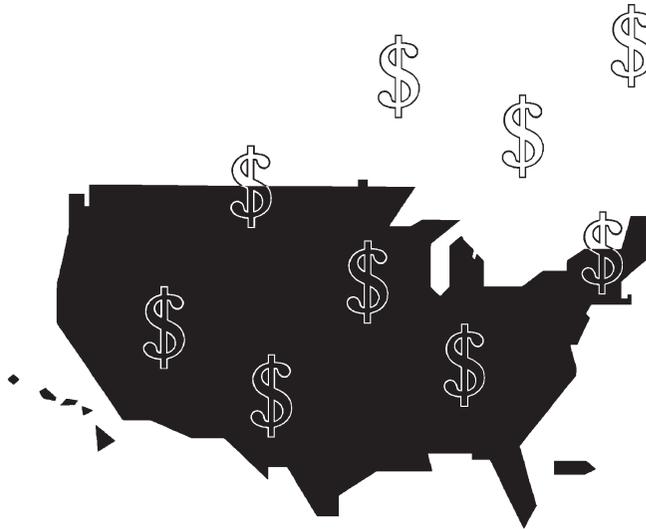


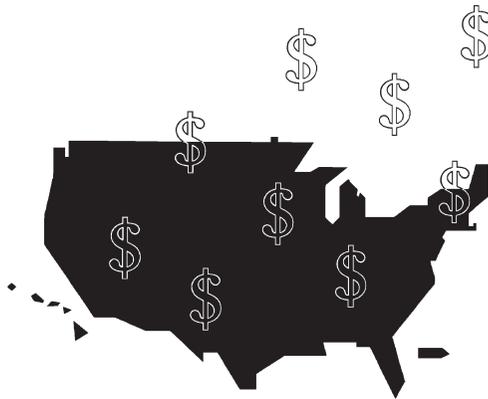
Currency and Foreign Transactions Reporting Act



Exemption Handbook



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Exemption Handbook

Department of the Treasury
Office of Financial Enforcement
and
Internal Revenue Service

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INTRODUCTION

The Bank Secrecy Act ("BSA"), 31 U.S.C. §5311-5324, and the BSA regulations, 31 C.F.R. Part 103, that the Department of the Treasury ("Treasury") has issued, require domestic financial institutions (other than casinos and the U.S. Postal Service) to file a report of each single or multiple "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." 31 CFR 103.22(a)(1). These reports, which are filed on IRS Form 4789, the Currency Transaction Report ("CTR"), have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. Information from CTRs is routinely used in a wide variety of criminal and tax investigations and prosecutions, as investigative leads, intelligence for the tracking of currency flows, corroborating information, and probative evidence.*

Treasury's experience in enforcing the BSA, however, has shown that certain legitimate businesses engage in regular and frequent currency transactions with domestic banks. The routine reporting of these transactions is less likely to be useful to law enforcement agencies. Treasury has therefore included in the BSA regulations provisions that permit banks to exempt government agencies and the accounts of certain customers from the CTR reporting requirements. In some instances, banks may unilaterally exempt government agencies and the accounts of particular customers without prior approval from Treasury or the Internal Revenue Service ("IRS"). In other instances, banks must obtain additional authority from the IRS, through the IRS Data Center in Detroit, Michigan, to grant exemptions to particular accounts of customers. The IRS has been delegated this authority from Treasury.

* One of the more prominent examples of the reports' utility is *United States v. Badalamenti*, (794F.2d 821 (2d Cir. 1986), appeal pending, No. 87-1303 (2d Cir., filed June 29, 1987), informally known as the "Pizza Connection" case. This case involved heroin smuggling into the United States by Italian and U.S. organized crime groups. During the investigation, Federal authorities discovered a number of BSA reports that indicated that a Swiss national was making large cash transactions. These reports led authorities to an extensive money laundering opera-

Treasury encourages banks to make full use of the exemption provisions. The use of the exemption provisions can yield substantial benefits for banks and Treasury. By eliminating CTR reporting on properly exempted accounts and certain transactions by government agencies, banks can reduce the cost of filing CTRs. These costs can be substantial, particularly for larger banks in major metropolitan areas that have many accounts by businesses and transactions by government agencies that are exemptible. The reduction in the number of CTRs filed by the banks, in turn, reduces Treasury's and IRS's cost of processing, computerizing, and storing CTRs. In addition, by reducing the number of CTRs which are not of value to law enforcement, Treasury can more effectively analyze and utilize the remaining CTR information.

For these same reasons, Treasury and the IRS have implemented procedures which allow banks to magnetically file CTRs. Treasury and IRS believe that magnetic filings will, likewise, reduce the costs to the banks and the government of complying with the BSA, while assuring a complete and accurate data base which can be utilized effectively to combat crime.

The exemption provisions specify the procedures and categories of accounts and government agencies for which a bank may grant unilateral exemptions, or obtain additional authority from the IRS to grant special exemptions. This booklet is intended to help banks understand the exemption provisions and improve compliance with the exemption requirements. It will explain how to determine whether a particular customer's account or government agency qualifies for an exemption, the process for exempting that account or agency, and the actions the bank should take after granting an exemption.

tion that involved the transfer of tens of millions of dollars through banks and investment houses in New York City to financial institutions in Switzerland and Italy. Ultimately, 20 defendants were convicted in Federal court for heroin conspiracy, racketeering, and BSA violations. All received prison sentences, and 15 defendants received sentences ranging from 15-45 years. In addition, the Swiss national was convicted and imprisoned by Swiss authorities for violations of Swiss law relating to his money laundering activities.

These guidelines address questions frequently asked by banks about the exemption provisions. Treasury welcomes your comments and invites you to submit suggestions for improvements in future editions of these guidelines to:

Director
FinCEN
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0400

In addition, if you have a question that is not addressed by these guidelines, Treasury

strongly encourages you to call or write FinCEN above or:

Compliance Review Group
IRS Data Center
P.O. Box 32063
Detroit, Michigan 48232
(313) 234-1613

This booklet is intended only to provide advice on the exemption process and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

I. DETERMINING WHICH CUSTOMER ACCOUNTS OR GOVERNMENT AGENCIES TO EXEMPT

A. EXCEPTED TRANSACTIONS

In developing exemption policies and procedures, banks should be aware that two types of transactions are specifically excepted from the CTR reporting requirements. (See Appendix A.) This means that a bank simply does not have to file CTRs on the following transactions and, therefore, need not exempt them:

1. Transactions with Federal Reserve Banks or Federal Home Loan Banks. This category includes all types of cash receipts or disbursements at Federal Reserve Banks or Federal Home Loan Banks.
2. Transactions between domestic banks. This category includes all types of currency transactions between "banks" as defined in 31 C.F.R. 103.11(a) (e.g., commercial banks, savings and loan associations, and credit unions). This category does *not* permit banks to except transactions with *nonbank* financial institutions (e.g., casinos, currency exchanges, securities brokers). In addition, with the exception of the U.S. Postal Service and certain check cashing agencies, nonbank financial institutions may not be exempted from the reporting requirements. Thus, banks *must* file CTRs on their transactions with foreign banks and with all nonbank financial institutions other than the U.S. Postal Service or check cashing services that have been granted an exemption (as described below).

B. UNILATERAL EXEMPTIONS

The regulations establish certain categories of business accounts and transactions of customers and government agencies that a bank may unilaterally exempt without having to obtain advance approval from Treasury or the IRS: (1) Retail and other specified businesses; (2) government agencies; and (3) payroll withdrawals.

1. Retail and Other Specified Businesses

A bank may unilaterally exempt "(d)eposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States." 31 CFR

103.22(b)(2)(i). A bank also may unilaterally exempt "(d)eposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, theater, regularly scheduled passenger carrier or any public utility." 31 CFR 103.22(b)(2)(ii).

a. Retail Businesses

i. Definition of retail type of business

The term "retail type of business" means "a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portions by currency . . ." 31 CFR 103.22(b)(2)(i). A business that is primarily engaged in providing *services*, rather than *goods*, to ultimate consumers (e.g., a car wash, a dry cleaning store, an appliance repair shop, or a health spa) does not come within the scope of this exemption. In addition, a business that is primarily engaged in selling goods wholesale rather than retail, is not within the scope of this exemption. If a business provides both goods and services to ultimate consumers or sells goods both wholesale and retail, a bank may exempt that business account only if more than 50% of the business' gross revenues at the time of the exemption is attributable to the retail sale of goods to ultimate consumers. Thus, a store that sells women's clothing off the rack and that also offers custom alterations on the premises may have its accounts exempted under these provisions if more than 50% of its gross revenues are attributable to the store's sale of clothing and not to the custom alterations. Similarly, if a bakery sells baked goods to ultimate consumers and to supermarkets for purposes of resale, the bank may exempt the bakery's account only if more than 50% of its gross revenues are from the sale of baked goods to ultimate consumers. (See Appendix A.)

ii. Payment in currency

The phrase "for which the business is paid in substantial portions by currency" is intended

to limit this exemption to businesses that, in the ordinary course of business, routinely receive currency in payment for the goods that they offer (e.g., a bookstore or a drug store). To qualify, the business must be paid in currency on a regular and frequent basis.

iii. United States operation

The term "operates a retail type of business in the United States" is intended to limit this exemption to retail businesses that actually are doing business in the United States. A foreign citizen or corporation operating a retail business solely outside the United States could establish an account at a U.S. bank, but could not have transactions involving that account exempted under these provisions. On the other hand, a corporation whose shares are owned by foreign individuals or corporations, but which is organized and is doing a retail business in the United States, could have its transactions involving that account exempted under these provisions.

iv. Nonexemptible retail business accounts

It is important to remember that accounts of "dealerships which buy or sell motor vehicles, vessels, or aircraft," while retail sellers of goods, may not be exempted by either unilateral or special exemption from the CTR reporting requirements. 31 CFR 103.22(b)(2)(i). This applies to all types of motor vehicles, vessels, and aircraft, including airplanes, automobiles, boats, construction equipment (e.g., road graders and backhoes), farm equipment (e.g., combines and tractors), mopeds, motorcycles, recreational vehicles, sailplanes, scooters, ships, snowmobiles, trucks, and yachts.

b. Specified Businesses

In addition to permitting an exemption for the accounts of retail types of businesses, the regulations permit unilateral exemptions for the following types of businesses: sports arenas, race tracks, amusement parks, bars, restaurants, hotels, licensed check cashing services, vending machine companies, theaters, regularly scheduled passenger services and public utilities. (See Appendix A.) Each of these businesses is discussed briefly below.

i. Sports arena

This includes a stadium or arena that regularly accommodates either a single sport (e.g., base-

ball, football, ice skating, jai alai, riding, soccer, or tennis) or multiple sports that are open to attendance or participation by the general public. A promoter who arranges for the presentation of sporting or other entertainment events at a sports arena does not come within the scope of this provision.

ii. Race track

This includes all tracks that hold races of bicycles, dogs, horses, or motor vehicles on a *regular* basis, whether or not betting on these races is permitted at the tracks, and that are open to attendance by the general public. A business organized to handle commercial activities for an automobile race that occurs once a year in a particular city (e.g., a grand prix) does not come within the scope of this provision.

iii. Amusement park

This includes any business that derives more than 50% of its gross revenues from rides and games (other than gambling devices) and the sale of food, drink, and souvenirs. It does not include traveling carnivals.

iv. Bar

This includes any business that serves food or drink to its patrons for consumption on or off the premises, and that derives more than 50% of its gross revenues from the sale of alcoholic beverages for consumption on the premises.

v. Restaurant

This includes any business that serves food or drink to its patrons for consumption on or off the premises, and that derives more than 50% of its gross revenues from the sale of food for consumption on or off the premises.

vi. Hotel

This includes any business (other than a cruise ship) that derives more than 50% of its gross revenues from providing temporary lodging to its patrons.

vii. Licensed check cashing service

This currently includes any business that, for a fee, cashes checks for its customers and that is specifically licensed to do so by an agency or instrumentality of a state or local government. (But see Appendix A.) A check cashing service

that is unlicensed, or that has only a general business license, does not come within the scope of this provision. If a bank wishes to grant a unilateral exemption to a licensed check cashing service it should do so only for withdrawals of currency, not deposits, because currency deposits are generally not attributable to check cashing activities of the business.

viii. Vending machine company

This includes any business that operates vending devices which provide either a product (e.g., beverages, candy, food, newspapers, or change) or a service (e.g., a coin-operated laundry) when activated by inserting coins or small-denomination currency.

