

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

RIN 1506-AA25

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Nonfinancial Trades or Businesses Report Certain Currency Transactions

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Interim rule.

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

DATES: This interim rule is effective as of January 1, 2002.

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SUPPLEMENTARY INFORMATION:**I. Introduction**

This document adds, as an interim rule, a new section 31 CFR 103.30. The Interim Rule is adopted to implement the terms of 31 U.S.C. 5331, which was added to the Bank Secrecy Act by section 365 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107-56 (October 26, 2001).

II. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311, *et seq.*, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.¹

Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311, *et seq.*), appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

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

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

Reports required under section 5331 must be in such form as the Secretary may prescribe. The reports must contain: (1) the name, address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received; (2) the amount of coins or currency received; (3) the date and nature of the transaction; and (4) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

III. Interim Rule

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

Because section 5331 is substantially similar to 26 U.S.C. 6050I, the Interim Rule provides that persons required to report a transaction under section 5331 must make that report by filing a joint FinCEN/IRS form with the IRS. Under

this dual-reporting regime, only one form is required to be filed for a transaction subject to both section 5331 and section 6050I of title 26. Thus, the Interim Rule imposes no new reporting or record-keeping burden on persons required to report certain transactions under section 5331.

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

IV. Regulatory Flexibility Act

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

V. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and approved by the Office of Management and Budget (OMB) under control number 1506-0018. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

To submit comments concerning the collection of information described in this Interim Rule, please refer to the companion Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**.

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

VI. Executive Order 12866

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

VII. Unfunded Mandates Act of 1995 Statement

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

VIII. Administrative Procedure Act

Because the Interim Rule implements the statute, imposes no additional burden on the public, and addresses the collection of records that may be integral in ongoing antiterrorism and other criminal and regulatory investigations or proceedings, it is found to be impracticable, unnecessary, and contrary to the public interest to comply with notice and public procedure under 5 U.S.C. 553(b). For these reasons, the Interim Rule is made effective before 30 days have passed after its publication date. See 5 U.S.C. 553(d).

List of Subjects in 31 CFR Part 103

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

Amendments to the Regulations

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

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

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

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5331.

2. A new § 103.30 is added to subpart B to read as follows:

§ 103.30 Reports relating to currency in excess of \$10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *Reportable transactions*—(i) *In general.* Any person (solely for purposes of section 5331 of title 31, United States Code and this section, “person” shall have the same meaning as under 26 U.S.C. 7701 (a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of \$10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and § 103.22.

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(2) *Currency received for the account of another.* Currency in excess of \$10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of \$10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.*, where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Currency received by agents*—(i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of \$10,000 from a principal must report the receipt of currency under this section.

(ii) *Exception.* An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the “second currency transaction”) which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and

who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal’s address and taxpayer identification number.

(iii) *Example.* The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, \$75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B’s name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B’s name, address, and taxpayer identification number (assuming D does not know that E already has B’s address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person’s trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) *Multiple payments.* The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of \$10,000.* If the initial payment exceeds \$10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of \$10,000 or less.* If the initial payment does not exceed \$10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

(3) *Subsequent payments.* In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the

aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed \$10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) *Example.* The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, Year 1, M receives an initial payment in currency of \$11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of \$4,000 on February 15, Year 1, \$6,000 on March 20, Year 1, and \$12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling \$22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded \$10,000.

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Currency.* Solely for purposes of 31 U.S.C. 5331 and this section, *currency* means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order having a face amount of not more than \$10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) *Designated reporting transaction.* A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable, (ii) A collectible, or

(iii) A travel or entertainment activity.

