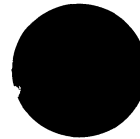


U.S. Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section



Money Laundering Statutes and Related Materials

Including Statutes Amended by the Intelligence Reform and
Terrorism Prevention Act of 2004, the Criminal Law Technical
Amendments Act, the Patriot Act, and CAFRA

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Title 18

18 U.S.C. § 981. Civil forfeiture.

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

(i) involves the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

A list of all violations of federal and state or foreign law identified as “specified unlawful activity” under 18 U.S.C. § 1956(c)(7) can be found on page 105. See also text of section 1956(c)(7) at page 20.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of—

(i) section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(G) All assets, foreign or domestic—

(i) of any individual, entity, or organization engaged in planning or perpetrating any act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing an act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

(iii) derived from, involved in, or used or intended to be used to commit any act of domestic or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.

18 U.S.C. § 981(a)(1)(G). Note.

[The following provision was enacted as section 316 of Pub. L. 107-56 but was not codified to any section of the United States Code.]

(a) Right to contest.- An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) Evidence.- In considering a claim filed under this section, the Court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if a court determines that such evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

(c) Clarifications.—

(1) Protection of rights.— The exclusion of certain provisions of Federal law from the definition of the term “civil forfeiture statute” in section 981(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under —

(A) subsection (a) of this section;

(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(2) Savings clause.— Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and—

(i) the seizure is made pursuant to a lawful arrest or search; or

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof.

Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. § 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine—

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency—

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States

shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a

violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of

forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—

(1) the term “Attorney General” means the Attorney General or his delegate; and

(2) the term “Secretary of the Treasury” means the Secretary of the Treasury or his delegate.

(k) Interbank accounts.—

(1) In general.—

(A) In general.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. § 801 et seq.), if funds are deposited into an account at a

foreign bank, and that foreign bank has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign bank, may be restrained, seized, or arrested.

(B) Authority to suspend.—The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign bank is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) No requirement for Government to trace funds.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign bank, nor shall it be necessary for the Government to rely on the application of section 984.

(3) Claims brought by owner of the funds.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign bank may contest the forfeiture by filing a claim under section 983.

(4) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Interbank account.—The term “interbank account” has the same meaning as in section 984(c)(2)(B).

(B) Owner.—

(i) In general.—Except as provided in clause (ii), the term “owner”—

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign bank at the time such funds were deposited; and

(II) does not include either the foreign bank or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) Exception.—The foreign bank may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign bank; or

(II) the foreign bank establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign bank had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign bank shall be deemed the owner of the funds to the extent of such discharged obligation.

Amended: Criminal Law Technical Amendments Act of 2002, Pub. L. 107-273, Div. B, Title IV, § 4002(a)(2), Nov. 2, 2002, 116 Stat. 1758, 1806.

18 U.S.C. § 982. Criminal forfeiture.

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 842, 844, 1028, 1029, or 1030 of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under—

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud), involving the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution,

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements,

pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate—

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000 or more in any twelve month period.

Amended: Criminal Law Technical Amendments Act of 2002, Pub. L. 107-273, Div. B, Title IV, § 4002(b)(10), Nov. 2, 2002, 116 Stat. 1758, 1808.

18 U.S.C. § 983. General rules for civil forfeiture proceedings.

(a) Notice; claim; complaint.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of

seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

- (i) endangering the life or physical safety of an individual;
- (ii) flight from prosecution;
- (iii) destruction of or tampering with evidence;
- (iv) intimidation of potential witnesses; or
- (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of

Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

- (i) identify the specific property being claimed;
- (ii) state the claimant's interest in such property; and
- (iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a

claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) Representation.—

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

(i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) Burden of proof.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) Innocent owner defense.—

(1) An innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term “innocent owner” means an owner who—

(i) did not know of the conduct giving rise to forfeiture; or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term “innocent owner” means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;

(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the

community for the claimant and all dependents residing with the claimant;

(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term “owner”—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage,

recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) Motion to set aside forfeiture.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person’s interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party’s interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) Release of seized property.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed

or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met,

the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

- (ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and
- (iii) requiring the claimant to obtain or maintain insurance on the subject property; and
- (B) the Government may place a lien against the property or file a *lis pendens* to ensure that the property is not transferred to another person.
- (8) This subsection shall not apply if the seized property—
- (A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;
- (B) is to be used as evidence of a violation of the law;
- (C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or
- (D) is likely to be used to commit additional criminal acts if returned to the claimant.
- (g) Proportionality.—
- (1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.
- (2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.
- (3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.
- (4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.
- (h) Civil fine.—
- (1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.
- (2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.
- (3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.
- (i) Civil forfeiture statute defined.—In this section, the term “civil forfeiture statute”—
- (1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and
- (2) does not include—
- (A) the Tariff Act of 1930 or any other provision of law codified in title 19;
- (B) the Internal Revenue Code of 1986;
- (C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);
- (D) the Trading with the Enemy Act (50 U.S.C. App. § 1 et seq.) or the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. § 1701 et seq.); or
- (E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. § 401).
- (j) Restraining orders; protective orders.—

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A

hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, § 316(d), Oct. 26, 2001, 115 Stat. 272, 310.

18 U.S.C. § 984. Civil forfeiture of fungible property.

(a)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals—

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

(c)(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.

(2) In this subsection—

(A) the term “financial institution” includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. § 3101(b)(7)); and

(B) the term “interbank account” means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 13(a), Apr. 25, 2000, 114 Stat. 202, 218.

18 U.S.C. § 986. Subpoenas for bank records.

(a) At any time after the commencement of any action for forfeiture in rem brought by the United States under section 1956, 1957, or 1960 of this title, section 5322 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party

requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.

(d) Access to records in bank secrecy jurisdictions.—

(1) In general.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. § 853(n)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

(B) it is within the capacity of the claimant to waive the claimant’s rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) Privilege.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

Amended: Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. 106-185, § 17, Apr. 25, 2000, 114 Stat. 202, 221.

18 U.S.C. § 1956. Laundering of monetary instruments.

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the

control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.—

(1) In general.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.—A court described in paragraph (2) may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.—

(A) In general.—A court described in paragraph (2) may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan,

extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. § 3101);

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means

of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. § 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774); or

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. § 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513

(relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280

(relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), or section 2339A or 2339B (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. § 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 [7 U.S.C.A. § 2024] (relating to food stamp fraud) involving a quantity of coupons having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C.A. § 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. § 2122) (relating to prohibitions governing atomic weapons)

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Ocean Dumping Act (33 U.S.C. § 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. § 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), or the

Resources Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

A list of all violations of federal and state or foreign law identified as "specified unlawful activity" under 18 U.S.C. § 1956(c)(7) can be found on page 105.

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) Notice of conviction of financial institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) Venue.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

Amended: Prevention of Terrorist Access to Destructive Weapons Act of 2004, Pub. L. 108-458, Title VI, Subtitle J, § 6909, Dec. 17, 2004, 118 Stat. 3638, 3774.

18 U.S.C. § 1957. Engaging in monetary transactions in property derived from specified unlawful activity.

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in

accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term “monetary transaction” means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person’s right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term “specified unlawful activity” has the meaning given that term in section 1956 of this title.

Amended: Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, Title IV, § 413(c)(2), Sept. 24, 1994, 108 Stat. 2160, 2255.

18 U.S.C. § 1960. Prohibition of unlicensed money transmitting businesses.

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term “State” means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, § 373(a), Oct. 26, 2001, 115 Stat. 272, 339.

18 U.S.C. § 1961(1). Definitions.

As used in this chapter—

(1) “racketeering activity” means

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under

State law and punishable by imprisonment for more than one year;

(B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1591 (relating to peonage, slavery, and trafficking in persons), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the

prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials),

(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds),

(D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States,

(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act,

(F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or

(G) any act that is indictable under any provision listed in section 2332b(g)(5)(B).

Amended: Weapons of Mass Destruction Prohibition Improvement Act of 2004, Pub. L. 108-458, Title VI, Subtitle I, § 6802(e), Dec. 17, 2004, 118 Stat. 3638, 3767, 3768.

18 U.S.C. § 2339A. Providing material support to terrorists.

(a) Offense.—Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. § 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

(b) Definitions.—As used in this section—

(1) the term “material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

(2) the term “training” means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and

(3) the term “expert advice or assistance” means advice or assistance derived from scientific, technical or other specialized knowledge.

Amended: Material Support to Terrorism Prohibition Enhancement Act of 2004, Pub. L. 108-458, Title VI, Subtitle G, § 6603, Dec. 17, 2004, 118 Stat. 3638, 3762.

18 U.S.C. § 2339B. Providing material support or resources to designated foreign terrorist organizations.

(a) Prohibited activities.—

(1) Unlawful conduct.—Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(2) Financial institutions.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) Civil penalty.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

(A) \$50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

(c) Injunction.—Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

(d) Extraterritorial jurisdiction.—

(1) In general.—There is jurisdiction over an offense under subsection (a) if—

(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20)));

(B) an offender is a stateless person whose habitual residence is in the United States;

(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(D) the offense occurs in whole or in part within the United States;

(E) the offense occurs in or affects interstate or foreign commerce; or

(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(2) Extraterritorial jurisdiction.—There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Investigations.—

(1) In general.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

(2) Coordination with the Department of the Treasury.—The Attorney General shall work in coordination with the Secretary in investigations relating to—

(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

(B) civil penalty proceedings authorized under subsection (b).

(3) Referral.—Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

(f) Classified information in civil proceedings brought by the United States.—

(1) Discovery of classified information by defendants.—

(A) Request by United States.—In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to—

(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

(ii) substitute a summary of the information for such classified documents; or

(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

(B) Order granting request.—If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(C) Denial of request.—If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(2) Introduction of classified information; precautions by court.—

(A) Exhibits.—To prevent unnecessary or inadvertent disclosure of classified information in a civil proceeding brought by the United States under this section, the United States may petition the court ex parte to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

(i) Copies of items from which classified information has been redacted.

(ii) Stipulations admitting relevant facts that specific classified information would tend to prove.

(iii) A declassified summary of the specific classified information.