A business that primarily operates coin-operated juke boxes, or coin-operated video games that do not constitute gambling devices, is within the scope of this provision. A business that operates coin-operated gambling devices of the type used in casinos (e.g., slot machines or video poker) does not come within the scope of this provision.

ix. Theater

This includes any theater that shows films or that presents live entertainment.

x. Regularly scheduled passenger carrier

This includes any business that is principally engaged in providing transportation of passenger by airplane, boat, bus, limousine, ferry, or train on a regular and publicly available schedule. A business that is principally engaged in operating a taxicab or limousine service, or transporting passengers on a charter basis by airplane, bus, or train, does not come within the scope of this exemption.

xi. Public utility

This includes any business that is principally engaged in operating a public utility (e.g., electric power, telephone service, or water).

c. Multi-Faceted Businesses

In some cases, a particular business entity may offer more than one type of good or service to the public. So long as more than 50% of the gross revenues of the customer whose account is being considered for an exemption is derived from a unilaterally exemptible business

or businesses (e.g., bar and restaurant) and the remainder of the business is derived from a business for which the bank may obtain authority from the IRS to grant a special exemption, the bank may unilaterally grant an exemption for the account. Thus, for instance, if a bakery were to sell its baked goods to ultimate consumers (retail) and to supermarkets (wholesale), the bank would be able to unilaterally exempt the bakery's account only if the bakery derived more than 50% of its gross revenues from the retail business and not the wholesale operation.

If more than 50% of the gross revenues is derived from a type of business that cannot be unilaterally exempted, but that may be granted a special exemption, the bank may not grant that account a unilateral exemption. For example, if a bank has knowledge that one of its customers, a local bar, has been deriving the majority of its gross revenues from operating an unlicensed check cashing service, it may not unilaterally exempt the customer's account. Instead, the bank should contact the IRS to request a special exemption.

Finally, if the bank's customer is a business entity that operates *exemptible and nonexemptible* (as opposed to unilaterally exemptible and specially exemptible) businesses and the funds from both types of businesses (e.g., auto parts department and a car dealer) are commingled in the same account, the bank may not grant the account of that customer a unilateral exemption and should not write to the IRS in Detroit to request a special exemption. This is true even if more than 50% of the gross revenues is derived from the exemptible business. If the bank has any questions, it should contact FinCEN at Treasury for guidance, at the address listed on page 2 above.

d. Limitations on Exemptions for Retail and Other Specified Businesses

There are three limitations that apply to all exemptions for accounts of retail or other specified businesses: (1) they may only be granted for "deposits or withdrawals of currency," (2) they may only be granted for "an existing account by an established customer," and (3) they may only be granted for a "United States resident." These limitations are explained in more detail below. 31 CFR 103.22(b)(2)(i), (ii).

i. *"Deposits or withdrawals of currency"*

The term "(d)eposits or withdrawals of currency" limits these exemptions to currency deposits or withdrawals or both, involving the account of a properly exempted customer. Thus, under these exemption provisions, a bank may *not* exempt any other type of transaction involving that account (e.g., the purchase of cashier's checks or money orders, exchanges of currency, or cash disbursement of loan proceeds). In addition, if a bank customer presents several third-party checks and obtains "cash back" without actually depositing the checks into an account, that transaction is not considered a deposit or withdrawal under these exemptions. This is true even if the bank has granted a unilaterally exemptible business (e.g., a retail business or licensed check casher) an exemption for currency deposits into and withdrawals from that account; it still must file CTRs on any "cash back" transaction by that customer that does not involve the actual deposit of the checks into, and the actual withdrawal of more than \$10,000 in cash from, the customer's account.

ii. *"Existing account by an established depositor"*

• *Existing Account*

Banks frequently ask whether they should grant a unilateral exemption for each separate account of a customer that has multiple accounts or for the customer (i.e., an exemption that covers multiple accounts of the same customer with a single taxpayer identification number (TIN)). The term "existing account" means that for this type of exemption, the bank can only grant a unilateral exemption for an individual *account*, *not* for an individual customer. If a particular customer has separate accounts at the bank, each account should be considered separately by the bank to determine whether an exemption should be granted. The bank should *not* grant a single exemption covering multiple accounts of that customer, even if those accounts have the same TIN. If the bank has already granted any of its customers a single exemption covering multiple accounts, the bank should contact FinCEN at the address listed on page 2 for guidance. In addition, if the bank determines that it wants to grant exemptions for more than one account, it should prepare an exemption statement for each account

and establish a separate exemption limit. (See pp. 10–11 below.)

Thus, for example, if three fast-food restaurants owned by the same corporation each have separate deposit accounts at the same bank, that bank may not grant one exemption that covers all three accounts. Instead, the bank should consider each account separately for an exemption. If the bank decides that all three accounts should be exempted, the bank should prepare three separate exemption statements and establish separate exemption limits for each account.

• *Established Depositor*

The term "established depositor" is intended to make clear that a bank may not exempt the account of a business at the time that the business opens the account. As these guidelines will later explain, a bank must establish a dollar limit for an exemption in an amount that does not exceed an amount "commensurate with the customary conduct of the lawful, domestic business of that customer. . . ." 31 CFR 103.22(c). If a bank has not had a prior account relationship with a customer, it cannot determine, from a history of its transactions with that customer, what dollar limit would be commensurate with that customer's lawful, domestic business.

For this reason, the bank generally should not unilaterally exempt the account of a business for at least the first two months of that business' depositor relationship with the bank. After reviewing at least two months of currency transactions of the account being considered for exemption, the bank may then set a limit. If the customer has had an account at the bank for more than two months, the bank generally should review at least the most recent two months of transactions involving that account, unless those months are not representative of the customary conduct of the customer's lawful domestic business. (See p.9 below).

iii. *"United States resident"*

The term "United States resident" is intended to limit these exemptions to accounts of business entities that are physically residing in the United States at the time of the exemption. The term includes a sole proprietorship oper-

ated by a U.S. citizen or permanent resident, alien, a corporation, a partnership, an association, or any other form of corporate organization, which is physically located in and doing business in the United States. The term does not include a foreign embassy or consulate in the United States, or a foreign business entity that does business, but does not have a place of business, in the United States.

2. Government Agencies

The regulations permit a bank unilaterally to exempt "(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." 31 CFR 103.22(b)(2)(iii). By its terms, this exemption applies to all types of currency transactions conducted by the Federal Government or any of its agencies or instrumentalities, as well as any state or local (e.g., county or municipal) government or any of its agencies or instrumentalities whether or not through an account. Government agencies and instrumentalities do not have to be "established depositors" as described above. The only restriction on these types of exemptions is that the exemptions must be "in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality." 31 CFR 103.22(c). (See discussion p.9 below.)

A bank may therefore exempt the cash transactions involving any government agency (e.g., the Treasury Department, the Justice Department, and Federal law enforcement agencies) or government instrumentality (e.g., state-supported colleges and universities), even if that agency or instrumentality does not constitute "an established depositor," as defined on page 6 above. If the government agency (e.g., state-supported college) has a privately owned business (e.g., bookstore) that is operated on its grounds, the business may not be exempted under this exemption but may be exempted under another exemption (e.g., retail business). A union or fraternal association whose membership consists of officials or employees of a government agency or instrumentality also does not come within the scope of these provisions.

Although the regulations generally do not permit banks to exempt their transactions with

nonbank financial institutions (see page 8 below), a bank may use this exemption to exempt its transactions with the U.S. Postal Service, which the regulations have designated as a nonbank financial institution with respect to its sales of postal money orders.

3. Payroll Withdrawals

The regulations also permit a bank unilaterally to exempt "(w)ithdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than \$10,000 in order to pay its employees in currency." 31 CFR 103.22(b)(2)(iv). This exemption is limited to *withdrawals* of currency by an employer that actually pays its employees with the currency it has withdrawn. It does not include an employer that pays its employees by check, but then cashes employees' paychecks and presents the employees' checks at a bank to receive "cash back." Similarly, an employer that withdraws cash to offer a check-cashing service to its employees does *not* come within the scope of this exemption.

The terms "existing account by an established depositor" and "United States resident" have the same scope as those terms described on page 6 above.

C. SPECIAL EXEMPTIONS

1. General Criteria

Even if a particular customer's account does not come within one of the categories of exemptions that a bank may unilaterally grant, the bank may still be able to exempt the deposits and withdrawals of cash of that customer's account that exceed \$10,000 from the CTR reporting requirements. If a bank determines that one of its customers appears to be operating a legitimate business, and the customary conduct of the lawful domestic business of that customer involves regular and frequent currency deposits or withdrawals, the bank may apply to the IRS for additional authority to exempt deposits or withdrawals involving an account of that customer. If the bank receives additional authority from the IRS, it may then grant a "special exemption."

Because there are numerous types of businesses that may qualify for special exemptions, Treasury has refrained from developing a com-

prehensive list of those businesses. However, Appendix A contains a list of some of the types of businesses that have been approved in the past for special exemptions. The IRS will not grant additional authority for special exemptions of businesses such as automobile clubs that offer travelers' checks for sale, precious metal or coin dealers, scrap metal dealers, and gambling operations, whether charitable or for profit.

2. Nonexemptible Entities

Transactions by certain types of businesses may not be the subject of a unilateral or special exemption under any circumstances: (See Appendix A).