(3) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) *Examples.* The following examples illustrate the definition of "currency" set forth in paragraphs (c)(1) through (c)(5) of this section:

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for \$13,200. D tenders to M in payment United States currency in the amount of \$6,200 and a cashier's check in the face amount of \$7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than \$10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for \$11,500. E tenders to Q in payment United States currency in the amount of \$2,000 and a cashier's check payable to E and Q in the amount of \$9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for \$12,000. F gives S traveler's checks totaling \$2,400 and pays the balance with a personal check payable to S in the amount of \$9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than \$10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for \$16,500. G pays T with a cashier's check payable to T in the amount of \$16,500. The cashier's check is not treated as currency because the face amount of the check is more than \$10,000. Thus, no report is required to be made by T under section 5331 and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds \$10,000 in face amount, exceeds \$10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of

section 5331 and this section. Therefore, because W has received more than \$10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) *Consumer durable*. The term *consumer durable* means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000. Thus, for example, a \$20,000 automobile is a consumer durable (whether or not it is sold for business use), but a \$20,000 dump truck or a \$20,000 factory machine is not.

(8) *Collectible*. The term *collectible* means an item described in paragraphs (A) through (D) of section 408 (m)(2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) *Travel or entertainment activity*. The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of 26 CFR 1.274-2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

(10) *Retail sale*. The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) *Trade or business*. The term *trade or business* has the same meaning as under section 162 of title 26, United States Code.

(12) *Transaction*. (i) Solely for purposes of 31 U.S.C. 5331 and this section, the term *transaction* means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term *related transactions* means any transaction conducted between a payer (or its agent) and a

recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12) (i) and (ii) of this section:

Example 1. A person has a tacit agreement with a gold dealer to purchase \$36,000 in gold bullion. The \$36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate \$9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to \$8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to \$4,000, which the client again pays in currency. The aggregate amount of currency paid (\$12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

Example 3. A person intends to contribute a total of \$45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The \$45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate \$9,000 contributions of currency to a single fund or by making five \$9,000 contributions of currency to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for currency two items, at a cost of \$9,240 and \$1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales (\$10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for currency \$9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three \$9,000 transactions are related transactions aggregating \$27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(13) *Recipient*. (i) The term *recipient* means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department,

headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) *Examples*. The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of \$7,500 and \$5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of \$3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of \$10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of 31 U.S.C. 5331—(1) Receipt of currency by certain casinos having gross annual gaming revenue in excess of \$1,000,000—(i) In general.* If a casino receives currency in excess of \$10,000 and is required to report the receipt of such currency directly to the Treasury Department under §§ 103.22 (a)(2) and 103.25 and is subject to the recordkeeping requirements of § 103.36, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(ii) *Casinos exempt under § 103.55(c).* Pursuant to § 103.55, the Secretary may exempt from the reporting and recordkeeping requirements under §§ 103.22, 103.25 and 103.36 casinos in

any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this part. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(iii) *Reporting of currency received in a nongaming business.* Nongaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of \$10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (d)(1)(i) or (ii) of this section must report with respect to currency in excess of \$10,000 received in its nongaming businesses.

(iv) *Example.* The following example illustrates the application of the rules in paragraphs (d)(2) (i) and (iii) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of \$1,000,000. C is a casino with gross annual gaming revenue of less than \$1,000,000. Casino A receives \$15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under §§ 103.22(a)(2) and 103.25. Casino B receives \$15,000 in currency from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives \$15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (d)(1)(i) of this section ("the casino exception") applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to casinos having gross annual gaming revenue of \$1,000,000 or less which do not have to report to the Treasury Department under §§ 103.22(a)(2) and 103.25.

(2) *Receipt of currency not in the course of the recipient's trade or*

business. The receipt of currency in excess of \$10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for \$12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(3) *Receipt is made with respect to a foreign currency transaction—(i) In general.* Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(3)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of \$125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives \$125,000 in currency. W is not required to report under 31 U.S.C. 5331 or this section because the exception provided in paragraph (d)(3)(i) of this section ("foreign

transaction exception") applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(e) *Time, manner, and form of reporting—(1) In general.* The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.60501-1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.60501-1(e)(1) and (3) respectively.

(2) *Verification.* A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) *Retention of reports.* A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Dated: December 20, 2001.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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