(B) Determination by court.—The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(3) Taking of trial testimony.—

(A) Objection.—During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) Action by court.—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including—

(i) permitting the United States to provide the court, *ex parte*, with a proffer of the witness's response to the question or line of inquiry; and

(ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(C) Obligation of defendant.—In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any classified information sought to be introduced.

(4) Appeal.—If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

(5) Interlocutory appeal.—

(A) Subject of appeal.—An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

(i) authorizing the disclosure of classified information;

(ii) imposing sanctions for nondisclosure of classified information; or

(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

(B) Expedited consideration.—

(i) In general.—An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

(ii) Appeals prior to trial.—If an appeal is of an order made prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

(iii) Appeals during trial.—If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals—

(I) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;

(II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

(III) shall render its decision not later than 4 days after argument on appeal; and

(IV) may dispense with the issuance of a written opinion in rendering its decision.

(C) Effect of ruling.—An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(6) Construction.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the

disclosure of classified information, including the invocation of the military and State secrets privilege.

(g) Definitions.—As used in this section—

(1) the term “classified information” has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. § App.);

(2) the term “financial institution” has the same meaning as in section 5312(a)(2) of title 31, United States Code;

(3) the term “funds” includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

(4) the term “material support or resources” has the same meaning given that term in section 2339A (including the definitions of “training” and “expert advice or assistance” in that section);

(5) the term “Secretary” means the Secretary of the Treasury; and

(6) the term “terrorist organization” means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

(h) Provision of personnel.—No person may be prosecuted under this section in connection with the term “personnel” unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control.

(i) Rule of construction.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.

(j) Exception.—No person may be prosecuted under this section in connection with the term “personnel”, “training”, or “expert advice or assistance” if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

Amended: Material Support to Terrorism Prohibition Enhancement Act of 2004, Pub. L. 108-458, Title VI, Subtitle G, § 6603, Dec. 17, 2004, 118 Stat. 3638, 3762, 3763, 3764.

18 U.S.C. § 2339C. Prohibitions against the financing of terrorism.

(a) Offenses.—

(1) In general.—Whoever, in a circumstance described in subsection (b), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

(2) Attempts and conspiracies.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

(3) Relationship to predicate act.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

(b) Jurisdiction.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

(1) the offense takes place in the United States and—

(A) a perpetrator was a national of another state or a stateless person;

(B) on board a vessel flying the flag of another state or an aircraft which is registered under the laws of another state at the time the offense is committed;

(C) on board an aircraft which is operated by the government of another state;

(D) a perpetrator is found outside the United States;

(E) was directed toward or resulted in the carrying out of a predicate act against—

(i) a national of another state; or

(ii) another state or a government facility of such state, including its embassy or other diplomatic or consular premises of that state;

(F) was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel another state or international organization to do or abstain from doing any act; or

(G) was directed toward or resulted in the carrying out of a predicate act—

(i) outside the United States; or

(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

(2) the offense takes place outside the United States and—

(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

(B) a perpetrator is found in the United States; or

(C) was directed toward or resulted in the carrying out of a predicate act against—

(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

(ii) any person or property within the United States;

(iii) any national of the United States or the property of such national; or

(iv) any property of any legal entity organized under the laws of the United States, including any of its States, districts, commonwealths, territories, or possessions;

(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

(4) the offense is committed on board an aircraft which is operated by the United States; or

(5) the offense was directed toward or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

(c) Concealment.—Whoever—

(1)(A) is in the United States; or

(B) is outside the United States and is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); and

(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support or resources, or any funds or proceeds of such funds—

(A) knowing or intending that the support or resources are to be provided, or knowing that the support or resources were provided, in violation of section 2339B of this title; or

(B) knowing or intending that any such funds are to be provided or collected, or knowing that the funds were provided or collected, in violation of subsection (a),

shall be punished as prescribed in subsection (d)(2).

(d) Penalties.—

(1) Subsection (a)—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 20 years, or both.

(2) Subsection (c)—Whoever violates subsection (c) shall be fined under this title, imprisoned for not more than 10 years, or both.

(e) Definitions.—In this section—

(1) the term “funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

(2) the term “government facility” means any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature, or the judiciary, or by officials or employees of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

(3) the term “proceeds” means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

(4) the term “provides” includes giving, donating, and transmitting;

(5) the term “collects” includes raising and receiving;

(6) the term “predicate act” means any act referred to in subparagraph (A) or (B) of subsection (a)(1);

(7) the term “treaty” means—

(A) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

(B) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(C) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

(D) the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

(E) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

(F) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

(G) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

(H) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; or

(I) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

(8) the term “intergovernmental organization” includes international organizations;

(9) the term “international organization” has the same meaning as in section 1116(b)(5) of this title;

(10) the term “armed conflict” does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature;

(11) the term “serious bodily injury” has the same meaning as in section 1365(g)(3) of this title;

(12) the term “national of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22));

(13) the term “material support or resources” has the same meaning given that term in section 2339B(g)(4) of this title; and

(14) the term “state” has the same meaning as that term has under international law, and includes all political subdivisions thereof.

(f) Civil penalty.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United States, including any of the laws of its States, districts, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least \$10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).

Amended: Material Support to Terrorism Prohibition Enhancement Act of 2004, Pub. L. 108-458, Title VI, Subtitle G, § 6604, Dec. 17, 2004, 118 Stat. 3638, 3764.

Title 21

21 U.S.C. § 853. Criminal forfeitures.

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and
- (3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes—

- (1) real property, including things growing on, affixed to, and found in land; and
- (2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II of this chapter is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

- (1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II of this chapter or within a reasonable time after such period; and
- (2) there was no likely source for such property other than the violation of this subchapter or subchapter II of this chapter.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) Order to repatriate and deposit

(A) In general

Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply

Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p) of this section, shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (n) of this section, no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General

may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or

interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine sites

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II of this chapter involving the manufacture of amphetamine or methamphetamine, shall—

(1) order restitution as provided in sections 3612 and 3664 of Title 18;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of Title 18.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, § 319(d), Oct. 26, 2001, 115 Stat. 272, 314.



Title 26

26 U.S.C. § 6050I. Returns relating to cash received in trade or business, etc.

(a) Cash receipts of more than 10,000.—Any person—

- (1) who is engaged in a trade or business, and
- (2) who, in the course of such trade or business, receives more than \$10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns.—A return is described in this subsection if such return—

- (1) is in such form as the Secretary may prescribe,
- (2) contains—
 - (A) the name, address, and TIN of the person from whom the cash was received,
 - (B) the amount of cash received,
 - (C) the date and nature of the transaction, and
 - (D) such other information as the Secretary may prescribe.

(c) Exceptions.—

(1) Cash received by financial institutions.—Subsection (a) shall not apply to—

- (A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or
- (B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary transactions.—For the purposes of this section, the term “cash” includes—

- (1) foreign currency, and
- (2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

- (1) the name, address and phone number of the information contact of the person required to make such return, and
- (2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited.—

(1) In general.—No person shall for the purpose of evading the return requirements of this section—

- (A) cause or attempt to cause a trade or business to fail to file a return required under this section;

(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) Penalties.—A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

(g) Cash received by criminal court clerks.—

(1) In general.—Every clerk of a Federal or State criminal court who receives more than \$10,000 in cash as bail or any individual charged with specified in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

(2) Return.—A return is described in this paragraph if such return—

(A) is in such form as the Secretary may prescribe, and

(B) contains—

(i) The name, address, and TIN of—

(I) the individual charged with the specified criminal offense, and

(II) each person posting the bail (other than a person licensed as a bail bondsman),

(ii) the amount of cash received,

(iii) the date the cash was received, and

(iv) such other information as the Secretary may prescribe.

(3) Specified criminal offense.—For purposes of this subsection, the term “specified criminal offense” means—

(A) any Federal criminal offense involving a controlled substance,

(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(C) money laundering (as defined in section 1956 or 1957 of such title), and

(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

(4) Information to Federal prosecutors.—Each clerk required to include a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

(5) Information to payors of bail.—Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

(A) the name and address of the clerk’s office required to make the return, and

(B) the aggregate amount of cash described in paragraph (1) received by such clerk.

Amended: Taxpayer Bill of Rights 2, Pub. L. 104-168, Title XII, § 1201(a)(9), July 30, 1996, 110 Stat. 1452, 1469.

Title 31

31 U.S.C. § 5312. Definitions and application.

(a) In this subchapter—

(1) “financial agency” means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(2) “financial institution” means—

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(h)));

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) any credit union;

(F) a thrift institution;

(G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.);

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which;

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the

Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) “monetary instruments” means—

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers’ checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) Nonfinancial trade or business.—The term “nonfinancial trade or business” means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.

(5) “person”, in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(6) “United States” means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter—

(1) “domestic financial agency” and “domestic financial institution” apply to an action in the United States of a financial agency or institution.

(2) “foreign financial agency” and “foreign financial institution” apply to an action outside the United States of a financial agency or institution.

(c) Additional definitions.—For purposes of this subchapter, the following definitions shall apply:

(1) Certain institutions included in definition.—The term “financial institution” (as defined in subsection (a)) includes the following:

(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act [7 U.S.C.A. § 1 et seq.].

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title VI, Subtitle C, § 6203(b), Dec. 17, 2004, 118 Stat. 3638, 3746.

31 U.S.C. § 5313. Reports on domestic coins and currency transaction.

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic

financial institution that is not insured, chartered, examined, or registered as a domestic financial institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation of this subchapter or a regulation under this subchapter (except a violation of section 5315 of this title or a regulation prescribed under section 5315), section 411 of the National Housing Act (12 U.S.C. § 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. § 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report—

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.

(2) The Secretary shall prescribe—

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

(d) Mandatory exemptions from reporting requirements.—

(1) In general.—The Secretary of the Treasury shall exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) 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 law reports on which have little or no value for law enforcement purposes.

(2) Notice of exemption.—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 the entities whose transactions with a depository institution are exempt under this subsection from the reporting requirements of subsection (a).

(e) Discretionary exemptions from reporting requirements.—

(1) In general.—The Secretary of the Treasury may exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

(2) Qualified business customer defined.—For purposes of this subsection, the term “qualified business customer” means a business which—

(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

(3) Criteria for exemption.—The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

(4) Guidelines.—

(A) In general.—The Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection.