- a. Transactions by a bank with nonbank financial institutions (e.g., casinos, currency exchanges, issuers of traveler's checks, and securities brokers or dealers) other than the U.S. Postal Service and check-cashing services.
- b. Transactions between a domestic bank and a foreign bank.
- c. Transactions by a bank with commodities brokers and dealers.
- d. Transactions by a bank with a motor vehicle, vessel, or aircraft dealer, as described above.
- e. Transactions by a bank with a foreign government, or any agency, instrumentality, or office thereof (e.g., foreign embassies and consulates).

D. CTR REPORTING ON CERTAIN TRANSACTIONS BY EXEMPTED CUSTOMERS

In using the exemption provisions of the regulations, banks must bear in mind that their granting of exemptions to certain accounts and customers does not mean that they will *never* have to file CTRs on those accounts and customers. Even after granting an exemption and setting a dollar limit for that exemption, a bank must continue to file CTRs on two types of currency transactions:

1. All currency transactions that are of the type exempted, but that exceed the dollar limit. Thus, if the exemption limit on a particular customer's account is for daily deposits that do not exceed \$20,000 when aggregated, the bank still must report the total amount of deposits into that account if the total of all deposits in the same banking day exceeds \$20,000 (e.g., \$20,000.01).
2. All non-exempted currency transactions involving an account. Thus, if the account is the subject of an exemption for currency *withdrawals* up to \$19,000, the bank must report any and all currency *deposits* into that account that exceed \$10,000.

II. HOW TO EXEMPT CUSTOMERS

Once a bank has determined that the account of a particular customer may qualify for a unilateral or special exemption, it is encouraged to initiate the process for granting the exemption. Under the regulations, only the bank (and not the customer) has the authority to grant unilateral exemptions or to apply to Treasury for special exemptions. In general, if a business customer specifically requests an exemption before the bank has contacted it, the bank should carefully scrutinize the customer's activity at the bank before deciding whether to grant an exemption. This is because the customer may be seeking the exemption to hide its transactions from the government.

A. REVIEW OF BANK RECORDS

As the first step, the bank should review the customer's transaction history, including its cash deposit or withdrawal transactions. This review is necessary to determine whether the customary conduct of a business entity's lawful domestic business involves currency deposits or withdrawals exceeding \$10,000 that occur regularly and frequently (e.g., daily or several times per week, or in some cases, weekly or biweekly). If the bank's records do not indicate that that entity has had regular and frequent currency deposits or withdrawals exceeding \$10,000, then the bank should not proceed any further with the exemption process, notwithstanding the nature of the customer's business.

1. Two Consecutive Months of Activity

The bank should review at least two consecutive months of transactions, including currency deposits or withdrawals, by its customer. The two months of deposits or withdrawals should be the most recent months unless those months are not truly representative of the customary conduct of the customer's lawful domestic business. For example, if the currency deposits or withdrawals of an established customer during the months of November and December far exceed that customer's currency deposits or withdrawals in other months because of seasonal shopping trends, the bank should review deposits or withdrawals that occurred in two consecutive months that do not include either November or December.

While the regulations do not require that a government agency or instrumentality be an "established depositor," the bank may still find it helpful to review at least the most recent two months' account activity of that agency, to aid in establishing an exemption limit that is "commensurate with the authorized activities of the agency or instrumentality." 31 CFR 103.22(c). However, if the customer whose account is being considered for exemption is a government law enforcement agency that opened the account for deposits of seized cash for transactions conducted in relation to criminal investigations or similar types of transactions, the bank need not review two consecutive months of account activity. These types of transactions are by their nature less regular and frequent than other transactions by other government agencies.

2. Review of Other Available Information

In addition, the bank should review any other information that it has concerning its customer which might assist the bank in reviewing that customer's transaction history. If the customer has a longstanding depositor relationship with the bank, the bank may have made extensions of credit or conducted other business with the customer that generated additional records about the customer's business. If the customer is a government agency or instrumentality, the bank should also ask for official identification from the person who is opening the account or conducting the transaction as a representative of that agency. These steps not only are consistent with a bank's marketing strategy of "knowing its customer," but also may aid in the determination of whether the customer, in fact, comes within one of the categories of exemptible businesses.

In some cases, criminals have succeeded in having a "front" company placed on the exemption list. Often, the address given to the bank was a vacant lot or a storefront where legitimate business could not be carried on. Treasury therefore encourages banks to know their customers. If a bank is not familiar with a particular business entity that it is considering for an exemption, Treasury urges the bank to take some steps to see if the customer appears

to be conducting a legitimate business by checking the telephone directory to verify the business' address and telephone number, or preferably by walking or driving past the business. The bank also may want to maintain a record of all of the steps that it took in determining whether the customer was eligible for an exemption.

B. PREPARATION OF EXEMPTION STATEMENTS

1. Statements for Customers Exempted After October 27, 1986

After the bank has reviewed the customer's transaction history and other information, and determined that the customer appears to be eligible for an exemption, it must then prepare a separate "exemption statement" for each account of the customer to be exempted. Pursuant to a 1986 amendment to the Bank Secrecy Act, the regulations state that after October 27, 1986 (the date on which the amendment became law), "a bank may not place any customer on its exempt list without first preparing a written statement, signed by the customer, describing the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption." 31 CFR 103.22(d).

2. Statements for Customers Exempted on or before October 27, 1986

For customers granted an exemption on or before October 27, 1986, the bank should prepare an exemption statement if there is any change in the business or in the type of exemption other than a change in address or in the dollar amount of the existing exemption. These instances would include a change in the name of the business, a change from one form of entity to another (e.g., sole proprietorship to corporation), a change from one type of business to another (e.g., a retail type of business to a restaurant), a change in ownership of the customer's business, or a change in the nature of the existing exemption (e.g., from withdrawals to deposits or from withdrawals only to withdrawals and deposits). The exemption statement should reflect the current information about the customer.

3. Form for Exemption Statements

Treasury has not issued a form that all banks are required to use for their exemption state-

ments. Instead, in response to many inquiries, Treasury has developed model form (see Appendix B) that banks may use. As stated at page 6 above, the bank must prepare a separate exemption statement for each customer account to be exempted. However, any exemption statement that a bank prepares must, under the regulations, include the following items:

- a. The name, address (i.e., complete street address), nature of business, taxpayer identification number, and account number of the customer being exempted. In addition, in order to ensure that an account is being properly exempted under 103.22(a), it is recommended that the customer also confirm that the funds being deposited into the account being exempted do indeed come from the business for which the account was established.
- b. A statement, following the information in paragraph "a" above, that reads as follows: "The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government."
- c. A space, following that statement, for the signature of the person who is attesting to the accuracy of the information concerning the name, address, nature of business, and tax identification number of the customer. This space must also list the signer's title and position (i.e., the office or division of the customer in which the person signing is employed), and should include the date of the signature.
- d. An indication by the bank whether the exemption covers deposits, withdrawals, or both, as well as the dollar limit of the exemption for both deposits and withdrawals.
- e. An indication by the bank whether the exemption is limited to certain types of deposits or withdrawals (e.g., withdrawals for payroll purposes).

4. Customer Information and Signature

To prepare the exemption statement, the bank, after compiling whatever information it needs for reviewing the customer's transaction history and other information, should contact the

customer, explain the need for the statement and its relationship to the exemption, obtain from the customer the information listed in item 3a on page 10 above, and have the customer place an original signature on the statement. Facsimile signatures are not acceptable for completion of the statement.

The signature on the statement need not be that of the highest ranking officer or employee of the business (or government agency) whose transactions are to be exempted. However, the bank should inform the customer that the signature should be that of an appropriate supervisory-level officer or employee who has personal knowledge of (and can therefore attest to the accuracy of) the information listed in item 3a above. In the case of an account established for the local store of a multiple-establishment business (e.g., fast food) or the local office of a government agency, the bank may accept the signature of a supervisory-level officer or employee in that local store or office.

5. Completion of Exemption Statement

After obtaining the customer's signature on the exemption statement, the bank should then complete the remainder of the statement. The regulations require that the statement include not only a description of "the customary conduct of the lawful domestic business of that customer," but also "a detailed statement of reasons why such person is qualified for an exemption." 31 CFR 103.22(d). Summary statements such as "retail," "qualified under 103.22(b)(2)(ii)," or "government" will not suffice to describe the business.

The following are examples of descriptions of businesses that will suffice:

1. retail women's shoe store;
2. retail and wholesale bakery with 70% of the gross revenues attributable to the retail business; and
3. a restaurant/bar with check cashing services that derives 80% of its gross revenues from the restaurant/bar.

The statement should include the period covered by the transaction history that the bank reviewed, the range (i.e., the maximum and minimum amounts) of the transactions during that period, and any other information that the bank may have about the business or its account activity. The bank must indicate in

the statement whether the exemption covers deposits, withdrawals, or both, and the dollar limit of the exemption. 31 CFR 103.22(d). This information should note whether the transactions exempted are limited to a certain type (e.g., withdrawals for payroll purposes). Finally, the bank should note on the statement the date on which it granted the exemption.

C. EXEMPTION LIMITS

1. General Criteria

In conjunction with its review of the customer's account activity, the bank must also determine for the exempted account the applicable dollar limit for the exempted deposits or withdrawals. 31 CFR 103.22(d). This determination requires the bank to establish two types of dollar limits for the currency transactions that are exempted:

- a. For exemptions pertaining to government agencies or instrumentalities, the dollar limits must be "in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality." 31 CFR 103.22(c).
- b. For all other categories of unilateral exemptions, the dollar limits must be "in amounts that the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer." 31 CFR 103.22(c).

This language indicates that there must be a reasonable relationship between the maximum amounts of the currency transactions that the bank reviewed and the dollar limit that it sets for a particular exemption. If, for example, the majority of the currency transactions reviewed range from \$20,000 to a maximum of \$25,000, the bank must not arbitrarily set the dollar limit at an amount so high (e.g., \$60,000) that no CTRs will ever be filed on the exempted account.

The bank must therefore carefully review the transaction history of the exempted account, to determine what limit would bear a reasonable relationship to the currency transactions reviewed. If one transaction amount recurs more frequently than any other, the bank may simply set the dollar limit at that amount, or at the amount of other transactions that do not substantially exceed that amount. Thus, for

example, if the bank had reviewed at least two months of currency transactions, and saw that the following pattern of transactions in a particular month was representative of the number and dollar amounts in all months reviewed,

March 1 - \$15,000	March 18 - \$45,000
March 2 - \$43,000	March 21 - \$30,000
March 4 - \$40,000	March 22 - \$28,000
March 7 - \$42,000	March 23 - \$35,000
March 8 - \$18,000	March 25 - \$40,000
March 9 - \$38,000	March 28 - \$40,000
March 11 - \$45,000	March 29 - \$20,000
March 15 - \$40,000	March 30 - \$41,000
March 16 - \$30,000	March 31 - \$40,000

it could select \$40,000 as the exemption limit because that amount recurs more frequently than any other and most of the other amounts are within a \$35,000 to \$45,000 range. However, Treasury suggests an exemption limit of \$45,000, as that amount occurs twice; it is not substantially greater than \$40,000; and there are other transactions (i.e., \$41,000, \$42,000, and \$43,000) that fall between \$40,000 and \$45,000.

