new CTR form, which is expected to be available in January 1989, will require the information on the law firm partnership itself also to be listed in Part II, on the back of the CTR.

—Angela Brown, the manager of Lee's Bakery, presents a check made payable to cash and drawn on the bakery's account. Because the customer conducting the transaction is not the same as the name of the account holder, the bank should inquire of Ms. Brown if she is cashing the check on the bakery's behalf. If she is cashing the check on the bakery's behalf, the information on the bakery would be placed in Part II, and the information on Ms. Brown would be placed in Part I.

—Monica Roberts, a courier, comes into the bank and deposits $50,000 into the Sunshine Corporation checking account. Treasury recommends that the bank ask the courier whether she is acting on behalf of Sunshine Corporation. The information on the courier goes in Part I. The information on the person on whose behalf the courier is making the deposit, whether obtained from the courier or the bank's records, goes in Part II. (A corporation is considered a person under § 103.11(1). The bank would not list all of the corporation's stockholders.)

—Jim Green comes into the bank with $25,000 in cash and purchases a bank check with himself named as payee. In order to ensure an accurate CTR, Treasury recommends that the bank ask the customer for whom the transaction is being conducted. If Mr. Green is conducting the transaction for himself, the bank will not fill out Part II. If he is conducting it on behalf of another, the bank must complete Part II with the information on the person on whose behalf the transaction is being conducted.

—Jim Green comes into the bank with $30,000 in currency and purchases a bank check with Susan Smith listed as the payee. Because Mr. Green may be performing this transaction for someone other than himself, Treasury recommends that the bank ask Mr. Green if he is conducting the transaction on behalf of another. If he is conducting the transaction on behalf of another, the information on Mr. Green is placed in Part I and the information on the person on whose behalf the transaction is being conducted is placed in Part II.

—Susan Smith comes into the bank and purchases bearer money orders with $25,000 in cash. The bank has knowledge that she is a frequent customer and often carries large amounts of money to buy bearer money orders. When asked, she give her occupation as "unemployed." Because this currency transaction may be on behalf of another person, Treasury recommends that the bank ask Susan Smith if she is conducting the transaction on behalf of another.

Proposed Structuring Definition

Most of the comments on the proposed structuring definition centered around perceived additional duties on the part of financial institutions, and whether Treasury could give additional guidance on the question of "assisting" in structuring.

Additional Duties

Some financial institutions were concerned that this amendment would place additional responsibilities upon financial institutions to track currency transactions that take place over more than one business day to ascertain whether there has been structuring, just as they are currently required to aggregate currency transactions of which they are aware that take place during the same business day to determine whether the reporting threshold under § 103.22 had been reached.

In response to these comments, Treasury notes that this amendment places no new additional duties upon financial institutions; it merely codifies the existing interpretation of structuring. The amendment also imposes no additional recordkeeping or tracking responsibilities. There is no need to set up separate tracking systems to detect currency transactions that aggregate to more than $10,000 over more than one business day because financial institutions are required to file CTR's only when a currency transaction is conducted which exceeds $10,000 on one business day.

If the financial institution suspects, either because of the personal knowledge of its employees or because of its computer or other recordkeeping system, that structuring is taking place, the financial institution should check its records to ascertain whether currency transactions have taken place that must be reported pursuant to 31 CFR 103.22(a), and should report its suspicion that structuring has taken place to the local office of the Internal Revenue Service's Criminal Investigation Division. *See* BSA Administrative Ruling 88-1, June 22, 1988, published at 53 FR 40062, 40064 (October 13, 1988).

Any information provided to the IRS should be given within the confines of section 1103(c) of the Right to Financial Privacy Act. 12 U.S.C. 3401-3422. Section 1103(c) of that Act permits a financial institution to notify a government authority of certain information relevant to a possible violation of any statute or regulation. Such information may consist of the names of any individuals or corporate entities involved in the suspicious transactions; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of the branch or office where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicion. S. Rep. 99-433, 99th Cong., 2d Sess., 15-16.

Additionally, a financial institution many be required, by the Federal regulatory agency that supervises it, to submit a criminal referral form. Thus, a financial institution should check with its regulatory agency to determine whether a referral form should be submitted.

Assisting in Structuring

Another point that some commenters raised, not directly related to the definition of "structuring," was that some financial institutions were concerned that there were no guidelines to help the financial institution in determining what "assisting" in structuring meant, and that they would be subject to penalties if a financial institution merely explained the structuring prohibition to its customers.