(B) Contents.—The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

(5) Annual review.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to—

(A) review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

(6) 2-Year phase-in provision.—During the 2-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, this subsection shall be applied by the Secretary on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.

(f) Provisions applicable to mandatory and discretionary exemptions.—

(1) Limitation on liability of depository institutions.— No depository institution shall be subject to any penalty which may be imposed under this subchapter for the failure of the institution to file a report with respect to a transaction with a customer for whom an exemption has been granted under subsection (d) or (e) unless the institution—

(A) knowingly files false or incomplete information to the Secretary 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 or the transaction is entered into that the customer or the transaction does not meet the criteria established for granting such exemption.

(2) Coordination with other provisions.—Any exemption granted by the Secretary of the Treasury under section 5318(a) in accordance with this section, and any transaction which is subject to such exemption, shall be subject to any other provision of law applicable to such exemption, including—

(A) the authority of the Secretary, under section 5318(a)(6), to revoke such exemption to any time; and

(B) any requirement to report, or any authority to require a report on, any possible violation of any law or regulation or any suspected criminal activity.

(g) Depository institution defined.—For purposes of this section, the term “depository institution”—

(1) has the meaning given to such term in section 19(b)(1)(A) of the Federal Reserve Act; and

(2) includes—

(A) any branch, agency, or commercial lending company (as such terms are defined in section 1(b) of the International Banking Act of 1978);

(B) any corporation chartered under section 25A of the Federal Reserve Act; and

(C) any corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

Amended: Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, Title IV, § 402(a), Sept. 24, 1994, 108 Stat. 2160, 2243.

31 U.S.C. § 5316. Reports on exporting and importing monetary instruments.

(a) Except as provided in subsection (c) of this section, a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly—

(1) transports, is about to transport, or has transported, monetary instruments of more than \$10,000 at one time—

(A) from a place in the United States to or through a place outside the United States; or

(B) to a place in the United States from or through a place outside the United States; or

(2) receives monetary instruments of more than \$10,000 at one time transported into the United States from or through a place outside the United States.

(b) A report under this section shall be filed at the time and place the Secretary of the Treasury prescribes. The report shall contain the following information to the extent the Secretary prescribes:

(1) the legal capacity in which the person filing the report is acting.

(2) the origin, destination, and route of the monetary instruments.

(3) when the monetary instruments are not legally and beneficially owned by the person transporting the instruments, or if the person transporting the instruments personally is not going to use them, the identity of the person that gave the instruments to the person transporting them, the identity of the person who is to receive them, or both.

(4) the amount and kind of monetary instruments transported.

(5) additional information.

(c) This section or a regulation under this section does not apply to a common carrier of passengers when a passenger possesses a monetary instrument, or to a common carrier of goods if the shipper does not declare the instrument.

(d) Cumulation of closely related events.— The Secretary of the Treasury may prescribe regulations under this section defining the term “at one time” for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).

Amended: Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title I, § 1358, Title III, § 3153, Oct. 26, 1986, 100 Stat. 3207-26 and 3207-94.

31 U.S.C. § 5317. Search and forfeiture of monetary instruments.

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) Searches at border.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) Forfeiture.—

(1) Criminal forfeiture.—

(A) In general.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(B) Procedure.—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

(2) Civil forfeiture.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 365(b)(2)(B), 372(a), Oct. 26, 2001, 115 Stat. 272, 335, 338.

31 U.S.C. § 5318. Compliance, exemptions, and summons authority.

(a) General powers of Secretary.—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

(3) examine any books, papers, records, or other data of domestic financial institutions or nonfinancial trades or businesses relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution or nonfinancial trade or business, an officer or employee of a financial institution or nonfinancial trade or business (including a former officer or employee), or any person having possession, custody, or care of the reports and records required

under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(5) exempt from the requirements of this subchapter any class of transactions within any State if the Secretary determines that—

(A) under the laws of such State, that class of transactions is subject to requirements substantially similar to those imposed under this subchapter; and

(B) there is adequate provision for the enforcement of such requirements; and

(6) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption under this paragraph or paragraph (5) by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) Limitations on summons power.—

(1) Scope of power.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. § 1951 et seq.) or any regulation under any such provision.

(2) Authority to issue.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) Administrative aspects of summons.—

(1) Production at designated site.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or

other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution or nonfinancial trade or business operates or conducts business in the United States.

(2) Fees and travel expenses.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

(3) No liability for expenses.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

(d) Service of summons.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(e) Contumacy or refusal.—

(1) Referral to Attorney General.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

(2) Jurisdiction of court.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

(A) the investigation which gave rise to the summons is being or has been carried on;

(B) the person summoned is an inhabitant; or

(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

(3) Court order.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

(4) Failure to comply with order.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(5) Service of process.—All process in any case under this subsection may be served in any judicial district in which such person may be found.

(f) Written and signed statement required.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution or nonfinancial trade or business prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

(g) Reporting of suspicious transactions.—

(1) In general.—The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

(2) Notification prohibited.—

(A) In general.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

(i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

(B) Disclosures in certain employment references.—

(i) Rule of construction.—

Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

(I) in a written employment reference that is provided in accordance with section 18(w) of the Federal Deposit Insurance Act in response to a request from another financial institution; or

(II) in a written termination notice or employment reference that is provided in accordance with the rules of a self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission,

except that such written reference or notice may not disclose that such information was also included in any such report, or that such report was made.

(ii) Information not required.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in any employment reference or termination notice referred to in clause (i).

(3) Liability for disclosures.—

(A) In general.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide

notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

(B) Rule of construction.—Subparagraph (A) shall not be construed as creating—

(i) any inference that the term “person”, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

(4) Single designee for reporting suspicious transactions.—

(A) In general.—In requiring reports under paragraph (1) of suspicious transactions, the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

(B) Duty of designee.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(C) Coordination with other reporting requirements.—Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any other applicable provision of law.

(h) Anti-money laundering programs.—

(1) In general.—In order to guard against money laundering through financial institutions, each

financial institution shall establish anti-money laundering programs, including, at a minimum—

- (A) the development of internal policies, procedures, and controls;
- (B) the designation of a compliance officer;
- (C) an ongoing employee training program; and
- (D) an independent audit function to test programs.

(2) Regulations.—The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.

(3) Concentration accounts.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

- (A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;
- (B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and
- (C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds

belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.

(i) Due diligence for United States private banking and correspondent bank accounts involving foreign persons.—

(1) In general.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

(2) Additional standards for certain correspondent accounts.—

(A) In general.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

- (i) under an offshore banking license; or
- (ii) under a banking license issued by a foreign country that has been designated—

(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; or

(II) by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

(B) Policies, procedures, and controls.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under subsection (g); and

(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

(3) Minimum standards for private banking accounts.—If a private banking account is requested or maintained by, or on behalf of, a non- United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(4) Definition.—For purposes of this subsection, the following definitions shall apply:

(A) Offshore banking license.—The term ‘offshore banking license’ means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

(B) Private banking account.—The term ‘private banking account’ means an account (or any combination of accounts) that—

(i) requires a minimum aggregate deposits of funds or other assets of not less than \$1,000,000;

(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.

(j) Prohibition on United States correspondent accounts with foreign shell banks.—

(1) In general.—A financial institution described in subparagraphs (A) through (G) of section 5312(a)(2) (in this subsection referred to as a “covered financial institution”) shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

(2) Prevention of indirect service to foreign shell banks.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. The Secretary of the Treasury shall, by regulation, delineate the reasonable steps necessary to comply with this paragraph.

(3) Exception.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

(A) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank described in subparagraph (A), as applicable.

(4) Definitions.—For purposes of this subsection—

(A) the term “affiliate” means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank; and

(B) the term “physical presence” means a place of business that—

(i) is maintained by a foreign bank;

(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

(I) employs 1 or more individuals on a full-time basis; and

(II) maintains operating records related to its banking activities; and

(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.

(k) Bank records related to anti-money laundering programs.—

(1) Definitions.—For purposes of this subsection, the following definitions shall apply:

(A) Appropriate Federal banking agency.—The term “appropriate Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

(B) Incorporated term.—The term “correspondent account” has the same meaning as in section 5318A(e)(1)(B).

(2) 120-hour rule.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a

covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

(3) Foreign bank records.—

(A) Summons or subpoena of records.—

(i) In general.—The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank.

(ii) Service of summons or subpoena.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(B) Acceptance of service.—

(i) Maintaining records in the United States.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

(ii) Law enforcement request.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution

shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(C) Termination of correspondent relationship.—

(i) Termination upon receipt of notice.— A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

(I) to comply with a summons or subpoena issued under subparagraph (A); or

(II) to initiate proceedings in a United States court contesting such summons or subpoena.

(ii) Limitation on liability.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

(iii) Failure to terminate relationship.— Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.

(l) Identification and verification of accountholders.—

(1) In general.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

(2) Minimum requirements.—The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and

(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

(3) Factors to be considered.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) Certain financial institutions.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

(5) Exemptions.—The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

(6) Effective date.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.

(m) Applicability of rules.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. § 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

(n) Reporting of certain cross-border transmittals of funds.—

(1) In general.—Subject to paragraphs (3) and (4), the Secretary shall prescribe regulations requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.

(2) Limitation on reporting requirements.—Information required to be reported by the regulations prescribed under paragraph (1) shall not exceed the information required to be retained by the reporting financial institution pursuant to section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder, unless—

(A) the Board of Governors of the Federal Reserve System and the Secretary jointly determine that a particular item or items of information are not currently required to be retained under such section or such regulations; and

(B) the Secretary determines, after consultation with the Board of Governors of the Federal Reserve System, that the reporting of such information is reasonably necessary to conduct the efforts of the Secretary to identify cross-border money laundering and terrorist financing.

(3) Form and manner of reports.—In prescribing the regulations required under paragraph (1), the Secretary shall, subject to paragraph (2), determine

the appropriate form, manner, content, and frequency of filing of the required reports.