To aid in its review of a customer's currency transactions, a bank may find it helpful to develop a chart that shows the number of currency transactions that fall within certain ranges. If the bank reviewing the transaction history set forth above had used this method, the chart of the transactions under review would look like this:

<u>\$10,001 - \$15,000</u>	<u>X</u>
<u>\$15,001 - \$20,000</u>	<u>XX</u>
<u>\$20,001 - \$25,000</u>	
<u>\$25,001 - \$30,000</u>	<u>XXX</u>
<u>\$30,001 - \$35,000</u>	<u>X</u>
<u>\$35,001 - \$40,000</u>	<u>XXXXXX</u>
<u>\$40,001 - \$45,000</u>	<u>XXXXX</u>
<u>\$45,001 - \$50,000</u>	

This chart graphically demonstrates that while the bank could select \$40,000 as the exemption limit, \$45,000 would be an appropriate exemption limit in this case because of the grouping of the transactions from \$35,000 to \$45,000.

If no amount recurs frequently enough to serve as a guide for the exemption limit, the bank may still establish an exemption limit based upon the range of any currency transac-

tions that it has reviewed. Thus, for example, if a bank had reviewed at least two months of transactions, and saw that the following pattern of currency transactions in a particular month was representative of the number and dollar amounts in all months reviewed,

April 1 - \$12,000	April 14 - \$13,000
April 4 - \$25,500	April 18 - \$21,500
April 5 - \$15,000	April 21 - \$26,000
April 7 - \$22,500	April 22 - \$12,300
April 8 - \$19,000	April 25 - \$21,000
April 11 - \$22,000	April 27 - \$24,000
April 13 - \$17,000	April 29 - \$25,000

it could select the highest amount, \$26,000, as the exemption limit. This is because most of the transactions are between \$15,000 and \$26,000, and \$26,000 does not substantially exceed the \$24,000, \$25,000, and \$25,500 transactions, as demonstrated below:

<u>\$10,001 - \$15,000</u>	<u>XXXX</u>
<u>\$15,001 - \$20,000</u>	<u>XX</u>
<u>\$20,001 - \$25,000</u>	<u>XXXXXX</u>
<u>\$25,001 - \$30,000</u>	<u>XX</u>

On the other hand, if the highest currency transaction or transactions substantially exceed the amount of most of the currency transactions, the bank should not establish the exemption limit at the amount of the highest transaction. Thus, for example, if the highest transaction in the last example had been \$46,000 rather than \$26,000, the bank should not select an amount that is higher than \$25,500 as the exemption limit. This is true even if there were two or more higher transactions (i.e., \$46,000 and \$65,000), as these amounts are substantially greater than the other currency transactions and they do not occur frequently or regularly. The key is to make sure that the amount selected as the exemption limit is commensurate with the customary conduct of the customer's lawful domestic business and that those amounts that are unusual (i.e., higher than the customary transactions) can be easily detected and reported on CTRs.

2. Seasonal and "Monday-Only" Limits

Banks should take note of two special situations in establishing and setting dollar limits for exempted currency transactions. If a bank is dealing with a business account that can be

exempted either unilaterally or specially, and that business is seasonal in nature (e.g., a hotel on the beach), the bank may establish an exemption that covers only the season in which that business has its peak activity, or that sets a high dollar limit for the business' peak season and a lower dollar limit for the other months of the year. Similarly, if an exemptible business proves to have a higher amount of currency transactions on a particular day (i.e., Monday or the day after a holiday, Friday, or the first and fifteenth of the month), than on other days of the week or month (i.e., because of greater business activity on weekends, more currency deposits made through night deposits or automated teller machines, or factory paydays), the bank may establish an exemption that covers only currency transactions posted on that day, or that sets a higher dollar limit for currency transactions on that day and a lower dollar limit for other days of the week.

Thus, for example, if the bank had reviewed at least two months of currency transactions, and saw that the following pattern of transactions in a particular month was representative of the number and dollar amounts in all months reviewed,

April 1 - \$15,000	April 14 - \$17,000
April 4 - \$46,000	April 18 - \$53,000
April 5 - \$ 5,000	April 21 - \$22,000
April 7 - \$19,000	April 22 - \$26,000
April 8 - \$24,000	April 25 - \$50,000
April 11 - \$52,000	April 27 - \$25,000
April 13 - \$21,000	April 29 - \$22,000

the bank should try to determine whether the higher amount of currency transactions reflected activity on the same day of the week every week (i.e., Mondays). If it did, it may be appropriate for the bank to set two exemption limits: (1) a daily exemption limit of \$26,000; and (2) a Monday or the day after a holiday limit of \$53,000.

D. MULTIPLE-ESTABLISHMENT CUSTOMERS

Another special situation of which banks should take note is the process of exempting multiple-establishment customers. For purposes of the regulations, a multiple-establishment customer is a customer that falls into one of the following categories:

1. An operator of the same type of exemptible business at several geographic locations

(e.g., a fast-food restaurant with the same trade name), which has established a single account that all of the locations use to make deposits and withdrawals;

2. An operator of several different types of exemptible businesses at one or more geographic locations which has established a single account that all of the businesses it operates use to make deposits and withdrawals;

3. An operator of the same type of exemptible business at several geographic locations, when each location has its own separate account; and

4. An operator of several different types of exemptible businesses at one or more geographic locations, when each location has its own separate account.

In the first two situations above, which involve only a single account, the bank should establish a single exemption for that account and set a single dollar limit that will apply to all transactions of the type exempted that involve that account.

In the latter two situations described above, which involve separate accounts for each location, the bank should establish a separate exemption for each account and separate dollar limit for each exemption. Because section 103.22(b)(2)(i), (ii), and (iv) of the regulations provides for exemption from an existing account by an established depositor who is a United States resident, the bank should grant a separate unilateral exemption for each individual account, not for each individual customer or business. If one customer has an account for each of its business establishments, the bank should separately consider each individual account (but not the customer) for an exemption. A single exemption should not be granted that covers multiple accounts, even if they have the same taxpayer identification number. If the bank has any questions about this, it should contact the FinCEN at the address listed on page 2. In addition, if the bank decides that it wants to grant an exemption for more than one account, a separate exemption statement should be obtained for each account and a separate dollar limit established.

E. SPECIAL EXEMPTION REQUESTS

Finally, if a bank wishes to exempt deposits into or withdrawals from an account by a customer that does not fall within one or more of the categories of unilaterally exemptible customers, it must apply to the IRS Data Center in Detroit, Michigan, for additional authority to exempt that account under the regulations. See 31 CFR 103.22(e). To apply for such additional authority, the bank must submit its request to:

Chief
Currency and Banking Reports Division
Compliance Review Group
Internal Revenue Service Data Center
P.O. Box 32063
Detroit, Michigan 48232

The request must be accompanied by a statement of the circumstances that the bank believes warrant a special exemption, as well as a

copy of the exemption statement (signed by the customer whose account is proposed for the special exemption) that meets all of the requirements described above for exemption statements for unilaterally exempted accounts. The request should also include a listing of daily amounts of currency deposited and withdrawn during the two-month period reviewed, what percentage of the amount of the deposits or withdrawals is ordinarily in \$100 bills or greater, a suggested dollar limit for the exemption, and the name and telephone number of the bank official whom the IRS may contact for further information concerning the exemption request. The request, if complete, will then be reviewed by the Compliance Review Group of the Data Center. A bank may *not* exempt a customer's account that does not qualify for a unilateral exemption until it has received notice from the IRS that it has granted the bank the additional authority to do so.

III. RECORDKEEPING FOR EXEMPTED CUSTOMERS

After it has granted an exemption involving a particular account of a customer, the bank is responsible for keeping two principal types of records pertaining to that exemption: (1) a centralized exemption list and (2) exemption statements.

A. EXEMPTION LIST

The bank must keep "(a) record of each exemption granted . . . and the reason therefore. . . in a centralized list." 31 CFR 103.22(f). This list, known as the "exemption list" or "exempt list," must include the name, complete street address, type of business, taxpayer identification number, and account number of each customer (whether a business entity or a government agency) whose transactions have been exempted, as well as an indication of whether the exemption covers withdrawals, deposits, or both, and the dollar limit of that exemption. For a special exemption, the bank should include the date the exemption was granted by Treasury or the IRS. For banks that manually revise their exemption lists, Treasury suggests the following format for the required information:

1. ABC Supermarket, Inc.
1234 Dixie Highway
Clear Springs, Florida 33123
Retail Grocery
Account Number: 123456
Deposits Exemption Limit: \$20,000
Withdrawals Exemption Limit: \$25,000
TIN: 59-2345678
2. BCD Citrus Growers
Route 5
Clear Springs, Florida 33123
Orange Grower
Account Number: 1234567
Withdrawals for Payroll Exemption Limit: \$25,000
TIN: 59-1234567
3. Jones Beverage Co.
5432 Main Street
Clear Springs, Florida 33123
Beer Wholesaler
Account Number: 2345678
Deposits Exemption Limit: \$20,000
(Special exemption authority granted 3/21/87)
TIN: 59-3456789

4. Clear Springs National Bank
5420 Main Street
Clear Springs, Florida 33123

The last entry on the sample format reflects the requirement in the Bank Secrecy Act regulations that a bank must also include on its exemption list the names and addresses of all domestic banks with which the bank conducts currency transactions that are exempted from the CTR reporting requirements. See 31 CFR 103.22(f). As stated on page 3 above, transactions between domestic banks are exempted from those reporting requirements. Even if the bank does not have an exemption list, it still must maintain the names and addresses of such domestic banks on a centralized list.

Again, because the bank's transactions with domestic banks are not included within the reporting requirement, the bank does not have to decide whether to exempt those transactions or to set an exemption dollar limit for them. Accordingly, the bank should not include a dollar limit for those domestic banks that it places on the exemption list.

Whenever a bank generates a list of its exempted customers, it must retain either the original or a copy of that list for a period of five years. The retention period for an exemption list begins on the day on which the original of that list was generated, either manually or through the use of an automated system. See 31 CFR 103.38(d). In addition, the regulations require that the exemption lists, like other records required to be retained under the Bank Secrecy Act regulations, "be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made." 31 CFR 103.38(d).

B. EXEMPTION STATEMENTS

The second principal category of records that a bank must keep concerning an exempted account is the exemption statement that the bank has obtained from a customer whose transactions involving that account have been exempted. After the bank has obtained such a statement, it must retain the original of the statement for a unilateral exemption (or a copy

of the statement for a special exemption) as long as the customer is on the exemption list, and for a period of five years after that cus-

tomers has been removed from the exemption list. 31 CFR 103.22(d).

IV. MONITORING EXEMPTIONS AND DISCOVERY OF IMPROPER EXEMPTIONS

A. MONITORING EXEMPTIONS

Banks should also continue to monitor the exemptions they have granted. A company that was appropriate for an exemption at one time may go out of business and be used as a "front" to conceal the movement of illegally obtained funds. It also may experience some other significant change in its operations, such as expansion of its business activities, that changes the nature of its business or that requires it to move to a new location. In addition, improvements or declines in the company's business may make the originally granted exemption limit inappropriate. Over time, the exemption limit for a particular account and customer may need to be increased or decreased so that it remains at a level that the bank may reasonably conclude does not "exceed amounts commensurate with the customary conduct of the lawful domestic business of that customer." 31 CFR 103.22(d).

