

DEPARTMENT OF THE TREASURY**31 CFR Part 103**

RIN 1506-AA25

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Nonfinancial Trades or Businesses Report Certain Currency Transactions**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Bank Secrecy Act regulations to require that persons who, in the course of conducting a nonfinancial trade or business, receive more than \$10,000 in coins or currency in one transaction (or two or more related transactions), file a report of such transaction with the Treasury Department.

DATES: Written comments on all aspects of the proposed rule are welcome and must be received on or before March 1, 2002.

ADDRESSES: Written comments should be submitted to: Cash Reporting-Section 5331 Comments, P.O. Box 1618, Vienna, VA 22183-1618. Comments may also be submitted by electronic mail to the following Internet address: regcomments@fincen.treas.gov with the caption in the body of the text, “Attention: Proposed Rule—Cash Reporting-Section 5331.” For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading “Submission of Comments.”

Inspection of comments: Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark, Deputy Chief Counsel, or Laurence J. Levine, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905-3590.

SUPPLEMENTARY INFORMATION:**I. Introduction**

Published elsewhere in this issue of the **Federal Register** is an interim rule adding a new section 31 CFR 103.30. The text of the interim rule is the same as the text of this notice of proposed rulemaking.

This document proposes a new section 31 CFR 103.30 in order to implement 31 U.S.C. 5331, as added to the Bank Secrecy Act by section 365 of

the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107-56 (October 26, 2001).

II. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311, *et seq.*, 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, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.¹ Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), 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.

Under 31 U.S.C. 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than \$10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with the Treasury Department. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and the accompanying regulations.

For purposes of section 5331, currency includes foreign currency, and to the extent provided in regulations, any monetary instrument, whether or not in bearer form, with a face amount of not more than \$10,000. Such monetary instruments shall not include any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of 31 U.S.C. 5312 (a)(2).

Reports required under section 5331 must be in such form as the Secretary may prescribe. The reports must contain: (1) The name, address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received; (2) the amount of coins or currency received; (3) the date and

nature of the transaction; and (4) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

III. Proposed Rule

With a minor exception, section 5331 requires reporting of the same transaction that must be reported to the Internal Revenue Service (“IRS”) under section 6050I of title 26, United States Code, and 26 CFR 1.6050I-1. Section 5331 does not require reporting of currency received by clerks of court. *Cf.* 26 U.S.C. 6050I(g). Further, section 5331 does not require the person making a report under section 5331 to furnish to the person whose name is required to be set forth on the report a statement concerning the report. *Cf.* 26 U.S.C. 6050I(e).

Because section 5331 is substantially similar to 26 U.S.C. 6050I, the proposed rule provides that persons required to report a transaction under section 5331 must make that report by filing a joint FinCEN/IRS form with the IRS. Under this dual-reporting regime, only one form is required to be filed for a transaction subject to both section 5331 and section 6050I of title 26. Thus, the proposed rule imposes no new reporting or record-keeping burden on persons required to report certain transactions under section 5331.

Because of the similarity between the provisions, FinCEN believes it is appropriate that the proposed rule adopt the same rules for multiple payments, monetary instruments, and designated reporting transactions as appear in the regulations under section 6050I. Thus, for example, the proposed rule would require that recipients aggregate an initial payment and subsequent payments such that a report is required if the aggregation exceeds \$10,000 within one year of the initial payment. In addition, the proposed rule, like 26 CFR 1.6050I-1, includes within the definition of currency monetary instruments such as cashiers’ checks, bank drafts, traveler’s checks or money orders, not having a face amount of more than \$10,000, when such monetary instruments are received in a “designated reporting transaction,” *i.e.*, certain retail sales as defined in the regulation.

IV. Submission of Comments

An original and four copies of any comment (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as

¹ Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the USA Patriot Act of 2001.

confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

It is hereby certified that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed rule applies only to persons already required to report information concerning transactions under the Internal Revenue Code and imposes no new reporting or recordkeeping requirements on those persons. Accordingly, an initial regulatory flexibility analysis is not required by the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

VI. Paperwork Reduction Act

The collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Post Office Box 39, Vienna, VA 22183. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

FinCEN specifically invites comments on (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information (see below); (c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Description of Respondents: Persons receiving cash payments greater than \$10,000 in the course of a trade or business.

Estimated Number of Respondents: 46,800.

Frequency: As required.

Estimate of Burden: None. Because this information is already required to be reported to the Internal Revenue Service pursuant to 26 U.S.C. 6050I, and is subject to IRS recordkeeping requirements, there is no burden associated with this collection of information. This regulation does not impose any requirement on any person that is not already required by 26 U.S.C. 6050I.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

VII. Executive Order 12866

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

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), 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 proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

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

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, FinCEN proposes to amend 31 CFR Part 103 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. 5311-5331.

2. The text of proposed § 103.30 is the same as the text of 31 CFR 103.30 set out in an interim rule published elsewhere in this issue of the **Federal Register**.

Dated: December 20, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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