(4) Feasibility report.—

(A) In general.—Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the National Intelligence Reform Act of 2004, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that—

(i) identifies the information in cross-border electronic transmittals of funds that may be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlines the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required;

(ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;

(iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and

(iv) discusses the information security protections required by the exercise of the Secretary's authority under this subsection.

(B) Consultation.—In reporting the feasibility report under subparagraph (A), the Secretary may consult with the Bank Secrecy Act Advisory Group established by the Secretary, and any other group considered by the Secretary to be relevant.

(5) Regulations.—

(A) In general.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of enactment of the National Intelligence Reform Act of 2004.

(B) Technological feasibility.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title VI, Subtitle C, § 6203, Dec. 17, 2004, 118 Stat. 3638, 3746, 3747, 3748, 3749, 3750.

31 U.S.C. § 5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern.

(a) International counter-money laundering requirements.—

(1) In general.—The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of

accounts is of primary money laundering concern, in accordance with subsection (c).

(2) Form of requirement.—The special measures described in—

(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

(C) subsection (b)(5) may be imposed only by regulation.

(3) Duration of orders; rulemaking.—Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)—

(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

(B) may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of issuance of such order.

(4) Process for selecting special measures.—In selecting which special measure or measures to take under this subsection, the Secretary of the Treasury—

(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and

(B) shall consider—

(i) whether similar action has been or is being taken by other nations or multilateral groups;

(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

(iii) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, class of transactions, or type of account; and

(iv) the effect of the action on United States national security and foreign policy.

(5) No limitation on other authority.—This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

(b) Special measures.—The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

(1) Recordkeeping and reporting of certain financial transactions.—

(A) In general.—The Secretary of the Treasury may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, class of transactions, or type of account to be of primary money laundering concern.

(B) Form of records and reports.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

(ii) the legal capacity in which a participant in any transaction is acting;

(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

(iv) a description of any transaction.

(2) Information relating to beneficial ownership.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern.

(3) Information relating to certain payable-through accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or

involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a payable through account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

(A) to identify each customer (and representative of such customer) of such financial institution who is permitted to use, or whose transactions are routed through, such payable-through account; and

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(4) Information relating to certain correspondent accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to

that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(5) Prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

(c) Consultations and information to be considered in finding jurisdictions, institutions, types of accounts, or transactions to be of primary money laundering concern.—

(1) In general.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary of the Treasury to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State and the Attorney General.

(2) Additional considerations.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

(A) Jurisdictional factors.—In the case of a particular jurisdiction—

(i) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction;

(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

(v) the extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

(vi) whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

(vii) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

(B) Institutional factors.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction;

(ii) the extent to which such institutions, transactions, or types of accounts are used

for legitimate business purposes in the jurisdiction; and

(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

(d) Notification of special measures invoked by the Secretary.—Not later than 10 days after the date of any action taken by the Secretary of the Treasury under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

(e) Definitions.—Notwithstanding any other provision of this subchapter, for purposes of this section and subsections (i) and (j) of section 5318, the following definitions shall apply:

(1) Bank definitions.—The following definitions shall apply with respect to a bank:

(A) Account.—The term “account”—

(i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

(ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(B) Correspondent account.—The term “correspondent account” means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.

(C) Payable-through account.—The term “payable-through account” means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act),

opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Definitions applicable to institutions other than banks.—With respect to any financial institution other than a bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), define by regulation the term “account”, and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable- through and correspondent accounts.

(3) Regulatory definition of beneficial ownership.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this section and subsections (i) and (j) of section 5318. Such regulations shall address issues related to an individual’s authority to fund, direct, or manage the account (including, without limitation, the power to direct payments into or out of the account), and an individual’s material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section or subsection (i) or (j) of section 5318 does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

(4) Other terms.—The Secretary may, by regulation, further define the terms in paragraphs (1), (2), and (3), and define other terms for the purposes of this section, as the Secretary deems appropriate.

(f) Classified information.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern, made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act), such information may be submitted by the Secretary to the reviewing court *ex parte* and *in camera*. This subsection does not confer or imply any right to judicial review of any finding made or any requirement imposed under this section.

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title VI, Subtitle C, § 6203, Dec. 17, 2004, 118 Stat. 3638, 3747.

31 U.S.C. § 5321. Civil penalties.

(a)(1) A domestic financial institution or nonfinancial trade or business, and a partner, director, officer, or employee of a domestic financial institution or nonfinancial trade or business, willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed \$100,000) involved in the transaction (if any) or \$25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3) A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than \$10,000.

(4) Structured transaction violation.—

(A) Penalty authorized.—The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) Maximum amount limitation.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) Coordination with forfeiture provision.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States in connection with the transaction with respect to which such penalty is imposed.

(5) Foreign financial agency transaction violation.—

(A) Penalty authorized.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates or any person willfully causing any violation of any provision of section 5314.

(B) Maximum amount limitation.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

(i) in the case of violation of such section involving a transaction, the greater of—

(I) the amount (not to exceed \$100,000) of the transaction; or

(II) \$25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

(I) an amount (not to exceed \$100,000) equal to the balance of the account at the time of the violation; or

(II) \$25,000.

(6) Negligence.—

(A) In general.—The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution or nonfinancial trade or business which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

(B) Pattern of negligent activity.—If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than \$50,000 on the financial institution or nonfinancial trade or business.

(7) Penalties for international counter money laundering violations.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.

(b) Time limitations for assessments and commencement of civil actions.—

(1) Assessments.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) Civil actions.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d) of section 5317 of this title or civil penalty under subsection (a)(2) of this section.

(d) Criminal penalty not exclusive of civil penalty.— A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e) Delegation of assessment authority to banking agencies.—

(1) In general.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) Authority of agencies.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

(3) Terms and conditions.—

(A) In general.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) Maximum dollar amount.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 353(a), 363(a), 365(c)(2)(B)(i), Oct. 26, 2001, 115 Stat. 272, 322, 332, 335.

31 U.S.C. § 5322. Criminal penalties.

(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, shall be fined not more than \$250,000, or imprisoned for not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 353(b), 363(b), Oct. 26, 2001, 115 Stat. 272, 323, 332.

31 U.S.C. § 5324. Structuring transactions involving financial institutions to evade reporting requirement prohibited.¹

(a) Domestic coin and currency transactions involving financial institutions.—No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(b) Domestic coin and currency transactions involving nonfinancial trades or businesses.—No person shall, for the purpose of evading the report requirements of section 5331 or any regulation prescribed under such section—

(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5331 or any regulation prescribed under such section;

(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5331 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

(c) International monetary instrument transactions.—No person shall, for the purpose of evading the reporting requirements of section 5316—

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(d) Criminal penalty.—

(1) In general.—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) Enhanced penalty for aggravated cases.—Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

Footnote

¹Section 5324 makes it an offense to engage in certain conduct with respect to four different reporting or recordkeeping requirements: section 5313 (currency transaction reports); section 5325 (recordkeeping requirement pertaining to purchase of monetary instruments such as bank checks, cashier's checks,

traveler's checks, and money orders); section 5326 (special recordkeeping and reporting requirements pursuant to a geographic targeting order); and section 21 of the Federal Deposit Insurance Act (codified at 12 U.S.C. § 1829(b)), pertaining to recordkeeping requirements involving wire transfers. The regulations covering recordkeeping requirements for wire transfers can be found at 31 C.F.R. §§ 103.33(e)-(g).

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title VI, Subtitle C, § 6203, Dec. 17, 2004, 118 Stat. 3638, 3747.

31 U.S.C. § 5325. Identification required to purchase certain monetary instruments.

(a) In general.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of \$3,000 or more unless—

(1) the individual has a transaction account with such financial institution and the financial institution—

(A) verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) the individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a)

shall be reported by such institution to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction account defined.—For purposes of this section, the term “transaction account” has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

Enacted: Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Title VI, § 6185(b), Nov. 18, 1988, 102 Stat. 4181, 4355.

31 U.S.C. § 5326. Records of certain domestic coin and currency transactions.

(a) In general.—If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area—

(1) to obtain such information as the Secretary may describe in such order concerning—

(A) any transaction in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) Authority to order depository institutions to obtain reports from customers.—

(1) In general.—The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

(A) to request any financial institution or nonfinancial trade or business (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution or nonfinancial trade or business under this subtitle with respect to any prior transaction (between such financial institution or nonfinancial trade or business and any other person) which involved any portion of the coins or currency (or monetary instruments) which are involved in the reportable transaction with the depository institution; and

(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle with respect to the reportable transaction) a written notice to the Secretary that the financial institution or nonfinancial trade or business failed to provide any copy of such report.

(2) Reportable transaction defined.—For purposes of this subsection, the term “reportable transaction” means any transaction involving coins or currency (or such other monetary instruments as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(c) Nondisclosure of orders.—No financial institution or nonfinancial trade or business or officer, director, employee or agent of a financial institution or nonfinancial trade or business subject to an order under this section may disclose the

existence of, or terms of, the order to any person except as prescribed by the Secretary.

(d) Maximum effective period for order.—No order issued under subsection (a) shall be effective for more than 180 days unless renewed pursuant to the requirements of subsection (a).

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, §§ 353(d), 365(c)(2)(B), Oct. 26, 2001, 115 Stat. 272, 323, 335.

31 U.S.C. § 5330. Registration of money transmitting businesses.

(a) Registration with Secretary of the Treasury required.—

(1) In general.—Any person who owns or controls a money transmitting business shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury not later than the end of the 180-day period beginning on the later of—

(A) the date of enactment of the Money Laundering Suppression Act of 1994; or

(B) the date on which the business is established.

(2) Form and manner of registration.—Subject to the requirements of subsection (b), the Secretary of the Treasury shall prescribe, by regulation, the form and manner for registering a money transmitting business pursuant to paragraph (1).

(3) Businesses remain subject to State law.—This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

(4) False and incomplete information.—The filing of false or materially incomplete information in connection with the registration of a money transmitting business shall be considered as a failure to comply with the requirements of this subchapter.

(b) Contents of registration.—The registration of a money transmitting business under subsection (a) shall include the following information:

- (1) The name and location of the business.
- (2) The name and address of each person who—
 - (A) owns or controls the business;
 - (B) is a director or officer of the business; or
 - (C) otherwise participates in the conduct of the affairs of the business.
- (3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act).
- (4) An estimate of the volume of business in the coming year (which shall be reported annually to the Secretary).
- (5) Such other information as the Secretary of the Treasury may require.