For these reasons, Treasury recommends that a bank review its exemption list at least once a year, and preferably once every six months. In keeping with the general policy that banks should know their customers, each review should include a contact with the customer of each exempted account to determine whether there are any changes in the customer's situation (such as the customer's name, address, or nature of business) since the last date of review. If the bank learns, either directly from the customer or through any other means, that any of the information to which that customer attested on the exemption statement has changed, it should obtain a new exemption statement from that customer that correctly reflects the relevant information from that customer. If that customer's account was granted a special exemption, the bank must then send a copy of the new exemption state-

ment to the IRS Data Center in Detroit and request additional authority for continuing that special exemption in light of the new information to which the customer has attested.

If the only item on a customer's exemption statement that a bank determines is no longer appropriate is the exemption dollar limit (an item to which the customer does not attest), the bank may increase or decrease the dollar limit unilaterally if the customer was unilaterally exempted, and need not obtain a new exemption statement from the customer. If the customer's account was the subject of a special exemption, the bank must obtain permission from the IRS Data Center before increasing the dollar limit.

B. DISCOVERY OF IMPROPER EXEMPTIONS

If a bank discovers that it has improperly exempted one or more customer accounts, it should promptly take several actions. The bank should first rescind all of the exemptions that it determines were improperly granted, and immediately remove those exemptions from the exemption list. It should then contact:

Director
FinCEN
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0400

The bank should *not* begin to backfile CTRs on the currency transactions it determines were improperly exempted until it obtains guidance from FinCEN. That office may request additional information concerning those exemptions and currency transactions to determine whether the bank should be directed to backfile CTRs on particular customers.

V. CONCLUSION

This set of guidelines should cover most of the issues that banks are likely to encounter in using the exemption provisions of the regulations. For further guidance on the exemption provisions, banks are encouraged to consult with IRS contact representatives at:

Compliance Review Group
IRS Data Center
P.O. Box 32063
Detroit, Michigan 48232
(313) 234-1613

or the FinCEN, Department of the Treasury at:

Director
FinCEN
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
(202) 622-0400

As new situations arise that, in Treasury's judgment, are likely to be of general interest to the banking community concerning the proper use of exemptions, Treasury will issue specific administrative rulings to deal with those situations, and may also amend these guidelines in appropriate circumstances.

APPENDIX A

The following lists identify various types of business accounts and their general exemption status under section 103.22 of the Bank Secrecy Act regulations or the Department of the Treasury's exemption policy. In the case of accounts of businesses that are unilaterally or specially exemptible, the bank must make sure that the customer meets all of the exemption criteria outlined in section 103.22 and conducts currency transactions exceeding \$10,000 on a regular and frequent basis. These items are discussed elsewhere in this booklet.

The lists are not all inclusive and are not necessarily determinative of whether a particular business account qualifies for an exemption. They are meant to provide guidance to banks and provide examples of the types of business accounts that may be appropriately exempted from the CTR reporting requirements. If a bank has a question regarding the exemptibility of a customer, it should contact the Compliance Review Group at the Internal Revenue Service Data Center in Detroit, Michigan.

EXCEPTED TRANSACTIONS

Currency transactions with the following financial institutions are automatically excepted from the reporting requirements. Thus, banks should not file CTRs on their transactions with these banks. However, banks must maintain the name and address of any domestic bank with which they conduct currency transactions on their exemption list.

The Federal Reserve Bank and Federal Home Loan Bank which provide currency and coin service should not be listed on the exemption list.

- Commercial Bank (Domestic)
- Cooperative Bank (Domestic)
- Credit Union (Domestic)
- Federal Home Loan Bank
- Federal Reserve Bank
- Savings and Loan (Domestic)
- Savings Bank (Domestic)

EXEMPTIBLE BY BANK UNILATERALLY

The following is a list of businesses which a bank generally may unilaterally exempt. In some instances, the businesses listed below may sell both retail and wholesale goods or may sell retail goods and provide a service. Such business accounts may be unilaterally exempted only if more than 50% of the gross revenues of the business are derived from the retail sale of goods and the remainder of their business is eligible for either a unilateral or special exemption. If the remainder of the business is of a type that may not be granted a unilateral or special exemption (e.g., an auto parts store that sells cars) the account of the business may *not* be granted either a unilateral or special exemption.

FinCEN is currently reviewing the exemption status of check cashing services. If it is decided that an exemption will no longer be allowed, notice will be published in the *Federal Register* and banks having received additional authority to grant special exemptions in the past may be notified directly.

Airline/Commercial (Scheduled)

Amusement Park

Appliance Store

Art Supply Store

Auto Parts Store

Bakery

Bar

Book Store

Building Materials (Retail)

Bus Line (Commercial)

Candy Store

Car Wash (Coin Operated)

Check Cashing (Licensed)

Clothing Store

College/State or Local Government

Community College/State or Local Government

Computer Store

Concession/Food (Retail)

Convenience Store

Delicatessen

Department Store

Drug Store

Dry Goods Merchandise (Misc.)

Duty Free Shop

Electric Utility

Electronics Store

Fast Food Restaurant

Film Sales

Fish Market

Florist

Furniture Sales

Garden Center

Gas Company (Utility)

Gas/Oil Retail Sales

General Store

Gift Shop

Government Agency

Grocery Store

Hardware Store

Health Food Store

Hotel

Ice Cream Store

Laundry (Coin Operated)

Law Enforcement Agency

Liquor Store

Lumber Store

Meat Market

Motel

Movie (Stage or Theater)

Musical Instrument Store

Newspapers (Retail Sales)

Paint Store

Petroleum (Home Heating)

Public Transportation

Race Track

Railroad (Passenger Service)

Record Store

Resort/Hotel

Restaurant

School (Public)

Seafood Store

Shoe Store

Sporting Goods Store

Sports Arena
Stationery Store
Supermarket
Telephone Company
Television Video Rentals
Tobacco Store

Toy Store
Uniform Store
U.S. Postal Service
University (State Supported)
Vending Machine Company
Water Company

SPECIAL EXEMPTION—REQUIRES IRS APPROVAL

If the following types of businesses conduct regular and frequent cash transactions, a bank should request additional authority from the IRS to grant a special exemption for the customer's account. IRS is receptive to requests for special exemptions involving service-type businesses.

Auto Repair
 Bakery Distributor
 Beauty Supplies Distributor
 Beverage Distributor
 Boat Tours
 Bowling Alley
 Bowling League
 Bus Line (Chartered)
 Cable TV
 Candy (Wholesale)
 Car Rentals
 Car Wash
 Cheese Distributor
 Church
 College (Private)
 Cosmetics Distributor
 Country Club
 Dairy Distributor
 Delivery Service
 Dry Cleaners
 Electrical Supplies Distributor
 Farming
 Ferry Service
 Film Processor
 Fireworks Distributor
 Flower Distributor
 Food Catering

Food Distributor
 Food Processor
 Food Service
 Frozen Food/Wholesale
 Garage (Parking)
 Gas/Oil Distributor
 Golf Course
 Hospital
 Insurance Company
 Limousine Service
 Liquor Distributor
 Lumber Mill
 Lumber Distributor
 Meat/Wholesale
 Medical Clinic
 Museum (Admission fees, gift shop)
 Nonprofit Organization
 Off Track Betting (NY only)
 Parking Facility
 Petroleum Distributor
 Poultry Distributor
 Private Mail Carrier
 Produce Distributor/Wholesaler
 Professional Sports Teams
 Property Management
 Real Estate Management
 Recreational Camps-Schools
 Religious Organization
 School (Private)
 Shoe Distributor
 Ski Resort
 Taxi Cab Company
 Ticket Agency (Entertainment/sports)
 Tobacco Distributor
 University (Private)
 Warehouse Rental

NOT EXEMPTIBLE

The following types of business accounts may not be exempted unilaterally and will not be granted a special exemption.

- Accountants
- Aircraft Sales
- Attorneys
- Auction House
- Automobile Clubs with Travelers Check Services
- Auto Dealer
- Bank/Foreign
- Bingo
- Boat Sales
- Card Clubs
- Casino
- Charter Ships, Airplanes, Buses
- Check Cashing (Unlicensed)
- Commodity Brokers/Dealers
- Cruise Lines (Ships)
- Currency Exchanger
- Doctors
- Embassy

- Escrow Company
- Farm Equipment Sales
- Foreign Bank
- Foreign Currency Exchange
- Individuals
- Investment Advisor
- Investment Banker
- Boat Dealer
- Mobile Home Sales
- Money Order Company
- Motorcycle Dealer
- Pawn Shops
- Real Estate Broker
- Recreational Vehicle Dealer
- Scrap Metal Dealer
- Securities Brokers/Dealers
- Telegraph Company
- Title Company
- Travelers Check Issuer/Seller/Redeemer
- Truck Dealer
- Unions
- Wire Transmitters of Funds

**APPENDIX B
MODEL CUSTOMER EXEMPTION STATEMENT**

**Part I: Identity of Customer
(To be completed by customer)**

- 1. Legal Name of Customer: _____
- 2. Trade Name of Customer (if different from legal name): _____
- 3. Complete Street Address(es) of Customer (Include street, city, state, and zip code for all street addresses of customer's locations using account to be exempted): _____

- 4. Taxpayer Identification Number of Customer: _____
- 5. Type and Number of Account To Be Exempted: _____

- 6. Nature of Business (Please include complete description): _____

- 7. The monies deposited into the account described in No. 5 are funds generated solely from the business described in No. 6.

Yes No

The information contained above is true and correct to the best of my knowledge and belief. I understand that this information will be read and relied upon by the Government.

Signature of Authorized Official

Date Signed

Name of Authorized Official
(Please type or print)

Title/Position of Official

**Part II: Information on Customer and Account to Be Exempted
(To be completed by bank only)**

8. Period of Account Activity Reviewed (Should include at least two consecutive months of transactions, as set forth in bank's records, that are representative of the customary conduct of the lawful domestic business of customer): _____

9. Highest Cash Transactions During Period Reviewed (Complete all that apply to account to be exempted): Deposits: _____ Withdrawals: _____ Withdrawals for Payroll Purposes: _____
10. Lowest Cash Transactions During Period Reviewed (Complete all that apply to account to be exempted): Deposits: _____ Withdrawals: _____ Withdrawals for Payroll Purposes: _____
11. Additional Information on Account Activity: _____

12. Reason(s) Customer Qualified for Exemption (Should include detailed description of type of business and relation of cash transactions to that business): _____

13. (For special exemption only) Date on Which Treasury/IRS Granted Additional Authority to Exempt: _____

Based upon an independent verification of the activity of account _____ (using available bank records pertaining to that account), and a review of the information to which the customer has certified in Part I above, I have determined that the following types of currency transactions involving account _____ are eligible for exemption from the requirements of the Bank Secrecy Act regulations pertaining to Currency Transaction Reports:

(Check one or more boxes, and fill in amounts, as appropriate)

- Daily deposits not exceeding \$ _____
- Daily withdrawals not exceeding \$ _____
- Daily withdrawals for payroll purposes not exceeding \$ _____
- Other exemptible transactions (e.g., government agency, Monday-only deposits, seasonal) not exceeding \$ _____ (Please specify type of customer and transactions exempted) _____

The dollar limits of these types of transactions do not exceed amounts commensurate with the customary conduct of the lawful domestic business of the customer.

