REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: **October 1998** **NO: 98-RA-6**

TO: **ALL FEDERALLY INSURED CREDIT UNIONS**

SUBJECT: **Exemptions from the Requirement to Report Transactions in Currency - Phase II**

Attached is a final rule issued by the Department of the Treasury's Financial Crimes Enforcement Network amending the Bank Secrecy Act (BSA) regulations. This amendment simplifies the process that permits credit unions and other financial institutions to exempt transactions by certain members from the BSA's large currency transaction requirements. Credit unions have until July 1, 2000 to phase in compliance with the simplified procedures, although you may adopt the procedures for members beginning on October 21, 1998.

The new rule is aimed at exemption of transactions of non-public companies, especially smaller businesses. It permits credit unions and other depository institutions to exempt transactions by any domestic business that has routine needs for large amounts of currency by simply filing a form stating that the business is exempt, so long as the business has been a member (customer) of the credit union (institution) for one year. (Transactions by certain categories of businesses may not be exempted.)

The rule thus eliminates earlier cumbersome and costly rules that required a great deal of paperwork before an exemption could be approved and limited the exemption to certain "permissible currency ranges" outside of which reporting was still required. The exemption will not alter the credit union's obligations to report any suspicious transactions, including currency transactions of the members that are exempted from routine reporting.

The exemption of the businesses covered by the new rule must be renewed every two years, but a proposed requirement that credit unions include information about a member's total currency transactions on the renewal form has been eliminated as unduly burdensome and unnecessary. Credit unions must simply indicate that they have maintained a system of monitoring the transactions in the account for reportable suspicious activity.

The new rule supplements earlier changes (restated in the new rule) that eliminated from reporting all transactions in currency between depository institutions and (i) other banks operating in the United States; (ii) government departments and agencies, and other entities that exercise governmental authority; (iii) companies listed on the major national stock exchanges; and (iv) subsidiaries of such listed companies. Together these new procedures should permit credit unions and other depository institutions to significantly decrease the volume of currency transactions reports, since the rules now permit easy exemption of the transactions of most commercial ventures.

Any questions about the final rule or its implementation should be directed to your respective NCUA regional office.

Sincerely,

_____/S/_____
Norman E. D'Amours
Chairman

Attachment

tutorial programs for young adults and adults.

(c) The program provider must also have experience in providing counseling for participants who encounter other problems with the police department application process.

§ 92.11 Content of the recruitment and retention programs.

Applicants must describe in detail the intended program strategies for providing academic and guidance counseling activities for members of the community, as described in §§ 92.2 through 92.4. A review of mandatory topics to be addressed in a detailed concept paper/application to be provided by all applicants follows.

(a) Applicants must address program strategies for responding to program and applicant needs throughout the recruitment process. The process should be based on an examination and understanding of the needs of the population in meeting the qualification requirements of the police department. The project strategy should subsequently be tailored based on the understanding of the current and anticipated problems in meeting police department requirements.

(b) Applicants must describe the manner in which academic services and tutorials, and guidance counseling programs that would assist applicants to pass the entrance examination and related tests will be provided. This should also include the anticipated length of the academic and guidance counseling programs, qualifications of the counselors, and the content of the counseling programs.

(c) Applicants must provide retention services to assist in keeping individuals in the application process of a police department. These may include:

(1) Counseling programs aimed at meeting the needs of potential police applicants before they are eligible to apply for a sworn position;

(2) Pre-police employment programs, such as junior police cadet programs, reserve programs, and police volunteer activities and

(3) Mentoring activities utilizing sworn officers.

(d) Applicants must estimate the number of police applicants to be served by the prospective program, along with an estimation of the total number of potential or actual applicants who will be successfully hired and eventually deployed as police officers.

§ 92.12 Program funding length.

Funding for these programs will be for one year only, but will allow for two additional years of no-cost extension.

§ 92.13 Program eligibility.

(a) Eligible organizations for the Police Recruitment program grant are certified nonprofit organizations that have training and/or experience in:

(1) Working with a police department and with teachers, counselors, and similar personnel;

(2) Providing services to the community in which the organization is located;

(3) Developing and managing services and techniques to recruit and train individuals, and in assisting such individuals in meeting requisite standards and provisions;

(4) Developing and managing services and techniques to assist in the retention of applicants to like programs; and

(5) Developing other programs that contribute to the community.

(b) A program is qualified to receive a grant if:

(1) The overall design of the program is to recruit and retain applicants to a police department;

(2) The program provides recruiting services that include tutorial programs to enable individuals to meet police force academic requirements and to pass entrance examinations;

(3) The program provides counseling to applicants to police departments who may encounter problems throughout the application process; and

(4) The program provides retention services to assist in retaining individuals to stay in the application process of the police department.