(c) Agents of money transmitting businesses.—

(1) Maintenance of lists of agents of money transmitting businesses.— Pursuant to regulations which the Secretary of the Treasury shall prescribe, each money transmitting business shall—

(A) maintain a list containing the names and addresses of all persons authorized to act as an agent for such business in connection with activities described in subsection (d)(1)(A) and such other information about such agents as the Secretary may require; and

(B) make the list and other information available on request to any appropriate law enforcement agency.

(2) Treatment of agent as money transmitting business.—The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of this section.

(d) Definitions.—For purposes of this section, the following definitions shall apply:

(1) Money transmitting business.—The term “money transmitting business” means any business other than the United States Postal Service which—

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers’ checks, and other similar instruments or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;; [sic]

(B) is required to file reports under section 5313; and

(C) is not a depository institution (as defined in section 5313(g)).

(2) Money transmitting service.—The term “money transmitting service” includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

(e) Civil penalty for failure to comply with registration requirements.—

(1) In general.—Any person who fails to comply with any requirement of this section or any regulation prescribed under this section shall be liable to the United States for a civil penalty of \$5,000 for each such violation.

(2) Continuing violation.—Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

(3) Assessments.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in

section 5321 and any such assessment shall be subject to the provisions of such section.

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, § 359(b), Oct. 26, 2001, 115 Stat. 272, 323, 334, 335.

31 U.S.C. § 5331. Reports relating to coins and currency received in nonfinancial trade or business.

(a) Coin and currency receipts of more than \$10,000.—Any person—

(1) who is engaged in a trade or business; and

(2) who, in the course of such trade or business, receives more than \$10,000 in coins or currency in 1 transaction (or 2 or more related transactions),

shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

(b) Form and manner of reports.—A report is described in this subsection if such report—

(1) is in such form as the Secretary may prescribe;

(2) contains—

(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

(B) the amount of coins or currency received;

(C) the date and nature of the transaction; and

(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

(c) Exceptions.—

(1) Amounts received by financial institutions.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) Transactions occurring outside the United States.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Currency includes foreign currency and certain monetary instruments.—

(1) In general.—For purposes of this section, the term “currency” includes—

(A) foreign currency; and

(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

(2) Scope of application.—Paragraph (1)(B) shall not apply to 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 section 5312(a)(2).

Amended: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, Title III, § 365(a), Oct. 26, 2001, 115 Stat. 272, 333.

31 U.S.C. § 5332. Bulk cash smuggling into or out of the United States.

(a) Criminal offense.—

(1) In general.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or

monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

(2) **Concealment on person.**—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

(b) **Penalty.**—

(1) **Term of imprisonment.**—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

(2) **Forfeiture.**—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property.

(3) **Procedure.**—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) **Personal money judgment.**—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

(c) **Civil forfeiture.**—

(1) **In general.**—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such violation or conspiracy, may be seized and forfeited to the United States.

(2) **Procedure.**—The seizure and forfeiture shall be governed by the procedures governing civil

forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(3) **Treatment of certain property as involved in the offense.**—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.

31 U.S.C. § 5332. Note.

[The following “findings” and “purposes” are part of section 371 of Pub. L. 107-56, but are not codified to any section of the United States Code.]

(a) **FINDINGS.**— Congress finds that—

(1) Effective enforcement of the currency reporting requirements of subchapter II of chapter 53 of title 31, United States Code [commonly referred to as the Bank Secrecy Act], and the regulations prescribed under such subchapter, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions.

(2) In their effort to avoid using traditional financial institutions, drug dealers and other criminals are forced to move large quantities of currency in bulk form to and through the airports, border crossings, and other ports of entry where the currency can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market.

(3) The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

(4) The intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of subchapter II of chapter 53 of title 31, United States Code [31 U.S.C.A. § 5311 et seq.], [sic] is the equivalent of, and creates the same harm as, the smuggling of goods.

(5) The arrest and prosecution of bulk cash smugglers are important parts of law enforcement's effort to stop the laundering of criminal proceeds, but the couriers who attempt to smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and thus are easily replaced. Accordingly, only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of the bulk cash is a critical part.

(6) The current penalties for violations of the currency reporting requirements are insufficient to provide a deterrent to the laundering of criminal proceeds. In particular, in cases where the only criminal violation under current law is a reporting offense, the law does not adequately provide for the confiscation of smuggled currency. In contrast, if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

(b) **PURPOSES-** The purposes of this section are—

- (1) to make the act of smuggling bulk cash itself a criminal offense;
- (2) to authorize forfeiture of any cash or instruments of the smuggling offense;
- (3) to emphasize the seriousness of the act of bulk cash smuggling.

Amended: International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004, Pub. L. 108-458, Title VI, Subtitle C, § 6203, Dec. 17, 2004, 118 Stat. 3638, 3747.



31 C.F.R. Part 103

Financial Recordkeeping and Reporting of Currency and Foreign Transactions

Subpart A: Definitions

§ 103.11. Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) **Accept.** A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) **At one time.** For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of section 103.23, on one or more days.

(c) **Bank.** Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. §§ 611-32).

(d) **Beneficiary.** The person to be paid by the beneficiary's bank.

(e) **Beneficiary's bank.** The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(f) **Broker or dealer in securities.** A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(g) **Common carrier.** Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so

indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(h) **Currency.** The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(i) [Reserved]

(j) **Deposit account.** Deposit accounts include transaction accounts described in paragraph (hh) of this section, savings accounts, and other time deposits.

(k) **Domestic.** When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(l) **Established customer.** A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(m) **Execution date.** The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(n) **Financial Institution.** Each agent, agency, branch, or office within the United States of any

person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A money services business as defined in paragraph (uu) of this section;

(4) A telegraph company;

(5)(i) **Casino.** A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (n)(5), "gross annual gaming revenue" means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this part solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.

(iii) Any reference in this part, other than in this paragraph (n)(5) and in paragraph (n)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) **Card club.** A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as

such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of \$1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term “casino,” as used in this Part shall include a reference to “card club” to the extent provided in paragraph (n)(5)(iii) of this section.

(ii) For purposes of this paragraph (n)(6), gross annual gaming revenue means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment’s previous business year or its current business year. A card club that is a financial institution for purposes of this Part solely because its gross annual revenue exceeds \$1,000,000 during its current business year, shall not be considered a financial institution for purposes of this Part prior to the time in its current business year when its gross annual revenue exceeds \$1,000,000;

(7) A person subject to supervision by any state or federal bank supervisory authority.

(8) A futures commission merchant;

(9) An introducing broker in commodities.

(o) Foreign bank. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(p) Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States

Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(q) Funds transfer. The series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator’s bank or an intermediary bank intended to carry out the originator’s payment order. A funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub.L. 95-630, 92 Stat. 3728, 15 U.S.C. § 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(r) Intermediary bank. A receiving bank other than the originator’s bank or the beneficiary’s bank.

(s) Intermediary financial institution. A receiving financial institution, other than the transmitter’s financial institution or the recipient’s financial institution. The term intermediary financial institution includes an intermediary bank.

(t) Investment security. An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(u) Monetary instruments.

(1) Monetary instruments include:

(i) Currency;

- (ii) Traveler's checks in any form;
 - (iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of § 103.23), or otherwise in such form that title thereto passes upon delivery;
 - (iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and
 - (v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.
- (2) Monetary instruments do not include warehouse receipts or bills of lading.
- (v) Originator. The sender of the first payment order in a funds transfer.
 - (w) Originator's bank. The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.
 - (x) Payment date. The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.
 - (y) Payment order. An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:
 - (1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

- (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

- (3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

- (z) Person. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

- (aa) Receiving bank. The bank or foreign bank to which the sender's instruction is addressed.

- (bb) Receiving financial institution. The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

- (cc) Recipient. The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

- (dd) Recipient's financial institution. The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

- (ee) Secretary. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

- (ff) Sender. The person giving the instruction to the receiving financial institution.

- (gg) Structure (structuring). For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any

amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this Part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(hh) Transaction account. Transaction accounts include those accounts described in 12 U.S.C. § 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ii) Transaction.

(1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of § 103.22, and other provisions of this part relating solely to the report required by that section, the term "transaction in currency" shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(jj) Transmittal of funds. A series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmitter's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub.L. 95-630, 92 Stat. 3728, 15 U.S.C. § 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(kk) Transmittal order. The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(ll) Transmitter. The sender of the first transmittal order in a transmittal of funds. The term transmitter includes an originator, except where the transmitter's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(mm) Transmitter's financial institution. The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial agency, or the transmitter if the transmitter is a financial institution or foreign financial agency.

The term transmitter's financial institution includes an originator's bank, except where the originator is a transmitter's financial institution other than a bank or foreign bank.

(nn) United States. The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(oo) Business day. Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

(pp) Postal Service. The United States Postal Service.

(qq) FinCEN. FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

(rr) Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-68.

(ss) State. The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.

(tt) Territories and Insular Possessions. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(uu) Money services business. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term "money services business" shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) Currency dealer or exchanger. A currency dealer or exchanger (other than a person who does

not exchange currency in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) Check casher. A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) Issuer of traveler's checks, money orders, or stored value. An issuer of traveler's checks, money orders, or stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) Seller or redeemer of traveler's checks, money orders, or stored value. A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than \$1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) Money transmitter—

(i) In general. Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) Facts and circumstances; Limitation. Whether a person "engages as a business" in the activities described in paragraph (uu)(5)(i) of

this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) United States Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) Stored value. Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(ww) Security. Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

(xx) Commodity. Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1a(4).

(yy) Contract of sale. Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. § 1a(7).

(zz) Futures commission merchant. Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission ("CFTC") under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. § 6f(a)(2).

(aaa) Introducing broker-commodities. Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. § 6f(a)(2).

(bbb) Option on a commodity. Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. § 1a(26).

[69 Fed. Reg. 4236, at 4237, Jan. 29, 2004]

§ 103.15. Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

[65 Fed. Reg. 13692, Mar. 14, 2000]

§ 103.18. Reports by banks of suspicious transactions.