Signature of Bank Official	Date of Signature
Name of Bank Official (Please type or print)	Title/Position of Bank Official

Part III: Identification of Exempting Bank
(To be completed by bank only)

- 14. Name of Bank: _____
- 15. Complete Street Address of Bank (Include street, city, state, and zip code): _____

- 16. Employer Identification Number of Bank: _____
- 17. MICR Number of Bank: _____
- 18. Supervisory Agency (check one):
 OCC FDIC FRS FHLBB NCUA
 Other (specify): _____

U.S. Government Printing Office: 1988-202-014/94503

FEDERAL REGISTER
Vol. 61, No. 80

Rules and Regulations

DEPARTMENT OF THE
TREASURY
Financial Crimes Enforcement
Network (FinCEN)

31 CFR Part 103

RIN 1506-AA10; 1506-AA11

Amendment to the Bank Secrecy Act
Regulations—Exemptions From the
Requirement To Report Transactions
in Currency

Part III

61 FR 18204

DATE: Wednesday, April 24, 1996

ACTION: Interim rule with request for
comments.

SUMMARY: This document contains an interim rule eliminating the requirement to report transactions in currency in excess of \$10,000, between depository institutions and certain classes of “exempt persons” defined in the rule. The interim rule applies to currency transactions occurring after April 30, 1996. It is adopted as a major step in reducing the burden imposed upon financial institutions by the Bank Secrecy Act and increasing the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury. The interim rule is part of a process to achieve the reduction set by the Money Laundering Suppression Act of 1994 in the number of currency transaction reports filed annually by depository institutions.

DATES: *Effective date.* The interim rule is effective May 1, 1996.

Comment deadline. Comments must be received by August 1, 1996.

Applicability. This interim rule applies to transactions in currency occurring after April 30, 1996.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182-2536, Attention: Interim CTR Exemption Rule.

Submission of comments. An original and four copies of any comment 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 confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Financial Crimes Enforcement Network (“FinCEN”) reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622-0400.

FOR FURTHER INFORMATION CONTACT: Pamela Johnson, Assistant Director, Office of Financial Institutions Policy, FinCEN, at (703) 905-3920; Charles Klingman, Office of Financial Institutions Policy, FinCEN, at (703) 905-3920; Stephen R. Kroll, Legal Counsel, FinCEN, at (703) 905-3590; or Cynthia A. Langwiser, Office of Legal Counsel, FinCEN, at (703) 905-3590.

SUPPLEMENTARY INFORMATION

I. Introduction

This document adds, as an interim rule, a new paragraph (h) (the “Interim Rule”) to 31 CFR 103.22. The Interim Rule exempts, from the requirement for the reporting of transactions in currency in excess of \$10,000, transactions occurring after April 30, 1996, between depository institutions¹ and certain classes of exempt persons defined in the Interim Rule. The Interim Rule is adopted to implement the terms of 31 U.S.C. 5313(d) (and related provisions of 31 U.S.C. 5313 (f) and (g)), which were added to

¹ As explained below, the text of the rule itself uses the term “bank,” which as defined in 31 CFR 103.11 (c) includes both banks and other classes of depository institutions.

the Bank Secrecy Act by section 402(a) of 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).

II. Background

A. 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 were added to 31 U.S.C. 5313 by the Money Laundering Suppression Act. Subsection (d)(1) 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 the following categories of entities:

(A) Another depository institution.

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

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

United States or any such State or political subdivision.

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

Subsection (d)(2) states that:

The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not less frequently than once each year) a list of all of the entities whose transactions with a depository institution are exempt under this subsection from the [currency transaction] reporting requirements.

The companion provisions of 31 U.S.C. 5313(e) authorize the Secretary to permit a depository institution to grant additional, discretionary, exemptions from currency transaction reporting. Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either subsection (d) or subsection (e) and provides for the coordination of any exemption with other Bank Secrecy Act provisions, especially those relating to the reporting of suspicious transactions. New 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 procedures:

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

During the period September 24, 1993 through September 23, 1994, approximately 11.2 million currency transaction reports were filed. Of that number, approximately 10.9 million reports were filed by depository institutions. Thus the statute contemplates a reduction of at least approximately 3.3 million filings per annum.

B. Shortcomings of the Present Exemption System

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 routine currency transactions by businesses from the operation of the currency transaction reporting requirement.

Several reasons have been given for this lack of success. The first is the retention by banks of liability for making incorrect exemption determinations. The risk of potential liability is made more serious by 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). Finally, advances in technology have made it less costly for some banks 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 administrative exemption system 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 administrative exemption system.² In addition, Con-

gress authorized the Treasury to exempt under the mandatory rules, as indicated above, “[a]ny business or category of business the reports on which have little or no value for law enforcement purposes.” 31 U.S.C. 5313 (d)(1)(D).

C. Objectives of the Interim Rule

As indicated above, the Interim Rule is the first step in the use of section 402 of the Money Laundering Suppression Act to transform the Bank Secrecy Act provisions relating to currency transaction reporting. That transformation has four objectives.

The first is to reduce the burden of currency transaction reporting. That reduction comes in part through the issuance of a blanket regulatory exemption covering transactions in currency between one depository institution and another within the United States and between depository institutions and government departments and agencies at all levels. But at least an equal (and likely a significantly greater) part of the reduction comes from the decision to treat as being of little interest to law enforcement transactions in currency between depository institutions and corporations whose common stock is listed on certain national stock exchanges.

That decision reflects a second, related objective of the Interim Rule: to begin the process of limiting currency transaction reports to transactions for which the benefits of the reporting requirement (both providing usable information to enforcement officials and creating a deterrent against attempts to misuse the financial system) justify the costs of supplying the information to the Treasury. It is unlikely that reports of routine currency transactions for a company of sufficient size to be traded on a national securities exchange can be of significant use, by themselves, to law enforcement, regulatory, or tax authorities.

The third objective is to focus the Bank Secrecy Act reporting system on transactions that signal matters of clear interest to law enforcement and regulatory authorities. In publishing the final rule relating to the reporting of

2. Thus, as noted below, transactions in currency between domestic banks are 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” are one of the categories of transactions specifically described as eligible for exemption by banks. See 31 CFR 103.22(b)(2)(iii).

suspicious transactions under the Bank Secrecy Act, Treasury stated “its judgment that reporting of suspicious transactions in a timely fashion is a key component of the flexible and cost-efficient compliance system required to prevent the use of the nation’s financial system for illegal purposes.” See 61 FR 4326, 4327 (February 5, 1996). The Interim Rule re-enforces the central importance of suspicious transaction reporting to Treasury’s counter-money laundering program; expanded suspicious transaction reporting forms a basis for steps to reduce sharply the extent to which routine currency transactions by ongoing businesses are required to be reported. Currency transactions, like non-currency transactions, are required to be reported under the terms of new 31 CFR 103.21, if they constitute suspicious transactions as defined in that section; nothing in the Interim Rule reduces or alters the obligations imposed by 31 CFR 103.21. See 31 U.S.C. 5313(f)(2)(B).

The relationship between required suspicious transaction reporting and expanded and simplified exemptions from routine currency transaction reporting is a strong one; each rule forms an integral part of the policy of the other. The substitution of suspicious transaction reporting for routine reporting of all currency transactions by exempt persons in effect defines what a routine transaction for an exempt person is. That is, a routine currency transaction, in the case of an exempt person, is a transaction that does not trigger the suspicious transaction reporting requirements, because the transaction does not, for example, give the bank a reason to suspect money laundering, a violation of a reporting requirement, or the absence of a business purpose. See 31 CFR 103.21(a)(2)(i)–(iii).

The fourth objective of the Interim Rule is to create an exemption system that works. Thus choices have been made with an eye to achieving ease of administration and comprehensibility—the very factors whose absence hindered the prior administrative exemption process.

FinCEN has attempted to craft a rule that will be easily understood by the banking professionals who must apply it. That meant painting with a broad brush; any general exemption rule will almost certainly include within its terms some results that are not optimal when viewed in isolation.

FinCEN understands that the changeover to the new system will require an initial period of effort by both the Treasury and banking

institutions; it is impossible to reduce the volume of currency transaction reports to the extent that the Interim Rule tries to do without creating some small degree of temporary inconvenience as the terms of the system change. FinCEN believes, however, that the transition period will be relatively short and that the new greatly streamlined exemption procedures, once in place, will be self-sustaining and will produce a leaner, less burdensome, and more cost effective exemption system than now exists.

FinCEN is eager to improve the terms of the rule as necessary to eliminate temporary incongruities. Comments on ways in which the rule could be improved in this regard are specifically invited.

D. Additional Relief Under Study

The Interim Rule is the first result of FinCEN’s work to put in place the new exemption system contemplated by the provisions of 31 U.S.C. 5313 (d) through (g). The goal of FinCEN’s work in this area, like the Congress’ goal in shaping the Money Laundering Suppression Act provisions on exemptions, is to reduce the cost of Bank Secrecy Act compliance and to further a fundamental restructuring of the Bank Secrecy Act. The restructuring emphasizes cost-effective collection of only that information that is likely to benefit law enforcement and regulatory authorities.

In solving the issues posed by implementation of the new statutory exemption rules, FinCEN has consulted regularly with banking industry representatives. For example, under the auspices of Bank Secrecy Act Advisory Group it convened a working session of bank officials to discuss possible structures for the new exemption system and the constraints that bank operating procedures posed for broad-scale relief from unnecessary currency transaction reporting.

In this connection, FinCEN is aware that the Interim Rule and any final rule resulting therefrom may well affect the operation of large banks in urban areas more than the operation of smaller community-based institutions, if only because larger companies tend to do business with larger banks and because the Interim Rule does not simplify the exemption system with respect to transactions by privately held companies, large and small, whose banking history

and business would also justify a simplified exemption system.

Accordingly, FinCEN is working now on a notice of proposed rulemaking implementing the discretionary exemption authority contained in 31 U.S.C. 5313(e) and will at the appropriate time consult with the banking community in shaping proposals to implement that authority. Meanwhile, banks will still be able to maintain any exemptions properly granted under the current administrative system. Commenters on this Interim Rule are invited to include in their comments any suggestions on the projected second stage of the exemption effort.

III. Specific Provisions

A. 103.22(a). Reports of Currency Transactions

A new sentence is added following the first sentence of paragraph (a) of 31 CFR 103.22 to provide a cross-reference in that paragraph to the provisions of new paragraph (h) added by the Interim Rule.