(c) To qualify for funding under the Police Recruitment program, the intended activities must support the recruitment services, tutorial and other academic assistance programs, and retention services for individuals. The qualified non-profit organization must submit an application which identifies the law enforcement department with which it will work and includes documentation showing:

(1) The need for the grant;

(2) The intended use of the funds;

(3) Expected results from the use of grant funds;

(4) Demographic characteristics of the population to be served, including age, disability, race, ethnicity, and languages used;

(5) Status as a non-profit organization; and

(6) Contains satisfactory assurances that the program for which the grant is made will meet the applicable requirements of the program guidelines prescribed in this document.

Dated: September 2, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98–25143 Filed 9–18–98; 8:45 am]

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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.

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 § 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:

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.[1]

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[2] 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.

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.[3]

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

[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).

[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.

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

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:

- 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;
- Banks are required to renew exemptions for non-listed business and payroll customers every two years rather than every year;
- Banks must maintain a system of monitoring the transactions in currency of each exempt customer for any and all reportable suspicious activity;
- 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;
- Banks may, but need not, treat all eligible accounts of a person at a single institution as exempt;
- Banks are not required to segregate funds derived from non-business activities when exempting a transaction in currency of a sole proprietorship; and
- 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

Prior 103.22	New 103.22
No provision	103.22(a).
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(c)(2).
103.22(a)(4)	103.22(c)(1).
103.22(b)	Deleted, except 103.22(b)(1)(iii) and 103.22(b)(2)(iv).
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)[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.

DISTRIBUTION TABLE—Continued

Prior 103.22	New 103.22
No provision	103.22(d)(11).

[4] All references to paragraph (h) of section 103.22 are to the final rule that was published in the FEDERAL 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 § 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.[5] 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.

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

[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.

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

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

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.[6] 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.

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.[7] 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

[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.

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

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

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.

V. Executive Order 12866

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.

VIII. Paperwork Reduction Act

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.

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:

§ 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 secction. 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

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 § 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 § 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 § 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 § 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

patterns, may trigger the obligations of a bank under § 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 § 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]

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statutes; Wisconsin, New Hampshire and Michigan

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Determination of substantially identical state statutes.

SUMMARY: The Department of the Treasury is announcing that it has reviewed the statutes of Wisconsin, New Hampshire and Michigan which have recently enacted laws adopting Revised Article 8 of the Uniform Commercial Code—Investment Securities (''Revised Article 8'') and determined that they are substantially identical to the uniform version of Revised Article 8 for purposes of interpreting the rules in 31 CFR Part 357, Subpart B (the ''TRADES'' regulations). Therefore, that portion of the TRADES rule requiring application of Revised Article 8 if a state has not adopted Revised Article 8 will no longer be applicable for those 3 states.

EFFECTIVE DATE: September 21, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel (202) 219–3320.

ADDRESSES: Copies of this notice are available for downloading from the Bureau of the Public Debt home page at: http://www.publicdebt.treas.gov.

SUPPLEMENTARY INFORMATION: On August 23, 1996, The Department published a final rule to govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System (''TRADES''), 61 FR 43626.

In the commentary to the final regulations, Treasury stated that for the 28 states that had by then adopted Revised Article 8, the versions enacted were ''substantially identical'' to the uniform version for purposes of the rule. Therefore, for those states, that portion of the TRADES rule requiring application of Revised Article 8 was not invoked. Treasury also indicated in the commentary that as additional states adopt Revised Article 8, notice would be provided in the **Federal Register** as to whether the enactments are substantially identical to the uniform version so that the federal application of Revised Article 8 would no longer be in effect for those states. Treasury adopted this approach in an attempt to provide certainty in application of the rule in response to public comments. Notices have subsequently been published setting forth Treasury's determination concerning 19 additional states' enactment of Revised Article 8. See (62 FR 26, January 2, 1997, 62 FR 34010, June 18, 1997, 62 FR 61912, November 20, 1997, 63 FR 20099, April 23, 1998 and 63 FR 35807, July 1, 1998). Thus, a total of 50 states, including the three states addressed herein, the District of Columbia and Puerto Rico, have enacted statutes substantially identical to the uniform version of Revised Article 8.

This notice addresses the recent adoption of Article 8 by Wisconsin, New Hampshire and Michigan.

Treasury has reviewed the three state enactments and has concluded all of them are substantially identical to the uniform version of Revised Article 8.

Accordingly, if either § 357.10(b) or § 357.11(b) directs a person to Wisconsin, New Hampshire and Michigan, the provisions of §§ 357.10(c) and 357.11(d) of the TRADES rule are not applicable.