(a) General.

(1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least \$5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) The transaction is designed to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, 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; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) When to file. A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) Exceptions. A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR § 240.17f-1.

(d) Retention of records. A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank

shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies or bank supervisory agencies upon request.

(e) Confidentiality of reports; limitation of liability. No bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except where such disclosure is requested by FinCEN or an appropriate law enforcement or bank supervisory agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (e) and 31 U.S.C. § 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A bank, and any director, officer, employee, or agent of such bank, that makes a report pursuant to this section (whether such report is required by this section or is made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of such report, or both, to the full extent provided by 31 U.S.C. § 5318(g)(3).

(f) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may be a violation of the reporting rules of the Bank Secrecy Act and of this part. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

[65 Fed. Reg. 13692, Mar. 14, 2000]

§ 103.20. Reports by money services businesses of suspicious transactions.

(a) General.

(1) Every money services business, described in § 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any

suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least \$2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5330; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(iv) Involves use of the money services business to facilitate criminal activity.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or

traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least \$5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB ("SAR-MSB"), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) Where to file. The SAR-MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR-MSB.

(3) When to file. A money services business subject to this section is required to file each SAR-MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR-MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money

services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR-MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-MSB if required by this section.

(c) Retention of records. A money services business shall maintain a copy of any SAR-MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR-MSB. A money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) Confidentiality of reports; limitation of liability. No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR-MSB or the information contained in a SAR-MSB, except where such disclosure is requested by FinCEN or an appropriate law enforcement or supervisory agency, shall decline to produce the SAR-MSB or to provide any information that would disclose that a SAR-MSB has been prepared or filed, citing this paragraph (d) and 31 U.S.C. § 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. § 5318(g)(3).

(e) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegates under the terms of

the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) Effective date. This section applies to transactions occurring after December 31, 2001.

[68 Fed. Reg. 6613, at 6617, Feb. 10, 2003]

§ 103.21 Reports by casinos of suspicious transactions.

(a) General.

(1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least \$5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91-508, as amended, codified at 12 U.S.C. § 1829b,

12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) Filing procedures—

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (“SARC”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) Where to file. The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) When to file. A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN’s Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SARC if required by this section.

(c) Exceptions. A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) Retention of records. A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(e) Confidentiality of reports; limitation of liability. No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. § 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. § 5318(g)(3).

(f) Compliance. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) Effective date. This section applies to transactions occurring after March 25, 2003.

[67 Fed. Reg. 60729, Sept. 26, 2002]

§ 103.22. Reports of transactions in currency.

(a) General. This section sets forth the rules for the reporting by financial institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b) of this section. The reporting rules relating to aggregation are stated in paragraph (c) of this section. Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d) of this section.

(b) Filing obligations—

(1) Financial institutions other than casinos. Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in this section. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) Casinos. Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

- (A) Purchases of chips, tokens, and plaques;
- (B) Front money deposits;
- (C) Safekeeping deposits;
- (D) Payments on any form of credit, including markers and counter checks;
- (E) Bets of currency;
- (F) Currency received by a casino for transmittal of funds through wire transfer for a customer;
- (G) Purchases of a casino's check; and
- (H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

- (A) Redemptions of chips, tokens, and plaques;
- (B) Front money withdrawals;
- (C) Safekeeping withdrawals;
- (D) Advances on any form of credit, including markers and counter checks;
- (E) Payments on bets, including slot jackpots;
- (F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;
- (G) Cashing of checks or other negotiable instruments;
- (H) Exchanges of currency for currency, including foreign currency; and
- (I) Reimbursements for customers' travel and entertainment expenses by the casino.

(c) Aggregation—

(1) Multiple branches. A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of this section's reporting requirements.

(2) Multiple transactions—general. In the case of financial institutions other than casinos, for purposes of this section, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day (or in the case of the Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(3) Multiple transactions—casinos. In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has

knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) Transactions of exempt persons—

(1) General. No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(6)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in paragraph (d)(7) of this section.)

(2) Exempt person. For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any State, or of any political subdivision of any State;

(iii) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate "Nasdaq Small-Cap Issues" heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a bank, of any entity described in paragraph (d)(2)(iv) of this section (a "listed entity") that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this paragraph (d), a "non-listed business"), other than an enterprise specified in paragraph (d)(6)(viii) of this section, that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

(B) Frequently engages in transactions in currency with the bank in excess of \$10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(vii) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this paragraph (d), a "payroll customer") that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

(B) Operates a firm that regularly withdraws more than \$10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(3) Initial designation of exempt persons—

(i) General. A bank must designate each exempt person with which it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this paragraph (d). Except as provided in paragraph (d)(3)(ii) of this section, designation by a bank of an exempt person shall be made by a single filing of Treasury Form TD F 90-22.53. (A bank is not required to file a Treasury Form TD F 90-22.53 with respect to the transfer of currency to or from any of the twelve Federal Reserve Banks.) The designation must be made separately by each bank that treats the person in question as an exempt person, except as provided in paragraph (d)(6)(vi) of this section. The designation requirements of this paragraph (d)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of prior § 103.22(a) under the rules contained in 31 CFR § 103.22(a) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998). A special transitional rule, which extends the time for initial designation for customers that have been previously treated as exempt under such prior rules, is contained in paragraph (d)(11) of this section.

(ii) Special rules for banks. When designating another bank as an exempt person, a bank must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a

current list of its domestic bank customers. In the event that a bank files its current list of domestic bank customers, the bank must make the filing as described in paragraph (d)(3)(i) of this section for each bank that is a new customer and for which an exemption is sought under this paragraph (d).

(4) Annual review. The information supporting each designation of an exempt person, and the application to each account of an exempt person described in paragraphs (d)(2)(vi) or (d)(2)(vii) of this section of the monitoring system required to be maintained by paragraph (d)(9)(ii) of this section, must be reviewed and verified at least once each year.

(5) Biennial filing with respect to certain exempt persons—

(i) General. A biennial filing, as described in paragraph (d)(5)(ii) of this section, is required for continuation of the treatment as an exempt person of a customer described in paragraph (d)(2)(vi) or (vii) of this section. No biennial filing is required for continuation of the treatment as an exempt person of a customer described in paragraphs (d)(2)(i) through (v) of this section.

(ii) Non-listed businesses and payroll customers. The designation of a non-listed business or a payroll customer as an exempt person must be renewed biennially, beginning on March 15 of the second calendar year following the year in which the first designation of such customer as an exempt person is made, and every other March 15 thereafter, on Treasury Form TD F 90-22.53. Biennial renewals must include a statement certifying that the bank's system of monitoring the transactions in currency of an exempt person for suspicious activity, required to be maintained by paragraph (d)(9)(ii) of this section, has been applied as necessary, but at least annually, to the account of the exempt person to whom the biennial renewal applies. Biennial renewals also must include information about any change in control of the exempt person involved of which the bank knows (or should know on the basis of its records).

(6) Operating rules—

(i) General rule. Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (d)(2) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (d)(9)(ii) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (d)(9)(ii) of this section.

(ii) Governmental departments and agencies. A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) Stock exchange listings. In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission "Edgar" System, or on any information contained on an Internet World-

Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) Listed company subsidiaries. In determining whether a person is described in paragraph (d)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(v) Aggregated accounts. In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(vi) Affiliated banks. The designation required by paragraph (d)(3) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(vii) Sole proprietorships. A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable.

(viii) Ineligible businesses. A business engaged primarily in one or more of the

following activities may not be treated as a non-listed business for purposes of this paragraph (d): serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues is derived from one or more of the ineligible business activities listed in this paragraph (d)(6)(viii).

(ix) Exemptible accounts of a non-listed business or payroll customer. The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this paragraph (d), is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. § 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this paragraph (d), is any interest-bearing account that is described as a money market deposit account in 12 CFR § 204.2(d)(2).

(x) Documentation. The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of § 103.38.

(7) Limitation on exemption. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency

is not subject to the exemption from reporting contained in paragraph (d)(1) of this section.

(8) Limitation on liability.

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

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

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

(ii) Subject to the specific terms of this paragraph (d), and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this paragraph (d) to the extent it continues to treat that customer as an exempt person until the date of that customer's next periodic review, which, as required by paragraph (d)(4) of this section, shall occur no less than once each year.

(iii) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(9) Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.

(i) Nothing in this paragraph (d) relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 103.21 with respect to any transaction,

including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 103.21(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transaction trends or patterns, may trigger the obligations of a bank under § 103.21.

(ii) Consistent with its annual review obligations under paragraph (d)(4) of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (d)(9)(i) of this section and § 103.21 with respect to all exempt persons.

(10) Revocation. The status of any person as an exempt person under this paragraph (d) may be revoked by FinCEN by written notice, which may be provided by publication in the Federal Register in appropriate situations, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(8)(ii) of this section:

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

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(11) Transitional rule.

(i) No accounts may be newly granted an exemption or placed on an exempt list on or after October 21, 1998, under the rules contained in 31 CFR § 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998).

(ii) If a bank properly treated an account (a “previously exempted account”) as exempt on October 20, 1998 under the rules contained in 31 CFR § 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998), it may continue to treat such account as exempt under such prior rules with respect to transactions in currency occurring on or before June 30, 2000, provided that it does so consistently until the earlier of June 30, 2000, and the date on which the bank makes the designation or the determination described in paragraph (d)(11)(iii) of this section. A bank that continues to treat a previously exempted account as exempt under the prior rules, and for the period, specified in the preceding sentence, shall remain subject to such prior rules, and to the penalties for failing to comply therewith, with respect to transactions in currency occurring during such period.

(iii) A bank must, on or before July 1, 2000, either designate the holder of a previously exempted account as an exempt person under paragraph (d)(2) of this section or determine that it may not or will not treat such holder as an exempt person under paragraph (d)(2) of this section (so that it will be required to make reports under paragraph (a) of this section with respect to transactions in currency by such person occurring on or after the date of determination, but no later than July 1, 2000). A bank that initially does not designate the holder of a previously exempted account as an exempt person for periods beginning after June 30, 2000, may later make such a designation, to the extent otherwise permitted to do so by this paragraph (d), for periods after the effective date of such designation.