B. 103.22(h)(1). Currency Transactions of Exempt Persons With Banks Occurring After April 30, 1996

Paragraph (h)(1) states the general effect of the Interim Rule. That is, simply and directly: no currency transaction report is required to be filed by a bank for a transaction in currency by an exempt person occurring after April 30, 1996.

The Interim Rule uses the term “bank” rather than “depository institution” to define the class of financial institutions to which the Interim Rule applies. Although 31 U.S.C. 5313(d) speaks of exemptions for transactions with “depository institutions” (as the latter term is defined in 31 U.S.C. 5313(g)), FinCEN believes that the broad definition of bank contained in 31 CFR 301.11(c) includes all of the categories of institutions included in the statutory “depository institution” definition; because the term “bank” is familiar to bank officials who work with the Bank Secrecy Act, substitution of a new term whose effect is the same does not appear either necessary or advisable.

The Interim Rule applies only to transactions between exempt persons and banks, to reflect

the terms of 31 U.S.C. 5313(d); it does not apply to transactions between exempt persons and financial institutions other than banks. Comments are invited about whether the rule should extend to transactions with such other classes of financial institutions.

Although 31 U.S.C. 5313(d) speaks of “mandatory” exemptions, the Interim Rule does not affirmatively prohibit banks from continuing to report routine currency transactions with exempt persons. Treasury believes that the incentives created by the Interim Rule are, as Congress intended them to be, sufficiently great to lead banks to take advantage of the new exemption system to a far greater extent than they took advantage of the prior administrative exemption system.

The Interim Rule, however, is not simply a regulatory relief measure. As indicated above, it is part of a fundamental restructuring of the Bank Secrecy Act’s administration. Treasury hopes and expects that banks will be willing to undertake the one-time effort necessary to make the new, substantially different system work.

C. 103.22(h)(2). Exempt Person

Under the Interim Rule, the crucial exemption determinant is whether a particular entity is an “exempt person.” That term is defined in new paragraph (h)(2).

The first three categories of exempt persons specified in paragraph (h)(2) are those to whom exemption is required to be granted by 31 U.S.C. 5313(d)(1)(A)–(C).³

Banks. The first category of exempt person is banks themselves, with the result that transactions between banks will not require reporting. In most cases, no reporting is required at present for such transactions; 31 CFR 103.22(b)(1)(ii) states flatly that the currency transaction reporting requirement does not “require reports of transactions between domestic banks.” The definition is limited to banking operations and transactions within the United States. Thus a transfer of currency by a bank inside the United States to a bank outside the United States is not exempt under the Interim Rule.

3. The language of 31 U.S.C. 5313(d)(1)(A)–(C) is quoted in section IIA of this Supplementary Information section, above.

Departments and Agencies of the United States and of States and Their Political Subdivisions

The second category of exempt person includes departments and agencies of the United States, of any state, and of any political subdivision of any state. The definition of “United States” used in 31 CFR 103.11 includes not only the states but also the District of Columbia and the various territories and insular possessions of the United States. See 31 CFR 103.11(nn); as of August 1, 1996, the definition will also include the Indian lands. See 61 FR 7054, 7056 (February 23, 1996). Thus departments and agencies of the governments of these areas are also classified as exempt persons under the definition.

Entities Exercising Governmental Authority

The third category of exempt person includes any entity established under the laws of the United States,⁴ 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. Operating rules for making determinations about the governmental entities are included in paragraph (h)(4), discussed below.

Listed Corporations

The fourth category of person subject to mandatory exemption under 31 U.S.C. 5313(d) is “any business or category of business the reports on which have little or no value for law enforcement purposes.” Treasury is making use of that provision to treat as an exempt person any corporation whose common stock (i) is listed on the New York Stock Exchange or the American Stock Exchange (but not including stock listed on the Emerging Company Marketplace of the American Stock Exchange), or (ii) has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (but not including stock listed under the separate “Nasdaq Small-Cap Issues” category). For convenience, this class of exempt persons is referred to in this discussion as “listed corporations.”

The “listed corporation” formulation has been adopted for several reasons. First, Treasury believes that the formulation is a convenient and accurate way of describing many, if not most, large-scale enterprises that make extensive routine use of currency in their normal business operations. Second, the list of corporations described in the formulation is readily available and is published in general circulation newspapers each morning. Finally, the scale of enterprises listed on the nation’s largest securities exchanges, and the variety of internal and external controls to which they are subject—whether as a matter of market discipline or government regulation—make their use for the sort of money laundering or tax evasion marked by anomalous transactions in currency, or that could be detected by a simple examination of currency transaction reports, sufficiently unlikely that the benefits of a uniform formulation far exceed the apparent risks of such a formulation. This is especially true because of the continuing applicability of the suspicious transaction reporting rules to all (non-currency and currency) transactions between listed corporations and banks.

The determination whether a company is a corporation for purposes of the Interim Rule depends solely upon the formal manner of its organization; if the company has a corporate charter, it is a corporation, and if it does not, it is not a corporation, for purposes of the Interim Rule. The sort of “corporate equivalence” analysis required, for example, for certain purposes to determine an entity’s status under the Internal Revenue Code is neither called for nor permitted by the Interim Rule.⁵

At present the Interim Rule applies only to corporations, even though Treasury understands that the equity interests of some partnerships and business trusts are also listed on the named securities exchanges. Comments are invited as to whether the definition of exempt person should be extended to all persons whose equity interests are so listed.

5. Again, there may be a limited group of entities, listed on the national securities exchanges but organized abroad, for which such a distinction raises issues of interpretation that cannot be dealt with effectively in the Interim Rule. Guidance is requested on whether such issues exist and, if so, how they should be resolved.

4. Again, the broad definition of “United States” applies.

Consolidated Subsidiaries of Listed Corporations

Many, if not most, listed corporations include groups of subsidiary operating corporations whose treatment under the Interim Rule raises significant issues. Such subsidiaries are not named in stock exchange listings, but the policy of the statute and Interim Rule cannot be effectively implemented without the inclusion of such subsidiaries in the exempt person category.

That fact raises an issue of what might be called the “burden” of reducing regulatory burden. Many definitions of parent-subsidiary relationship are quite technical and of importance only to legal, accounting, and investment specialists; even definitions phrased only in terms of stock ownership often devolve into questions of direct or indirect stock ownership that can be extremely difficult to resolve.

In that context, mindful of the need to provide as simple a formulation as possible, the Interim Rule treats as a subsidiary any corporation that files a consolidated income tax return with a listed corporation. The choice of this standard was not any easy one; its chief rationale is that the fact of consolidation (as opposed to, say, eligibility for consolidation) is relatively easy to determine by asking corporate customers (and by asking corporate officials to ask their tax or accounting departments if necessary).

Franchisees of listed corporations (or of their subsidiaries) are not included within the definition of exempt person, unless such franchisees are independently exempt as listed corporations or listed corporation subsidiaries. A local corporation that holds a McDonald’s franchise, for example, is not an exempt person simply because McDonald’s Corporation is a listed corporation; a McDonald’s outlet owned by McDonald’s Corporation directly, on the other hand, would be an exempt person, because McDonald’s Corporation’s common stock is listed on the New York Stock Exchange.

Still, the definition is not optimal. It introduces a note of complexity into the Interim Rule, and Internal Revenue Service (“IRS”) statistics indicate that at best only 70 to 80 percent of the companies eligible to file consolidated income tax returns with their parent companies actually do so. The success of the Interim Rule in reducing the volume of currency transaction reports will depend in part upon the effectiveness and acceptance of the definition of subsidiary company, and comments are encour-

aged about the appropriateness of the definition. FinCEN would especially welcome ideas about other formulations, based upon sound banking practice, that bank employees would find easy to apply and that would accomplish the goals of the Interim Rule more effectively than a definition based upon consolidation for income tax filing purposes.

D. 103.22(h)(3). Designation of Exempt Persons

The Interim Rule imposes one condition on a bank’s exemption of currency transactions of a customer who satisfies the definition of exempt person. That condition is that a single form be filed designating the exempt person and the bank that recognizes it as such. The designation is to be made by a bank by filing for each exempt person a single Internal Revenue Service Form 4789 (the form now used by banks and others to report a transaction in currency) that is marked (in the Form’s line 36) to indicate its purpose and that provides identifying information about the exempt person and bank involved.

The designation requirement must be satisfied, for existing customers, on or before August 15, 1996. The requirement is a condition subsequent; that is, a bank may recognize a customer as an exempt person on April 30, and stop filing currency transaction reports as permitted by the Interim Rule, even though it does not satisfy the designation requirement for the customer until August 15, 1996.

The designation of new customers as exempt persons must be made no later than 30 days following the first transaction in currency in excess of \$10,000 between a bank and the new customer. (Because persons may become new customers during the period April 30–August 15, 1996, a new customer to whom the 30 day designation rule applies is, technically, a customer who satisfies the exempt person definition and who becomes a customer, or who seeks to engage in its first transaction in currency, after July 15, 1996.)

Under the Interim Rule, each bank that deals with an exempt person must satisfy the designation requirement. FinCEN hopes to be able to use the results of the designation filings to compile a list of exempt persons that can itself be published in the Federal Register, as contemplated by 31 U.S.C. 5313(d)(2), in place of the

shorter descriptive notice of exempt persons that is published contemporaneously with the publication of the Interim Rule. The designation filings will also be used to review the effectiveness of the Interim Rule (and of any final rule that is derived from it) and the extent to which its terms are understood and used by banks.

E. 103.22(h)(4). Operating Rules for Applying Definition of Exempt Person

The Interim Rule contains several provisions that are designed to assist banks in applying the definition of “exempt person.”

1. General Rule

As indicated above, every effort has been made to craft a rule that is as simple to understand and to administer as its broad objective will permit. Application of the Interim Rule requires instead that banks simply make one or more determinations about the status of particular customers. The rule does not specify detailed procedures for making or documenting the determinations required. (Indeed, one defect of the administrative exemption system was its need for detailed procedural steps for authorizing exemptions. See 31 CFR 103.22(d).) Instead, paragraph (h)(4)(i) explains that banks are expected to perform the same degree of due diligence in determining whether a customer is an exempt person (and documenting that determination) that a reasonable and prudent bank would perform in the conduct of its own business in avoiding losses from fraud or misstatement. In other words, FinCEN’s objective is to leave it to bankers, who have already designed business procedures and protocols to deal with similar problems, to adapt their present procedures to achieve the results sought by the Interim Rule.

An assessment of compliance with the terms of the Interim Rule will focus not on whether a bank necessarily makes every judgment perfectly, but on whether it takes the steps a reasonable and prudent banker would take to create systems to apply the Interim Rule’s terms. Such an approach is a corollary to the limitations on liability set by 31 U.S.C. 5318(f)(1) and repeated in paragraph (h)(6) of the Interim Rule; under the liability limitations a bank remains subject to penalties if, inter alia, it has a reason to believe that a particular customer or trans-

action does not meet the criteria established for the granting of an exemption.