In response, Treasury emphasizes that the structuring activity must be for the purpose of evading the reporting requirements of § 103.22. Thus, before a financial institution may be held liable, either criminally or civilly, for assisting a customer in structuring transactions, the financial institution must have knowledge that its customer is attempting to circumvent the § 103.22 reporting requirement and the financial institution must assist, that is, aid or help, the customer in that attempt. If a customer disguises multiple cash transactions at a financial institution, without the complicity of any officer or employee of the institution, and the financial institution after diligent use of its manual or automated aggregation systems (or any other means) has no knowledge that these transactions were by or on behalf of the same customer, the financial institution has not knowingly and willfully violated the "assisting in structuring" provision of the Bank Secrecy Act. However, if a financial institution suspects a customer of structuring, perhaps because of repeated transactions just under $10,000, but refuses to investigate further because it wants to remain in ignorance, the financial institution may be deemed to have knowledge of structuring by virtue of its "willful blindness." *See United States* v. *Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976).

Although the term "assist in structuring" encompasses a wide range of actions that no single definition can fully address, a distinction can be drawn between merely explaining the requirements of this particular law, which is permissible, and advising the customer how to evade those requirements, which clearly would be a violation of the Bank Secrecy Act. For example, a bank employee, in response to a customer's questions, explained that all same business-day cash transactions in excess of $10,000 had to be reported to the government, that any transaction of less than $10,000 need not be reported, and that structuring of transactions to evade the reporting requirement is illegal. By merely explaining the law to the customer, the bank has not assisted the customer in structuring the transaction. Moreover, if the customer then decided to deposit only $9,000, the bank is not required to file a report under § 103.22. A financial institution is required to file a report only if a single currency transaction, or aggregated multiple currency transactions of which the financial institution has knowledge, exeeds $10,000 during a single business day. However, if in that latter example, there were circumstances leading the financial institution to believe that the customer was structuring his transactions to avoid the filing of a CTR, then it should report that fact to the local Internal Revenue Service Criminal Investigation Division, along with the information, noted above, which is permissible to disclose under the Right to Financial Privacy Act. *See* BSA Administrative Ruling 88-1, June 22, 1988.

Examples

Finally, some commenters asked for some examples of structuring. While the following examples are by no means exhaustive, the following acts are characteristic of persons who are seeking to structure transactions to avoid the reporting requirements of § 103.22:

—The person, after being informed that the institution intends to file a report on the transaction, seeks to take back part of the currency in order to reduce the amount of the transaction to $10,000 or less.

—The person conducts multiple transactions

—Each involving less than $10,000, but totaling more than $10,00—over the course of several consecutive or near-consecutive days (*e.g.*, Monday, Wednesday, and Friday), whether at the same financial institution, different branches of the same institution, or different institutions.

—Two or more persons enter a financial institution together and separately make cash purchases of instruments such as cashier's checks that individually do not exceed $10,000, but that total more than $10,000, from different tellers in the same institution.

—A customer makes a $9,000 deposit at 1:59 p.m. and a second deposit of $9,000 at 2:01 p.m. when the bank's business day changes at 2 p.m.

—A customer comes into the bank on Monday, Tuesday, Wednesday and Thursday, and each time deposits $8,000 into his checking account. On Friday, the customer comes in and orders that the $32,000 he deposited over the course of those four days be wire-transferred out of the country.

Conclusion

After consideration of all the comments submitted, Treasury is adopting the amendments as proposed, without change. The Authority paragraph is also revised to reflect the proper statutory references, to include the recent amendments made to the Bank Secrecy Act by the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, November 18, 1988.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

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

Drafting Information

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

List of Subjects in 31 CFR Part 103

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

Amendment

For the reasons set forth above, 31 CFR Part 103 is amended as set forth below:

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

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

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

§ 103.27 [Amended]

2. The first sentence of § 103.27 is amended by removing "for whose or which account" and adding in its place "on whose behalf".

3. Section 103.11 is amended by redesignating paragraphs (n), (o), (p), (q) and (r) as (o), (p), (q), (r) and (s) respectively, and by adding a new paragraph (n) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(n) *Structure (structuring).* For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this Part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

* * * * *

§ 103.53 [Amended]

4. Section 103.53 is amended by adding "(as that term is defined in § 103.11(n) of this Part)" after the word "Structure" in paragraph (c).

Dated: December 21, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-1344 Filed 1-19-89; 8:45 am]

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