[65 Fed. Reg. 46360, July 28, 2000]

§ 103.23. Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other

monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated,

(9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

[54 Fed. Reg. 28418, July 6, 1989]

§ 103.24. Reports of foreign financial accounts.

(a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

[52 Fed. Reg. 12641, Apr. 17, 1987]

§ 103.28. Identification required.

Before concluding any transaction with respect to which a report is required under § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (e.g., a drivers license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each

instance, the specific identifying information (i.e., the account number of the credit card, the driver's license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature card on file" on the report is prohibited.

[59 Fed. Reg. 61662, Dec. 1, 1994]

§ 103.29. Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000-\$10,000 inclusive:

- (1) If the purchaser has a deposit account with the financial institution:
 - (i)(A) The name of the purchaser;
 - (B) The date of purchase;
 - (C) The type(s) of instrument(s) purchased;
 - (D) The serial number(s) of each of the instrument(s) purchased; and
 - (E) The amount in dollars of each of the instrument(s) purchased.
- (ii) In addition, the financial institution must verify that the individual is a deposit account holder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit account holder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally

acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

(C) The date of birth of the purchaser;

(D) The date of purchase;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of the instrument(s) purchased; and

(G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (e.g., State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more

shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

[59 Fed. Reg. 52250, at 52252, Oct. 17, 1994]

§ 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 § 1.6050I-1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR § 1.6050I-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.

[66 Fed. Reg. 67681, Dec. 31, 2001]

§ 103.33. Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later cancelled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside the United States.

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the

transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 103.26(a), not to exceed five years.

(e) Banks. Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (e) with respect to a funds transfer in the amount of \$3,000 or more:

(1) Recordkeeping requirements.

(i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order:¹

(1) The name and address of the beneficiary;

(2) The account number of the beneficiary; and

(3) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) Originators other than established customers. In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator,

the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) Beneficiaries other than established customers. For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) if the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) if the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) Retrievability. The information that an originator's bank must retain under paragraphs

(e)(1)(i) and (e)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) Verification. Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) Exceptions. The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

- (A) A bank;
- (B) A wholly-owned domestic subsidiary of a bank chartered in the United States;
- (C) A broker or dealer in securities;
- (D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(f) Nonbank financial institutions. Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of \$3,000 or more:

(1) Recordkeeping requirements.

(i) For each transmittal order that it accepts as a transmitter's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmitter;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmitter with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order:²

(1) The name and address of the recipient;

(2) The account number of the recipient; and

(3) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) Transmitters other than established customers. In the case of a transmittal order from a transmitter that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmitter's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmitter's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record the lack thereof. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number

(e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(ii) If the transmittal order accepted by the transmitter's financial institution is not made in person, the transmitter's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (e.g., check or credit card transaction) for the transmittal of funds. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(3) Recipients other than established customers. For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (e.g., driver's license), as well as a record of the person's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the

recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) **Retrievability.** The information that a transmitter's financial institution must retain under paragraphs (f)(1)(i) and (f)(2) of this section shall be retrievable by the transmitter's financial institution by reference to the name of the transmitter. If the transmitter is an established customer of the transmitter's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (f)(1)(iii) and (f)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) **Verification.** Where verification is required under paragraphs (f)(2) and (f)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a

means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (e.g., a foreign driver's license with indication of home address).

(6) **Exceptions.** The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmitter and the recipient are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmitter and the recipient are the same person and the transmitter's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(g) Any transmitter's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (g):

(1) A transmitter's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:³

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:⁴

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(3) Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format. The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) Transmitter's financial institution. A transmitter's financial institution will be deemed to be in compliance with the provisions of paragraph (g)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(1)(iii) through (v), and the information specified in paragraph (g)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (g)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or financial

regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) Intermediary financial institution. An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (g)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(2)(iii) through (g)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (g)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) Obligation of requesting financial institution. Any information requested under paragraph (g)(3)(i)(B) or (g)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) Exceptions. The requirements of this paragraph (g) shall not apply to transmittals of funds that are listed in paragraph (e)(6) or (f)(6) of this section.

(Approved by the Office of Management and Budget under control number 1505-0063)

Footnotes

¹ For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

² For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

³ For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

⁴ For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

[68 Fed. Reg. 65392, at 65399, Nov. 20, 2003]

§ 103.41. Registration of money services businesses.

(a) Registration requirement—

(1) In general. Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. § 5330 and this section. This section does not apply to the United States Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) Agents. A person that is a money services business solely because that person serves as an agent of another money services business, see

§ 103.11(uu), is not required to register under this section, but a money services business that engages in activities described in § 103.11(uu) both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) Agency status. The determination whether a person is an agent depends on all the facts and circumstances.

(b) Registration procedures—

(1) In general.

(i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. § 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 103.38(d).

(2) Registration period. A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) Due date. The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) Events requiring re-registration. If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) Persons required to file the registration form. Under 31 U.S.C. § 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or

controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. § 5330 or this section.

(d) List of agents—

(1) In general. A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 103.38(d).

(2) Information included on the list of agents—

(i) In general. Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded \$100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 103.11(uu);

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. § 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) Special rules. Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to any person that is an agent of the money services business maintaining the list before the first day

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|-----------------|---|--|------------------------|
| 18 | 1116 | Homicide (murder or manslaughter of foreign officials, official guests, or internationally protected persons) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 18 | 1201 | Kidnaping | 1956(c)(7)(D) | 10/27/86 |
| 18 | 1203 | Kidnaping (hostage taking) | 1956(c)(7)(D) 1961(1)(G) | 10/27/86 10/26/01 |
| 18 | 1341 | Mail fraud involving a health care offense (frauds and swindles) | 1961(1)(B) 1956(c)(7)(F) | 10/27/86 8/21/96 |
| 18 | 1343 | Wire Fraud involving a health care offense (fraud by wire, radio, or television) | 1961(1)(B) 1956(c)(7)(F) | 10/27/86 8/21/96 |
| 18 | 1344 | Bank fraud (defrauding a federally chartered or insured financial institution) | 1961(1)(B) | 8/9/89 |
| 18 | 1347 | Health care fraud | 1956(c)(7)(F) | 8/21/96 |
| 18 | 1361 | Malicious mischief (willful injury of Government property) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 12/17/04 |
| 18 | 1362 | Malicious mischief (destruction of communication lines, stations, or systems) | 1961(1)(G) | 10/26/01 |
| 18 | 1363 | Malicious mischief (damage or destruction of buildings or property within special maritime and territorial jurisdiction) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 18 | 1366(a) | Malicious mischief (destruction of an energy facility) | 1961(1)(G) | 10/26/01 |
| 18 | 1425 | Nationality and citizenship (procurement of citizenship or naturalization unlawfully) | 1961(1)(B) | 9/30/96 |
| 18 | 1426 | Nationality and citizenship (reproduction of naturalization or citizenship papers) | 1961(1)(B) | 9/30/96 |
| 18 | 1427 | Nationality and citizenship (sale of naturalization or citizenship papers) | 1961(1)(B) | 9/30/96 |
| 18 | 1461 | Obscenity (mailing obscene or crime-inciting matter) | 1961(1)(B) | 10/27/86 |
| 18 | 1462 | Obscenity (importation or transportation of obscene matters) | 1961(1)(B) | 10/27/86 |

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|-----------------|--|--|------------------------|
| 18 | 1463 | Obscenity (mailing indecent matter on wrappers or envelopes) | 1961(1)(B) | 10/27/86 |
| 18 | 1464 | Obscenity (broadcasting obscene language) | 1961(1)(B) | 10/27/86 |
| 18 | 1465 | Obscenity (transportation of obscene matters for sale or distribution) | 1961(1)(B) | 10/27/86 |
| 18 | 1503 | Obstruction of justice (influencing or injuring officer or juror generally) | 1961(1)(B) | 10/27/86 |
| 18 | 1510 | Obstruction of justice (obstruction of criminal investigations) | 1961(1)(B) | 10/27/86 |
| 18 | 1511 | Obstruction of justice (obstruction of state or local law enforcement) | 1961(1)(B) | 10/27/86 |
| 18 | 1512 | Obstruction of justice (tampering with a witness, victim, or informant) | 1961(1)(B) | 11/10/86 |
| 18 | 1513 | Obstruction of justice (retaliating against a witness, victim, or informant) | 1961(1)(B) | 11/10/86 |
| 18 | 1518 | Obstruction of health care criminal investigation regarding health care offenses | 1956(c)(7)(F) | 8/21/96 |
| 18 | 1542 | Passports and visas (false statement in application and use of passport) | 1961(1)(B) | 4/24/96 |
| 18 | 1543 | Passports and visas (forgery or false use of passport) | 1961(1)(B) | 4/24/96 |
| 18 | 1544 | Passports and visas (misuse of passport) | 1961(1)(B) | 4/24/96 |
| 18 | 1546 | Passports and visas (fraud and misuse of visas, permits, and other documents) | 1961(1)(B) | 4/24/96 |
| 18 | 1581 | Peonage and slavery (peonage; obstructing enforcement) | 1961(1)(B) | 4/24/96 |
| 18 | 1582 | Peonage and slavery (vessels for slave trade) | 1961(1)(B) | 4/24/96 |
| 18 | 1583 | Peonage and slavery (enticement into slavery) | 1961(1)(B) | 4/24/96 |