2. Government Status

Paragraph (h)(4)(ii) permits a bank to determine the status of a customer as a government department, agency, or instrumentality based on its name or community knowledge, much like the so-called “eyeball test,” cf. Treas. Reg. 1.6049-4(c)(1)(ii), for the determination of exempt recipient status for the purposes of information reporting and withholding with respect to interest payments under applicable provisions of the Internal Revenue Code.

The determination whether an entity exercises “governmental authority” is unfortunately not amenable to such a simple test, and the second sentence of paragraph (h)(4)(ii) states a general definition of governmental authority for use by banks.

3. Status as Listed Corporation

Paragraph (h)(4)(iii) permits a bank to rely on any New York, American, or Nasdaq Stock Market listing published in a newspaper of general circulation. Such listings are easily identified. For example, in the Wall Street Journal, which is published and distributed nationally, the listings are entitled, respectively, “NEW YORK STOCK EXCHANGE COMPOSITE TRANSACTIONS,” “AMERICAN STOCK EXCHANGE COMPOSITE TRANSACTIONS,” AND “NASDAQ NATIONAL MARKET ISSUES.” Because such listings often make use of the trading symbols (abbreviated company names) for each stock, banks may also rely on any commonly accepted or published stock symbol guide in reviewing the newspaper listings to determine if the listings include their customers.

4. Consolidated Return Status

The treatment of a corporation as an exempt person because it is included in the consolidated income tax return of a listed corporation presents one of the more difficult issues of administration in the Interim Rule. The corporations included on any consolidated return are required to be shown on Internal Revenue Service Form 851 (Affiliation Schedule) filed with the

return; a bank may rely upon any reasonably authenticated photocopy of Form 851 (or the equivalent thereof for the appropriate tax year) in determining the status of a particular corporation, or it may rely upon any other reasonably authenticated information (for example, an officer's certificate) relating to a corporation's filing status.

F. 103.22(h)(5). Limitation on Exemption

The exemption for transactions by an exempt person applies only with respect to transactions involving that person's own funds. The exemption does not apply to situations in which an exempt person is engaging in a transaction as an agent on behalf of another, beneficial owner of currency. (If the principal for whom the agent is acting is itself an exempt person, the exempt status of the principal is what causes the transaction to be exempt.) In other words, an exempt person cannot lend its status, for a fee or otherwise, to another person's transactions.

G. 103.22(h)(6). Effect of Exemption; Limitation on Liability

The designation requirement applies equally to exempt persons who have previously been the subject of bank-initiated exemptions under the administrative exemption system as it does to other customers.

Once a bank has complied with the terms of the Interim Rule, it is generally protected, by 31 U.S.C. 5313(f) and paragraph (h)(6) of the Interim Rule, from any penalty for failure to file a currency transaction report with respect to a currency transaction by an exempt person. The protection does not apply if the bank knowingly files false or incomplete information relating to the exempt person (for example on an designation filing) or with respect to the transaction (for example on a suspicious activity report). The protection also does not apply if the bank has reason to believe at the time the exemption is granted that the customer does not satisfy the definition of exempt person or if the transaction is not a transaction of the exempt person.

It is anticipated that the Interim Rule will supersede the administrative exemption system with respect to categories of exempt persons named in the Interim Rule, 60 days after a final rule based on the Interim Rule is published. At

that time, transactions in currency with exempt persons after April 30, 1996 will be exempt from reporting by banks only to the extent that the new terms are satisfied.

H. 103.22(h)(7). Obligation To File Suspicious Activity Reports, etc.

The provisions of the Interim Rule create an exemption only with respect to the currency transaction reporting requirement. The Interim Rule does not create any exemption, and in fact has no effect of any kind, on the requirement that banks file suspicious activity reports with respect to transactions, including currency and non-currency transactions, that satisfy the requirements of the rules of FinCEN and the federal bank supervisory agencies relating to suspicious activity reporting.⁶ (Indeed, as indicated above, the reduction in currency transaction report volume reflects in part Treasury policy to rely to the greatest extent possible on reports of truly suspicious activity.)

For example, multiple exchanges of small denominations of currency into large denominations of currency or currency transactions that are not (or whose amounts are not) commensurate with the stated business or other activity of the exempt person conducting the transaction, or on whose behalf the transaction is conducted, may indicate the need to file suspicious activity reports with respect to transactions in currency. Similarly a sudden need for currency by a business that never before had such a need can form a basis for the determination that a suspicious activity report is due. In all cases, whether such a report is required is governed by the rules of 31 CFR 103.21, rules on whose application the Interim Rule has no effect.

I. 103.22(h)(8). Revocation

The Interim Rule makes clear that the status of an exempt person as such may be revoked at any time by the Treasury Department. Revocation

6. See 61 FR 4326, 4332, 4338 (February 5, 1996) (FinCEN, Office of the Comptroller of the Currency and Federal Reserve Board); 61 FR 6095, 6100 (February 16, 1996) (Federal Deposit Insurance Corporation and Office of Thrift Supervision); and 61 FR 11526 (March 21, 1996) (National Credit Union Administration).

will be prospective in all cases except those to which the protections of liability conferred by 31 U.S.C. 5313(f) and 31 CFR 103.22(h)(6) do not apply.

IV. Regulatory Matters

A. Executive Order 12866

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

B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Pub. L. 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to 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 interim rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Administrative Procedure Act

Because the Interim Rule implements the statute and grants significant relief from existing regulatory requirements, it is found to be impracticable to comply with notice and public procedure under 5 U.S.C. 553(b). Because the Interim Rule grants exemptions to current requirements, it may be made effective before 30 days have passed after its publication date. See 5 U.S.C. 553(d).

D. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flex-

ibility analysis (5 U.S.C. 604) are not applicable to this Interim Rule because the agency was not required to publish a notice of proposed rule-making under 5 U.S.C. 553 or any other law.

E. Paperwork Reduction Act

This Interim Rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). By expanding the applicable exemptions from an information collection that has been reviewed and approved by the Office of Management and Budget (OMB) under control number 1505-0063, the Interim Rule significantly reduces the existing burden of information collection under 31 CFR 103.22. Thus, although the Interim Rule advances the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq., and its implementing regulations, 5 CFR Part 1320, the Paperwork Reduction Act does not require FinCEN to follow any particular procedures in connection with the promulgation of the Interim Rule.

F. Compliance With 5 U.S.C. 801

Prior to the date of publication of this document in the Federal Register, FinCEN will have submitted to each House of the Congress and to the Comptroller General the information required to be submitted or made available with respect to the Interim Rule by the provisions of 5 U.S.C. 801 (a)(1)(A) and (a)(1)(B).

List of Subjects in 31 CFR Part 103

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

Amendment

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

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

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

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

2. Section 103.22 is amended by adding a new sentence immediately following the first sentence in paragraph (a)(1) and by adding a new paragraph (h) to read as follows:

§ 103.22—Reports of currency transactions.

(a)(1) * * * Transactions in currency by exempt persons with banks occurring after April 30, 1996, are not subject to this requirement to the extent provided in paragraph (h) of this section. * * *

* * * * *

(h) No filing required by banks for transactions by exempt persons occurring after April 30, 1996.

(1) Currency transactions of exempt persons with banks occurring after April 30, 1996. Notwithstanding the provisions of paragraph (a)(1) of this section, no bank is required to file a report otherwise required by paragraph (a)(1) of this section, with respect to any transaction in currency between an exempt person and a bank that is conducted after April 30, 1996.

(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 corporation whose common stock is listed on the New York Stock Exchange or the American Stock Exchange (except stock listed on the Emerging Company Marketplace of the American Stock Exchange) or whose common

stock has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock listed under the separate "Nasdaq Small-Cap Issues" heading); and

(v) Any subsidiary of any corporation described in paragraph (h)(2)(iv) of this section whose federal income tax return is filed as part of a consolidated federal income tax return with such corporation, pursuant to section 1501 of the Internal Revenue Code and the regulations promulgated thereunder, for the calendar year 1995 or for its last fiscal year ending before April 15, 1996.

(3) Designation of exempt persons.

(i) A bank must designate each exempt person with whom it engages in transactions in currency, on or before the later of August 15, 1996, and the date 30 days following the first transaction in currency between such bank and such exempt person that occurs after April 30, 1996.

(ii) Designation of an exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked "Designation of Exempt Person" and items 2-14 (Part I, Section A) and items 37-49 (Part III) are completed. The designation must be made separately by each bank that treats the person in question as an exempt person. (For availability, see 26 CFR 601.602.)

(iii) This designation requirement applies whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of paragraph (a) of this section under the rules contained in paragraph (b) or (e) of this section.

(4) Operating rules for designating exempt persons.

(i) Subject to the specific rules of this paragraph (h), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (h)(2) of this section) that a reasonable and prudent bank would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

(ii) A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (h)(2)(ii) or (h)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency

or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (h)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

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

(iv) In determining whether a person is described in paragraph (h)(2)(v) of this section, a bank may rely upon any reasonably authenticated corporate officer's certificate or any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year.

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

(6) Effect of exemption; limitation on liability.

(i) FinCEN may in the future determine by amendment to this part that the exemption contained in this paragraph (h) shall be the only basis for exempting persons described in paragraph (h)(2) of this section from the reporting requirements of paragraph (a) of this section.

(ii) No bank shall be subject to penalty under this part for failure to file a report required by paragraph (a) of this section with respect to a currency transaction by an exempt person with respect to which the requirements of this paragraph (h) have been satisfied, unless the bank:

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

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

(iii) A bank that files a report with respect to a currency transaction by an exempt person

rather than treating such person as exempt shall remain subject with respect to each such report to the rules for filing reports, and the penalties for filing false or incomplete reports, that are applicable to reporting of transactions in currency by persons other than exempt persons. A bank that continues for the period permitted by paragraph (h)(6)(i) of this section to treat a person described in paragraph (h)(2) of this section as exempt from the reporting requirements of paragraph (a) of this section on a basis other than as provided in this paragraph (h) shall remain subject in full to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

(7) Obligation to file suspicious activity reports, etc. Nothing in this paragraph (h) relieves a bank of the obligation, or alters in any way such bank's obligation, to file a report required by 103.21 with respect to any transaction, including, without limitation, any transaction in currency, or relieves a bank of any other reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to paragraph (a) of this section to the extent provided in this paragraph (h)).

(8) Revocation. The status of any person as an exempt person under this paragraph (h) may be revoked by FinCEN by written notice, which may be provided by publication in the Federal Register in appropriate situations, on such terms as are specified in such notice. In addition, and without any action on the part of the Treasury Department:

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

(ii) The status of a subsidiary as an exempt person under paragraph (h)(2)(v) of this section ceases once such subsidiary ceases to be included in a consolidated federal income tax return of a person described in paragraph (h)(2)(iv) of this section.

* * * * *

Dated: April 16, 1996.

Stanley E. Morris,
Director, Financial Crimes Enforcement
Network.

[FR Doc. 96-9798 Filed 4-23-96; 8:45 am]
BILLING CODE 4820-03-P