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|-----------------|--|--|------------------------|
| 18 | 2281 | Shipping (violence against maritime fixed platforms) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 18 | 2312 | Stolen property (interstate transportation of stolen motor vehicles) | 1961(1)(B) | 10/27/86 |
| 18 | 2313 | Stolen property (sale or receipt of stolen motor vehicles) | 1961(1)(B) | 10/27/86 |
| 18 | 2314 | Stolen property (interstate transportation of stolen property) | 1961(1)(B) | 10/27/86 |
| 18 | 2315 | Stolen property (sale, receipt, or possession of stolen property moved interstate) | 1961(1)(B) | 10/27/86 |
| 18 | 2318 | Stolen property (trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging) | 1961(1)(B) | 7/2/96 |
| 18 | 2319 | Stolen property (criminal infringement of a copyright) | 1956(c)(7)(D) 1961(1)(B) | 11/18/88 7/2/96 |
| 18 | 2319A | Stolen property (unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances) | 1961(1)(B) | 7/2/96 |
| 18 | 2320 | Stolen property (trafficking in counterfeit goods or services) | 1956(c)(7)(D) 1961(1)(B) | 9/13/94 7/2/96 |
| 18 | 2321 | Stolen property (trafficking in certain motor vehicles or motor vehicle parts) | 1961(1)(B) | 10/27/86 |
| 18 | 2332 | Terrorism (terrorist acts abroad against U.S. Nationals) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 18 | 2332a | Terrorism (use of weapons of mass destruction) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 18 | 2332b | Terrorism (international terrorist acts transcending national boundaries) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|-----------------|--|--|------------------------|
| 18 | 2332f | Terrorism (bombing of public places and facilities) | 1961(1)(G) | 6/25/02 |
| 18 | 2332g | Terrorism (missile systems designed to destroy aircraft) | 1956(c)(7)(D) 1961(1)(G) | 12/17/04 |
| 18 | 2332h | Terrorism (radiological dispersal devices) | 1956(c)(7)(D) 1961(1)(G) | 12/17/04 |
| 18 | 2339 | Terrorism (harboring terrorists) | 1961(1)(G) | 10/26/01 |
| 18 | 2339A 2339B | Terrorism (providing material support to terrorists or terrorist organizations) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 18 | 2339C | Terrorism (financing of terrorism) | 1961(1)(G) | 6/25/02 |
| 18 | 2340A | Torture | 1961(1)(G) | 10/26/01 |
| 18 | 2342 | Trafficking in contraband cigarettes (unlawful acts) | 1961(1)(B) | 10/27/86 |
| 18 | 2343 | Trafficking in contraband cigarettes (recordkeeping and inspection) | 1961(1)(B) | 10/27/86 |
| 18 | 2344 | Trafficking in contraband cigarettes (penalties) | 1961(1)(B) | 10/27/86 |
| 18 | 2345 | Trafficking in contraband cigarettes (effect on state law) | 1961(1)(B) | 10/27/86 |
| 18 | 2346 | Trafficking in contraband cigarettes (enforcement and regulations) | 1961(1)(B) | 10/27/86 |
| 18 | 2421 | Transportation for illegal sexual activity (transportation of an individual interstate to engage in criminal sexual activity) | 1961(1)(B) | 10/27/86 |
| 18 | 2422 | Transportation for illegal sexual activity (coercion and enticement to travel interstate to engage in criminal sexual activity) | 1961(1)(B) | 10/27/86 |
| 18 | 2423 | Transportation for illegal sexual activity (transportation of minors interstate to engage in criminal sexual activity) | 1961(1)(B) | 10/27/86 |
| 18 | 2424 | Transportation for illegal sexual activity (filing factual statement about alien individuals) | 1961(1)(B) | 10/27/86 |
| 19 | 1590 | Tariff Act of 1930 (aviation smuggling) | 1956(c)(7)(D) | 11/18/88 |

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|-----------------|---|--|------------------------|
| 21 | 841 | Drug abuse prevention and control (felony violations of certain prohibited acts) | 1961(1)(D) 1956(c)(7)(D) | 10/27/86 11/29/90 |
| 21 | 842 | Drug abuse prevention and control (subsequent violations of subparagraph (A) after one or more prior convictions of a drug-related offense) | 1961(1)(D) 1956(c)(7)(D) | 10/27/86 11/29/90 |
| 21 | 843 | Drug abuse prevention and control (felony violations of certain other prohibited acts) | 1961(1)(D) 1956(c)(7)(D) | 10/27/86 11/29/90 |
| 21 | 844 | Drug abuse prevention and control (penalties for simple possession after one or more prior convictions for any drug or narcotic offense) | 1961(1)(D) | 10/27/86 |
| 21 | 846 | Drug abuse prevention and control (attempt and conspiracy to commit any felonious offense defined in subchapter I) | 1961(1)(D) | 10/27/86 |
| 21 | 848 | Drug abuse prevention and control (continuing criminal enterprise) | 1956(c)(7)(C) 1961(1)(D) | 10/27/86 10/27/86 |
| 21 | 854 | Drug abuse prevention and control (investment of illicit drug profits obtained from a felonious violation of either subchapter I or II) | 1961(1)(D) | 10/27/86 |
| 21 | 856 | Drug abuse prevention and control (establishment of manufacturing operations) | 1961(1)(D) | 10/27/86 |
| 21 | 858 | Drug abuse prevention and control (endangering human life while illegally manufacturing a controlled substance) | 1961(1)(D) | 10/27/86 |
| 21 | 859 | Drug abuse prevention and control (felonious distribution to persons under 21 years of age) | 1961(1)(D) | 10/27/86 |
| 21 | 860 | Drug abuse prevention and control (felonious distribution or manufacturing in or near schools and colleges) | 1961(1)(D) | 10/27/86 |
| 21 | 861 | Drug abuse prevention and control (felonious employment of persons under 18 years of age) | 1961(1)(D) | 10/27/86 |
| 21 | 863 | Drug abuse prevention and control (transportation of drug paraphernalia) | 1961 (1)(D) 1956(c)(7)(D) | 10/27/86 11/18/88 |
| 21 | 952 | Drug abuse prevention and control (felonious importation of controlled substances) | 1961(1)(D) | 10/27/86 |

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|-----------------|--|--|------------------------|
| 21 | 953 | Drug abuse prevention and control (felonious exportation of controlled substances) | 1961(1)(D) | 10/27/86 |
| 21 | 955 | Drug abuse prevention and control (felonious possession on board vessels, etc., arriving in or departing from the United States) | 1961(1)(D) | 10/27/86 |
| 21 | 957 | Drug abuse prevention and control (felonious offenses by persons required to register) | 1961(1)(D) | 10/27/86 |
| 21 | 959 | Drug abuse prevention and control (felonious possession, manufacture, or distribution for purpose of unlawful importation) | 1961(1)(D) | 10/27/86 |
| 21 | 960 | Drug abuse prevention and control (certain unlawful acts and penalties defined) | 1961(1)(D) 1956(c)(7)(D) | 10/27/86 11/29/90 |
| 21 | 962 | Drug abuse prevention and control (second or subsequent offenses penalties defined) | 1961(1)(D) | 10/27/86 |
| 21 | 963 | Drug abuse prevention and control (attempt and conspiracy to commit any felonious offense defined in subchapter II) | 1961(1)(D) | 10/27/86 |
| 22 | 611 et seq. | Foreign Agents Registration Act of 1938 (felony violations of FARA of 1938) | 1956(c)(7)(D) | 10/26/01 |
| 22 | 2778(c) | Arms Export Control (criminal violations of Arms Export Control Act of 1979) | 1956(c)(7)(D) | 10/27/86 |
| 29 | 186 | Labor-management relations (restrictions on financial transactions) | 1961(1)(C) | 10/27/86 |
| 29 | 501(c) | Reporting and disclosure (fiduciary responsibility of officers of labor organizations embezzlement of assets) | 1961(1)(C) | 10/27/86 |
| 33 | 1251 et seq. | Federal Water Pollution Control Act (felony violations concerning the discharge of pollutants into the nation's waters) | 1956(c)(7)(E) | 11/29/90 |
| 33 | 1401 et seq. | Ocean Dumping Act (felony violations concerning the dumping of materials into ocean waters) | 1956(c)(7)(E) | 11/29/90 |

Specified Unlawful Activity Table

| Title: | Section: | Violations of federal law relating to: | Appearing in title 18, section: | Effective date: |
|---------------|----------------------|--|--|------------------------|
| 33 | 1901 et seq. | Act to Prevent Pollution From Ships (felony violations concerning the discharge of pollutants from ships) | 1956(c)(7)(E) | 11/29/90 |
| 42 | 1490s(a) | Housing Act of 1949 (equity skimming) | 1956(c)(7)(D) | 12/27/00 |
| 42 | 2122 | Atomic Energy Act of 1954 (prohibitions governing atomic weapons) | 1956(c)(7)(D) 1961(1)(G) | 12/17/04 |
| 42 | 2284 (sec. 236) | Atomic Energy Act of 1954 (sabotage of nuclear facilities or fuel) | 1961(1)(G) | 10/26/01 |
| 42 | 300f et seq. | Safe Drinking Water Act (felony violations concerning the safety of public water systems) | 1956(c)(7)(E) | 11/29/90 |
| 42 | 6901 et seq. | Resources Conservation and Recovery Act (felony violations concerning resource conservation and recovery) | 1956(c)(7)(E) | 11/29/90 |
| 49 | 46502 | Special aircraft jurisdiction of the United States (aircraft piracy) | 1956(c)(7)(D) 1961(1)(G) | 4/24/96 10/26/01 |
| 49 | 46504 (2nd sentence) | Special aircraft jurisdiction of the United States (assault on a flight crew with a dangerous weapon) | 1961(1)(G) | 10/26/01 |
| 49 | 46505(b)(3) or (c) | Special aircraft jurisdiction of the United States (explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft) | 1961(1)(G) | 10/26/01 |
| 49 | 46506 | Special aircraft jurisdiction of the United States (application of certain criminal laws to acts on aircraft if homicide or attempted homicide involved) | 1961(1)(G) | 10/26/01 |
| 49 | 60123(b) | Safety (destruction of interstate gas or hazardous liquid pipeline facility) | 1961(1)(G) | 10/26/01 |
| 50 | 1705 | Emergency Economic Powers (willful violations of the International Emergency Economic Powers Act) | 1956(c)(7)(D) | 10/27/86 |
| 50 | App. 16 | Trading with the Enemy Act (offenses and punishment) | 1956(c)(7)(D) | 10/27/86 |
| 50 | App. 2410 | Export regulation (knowingly violating the provisions of the Export Administration Act of 1979) | 1956(c)(7)(D) | 10/27/86 |

Specified Unlawful Activity Table

| Any act or threat (chargeable under state law and punishable by imprisonment for more than 1 year) involving: | Appearing in 18 U.S.C., section: | Effective date: |
|--|---|------------------------|
| Murder | 1961(1)(A) | 10/27/86 |
| Kidnaping | 1961(1)(A) | 10/27/86 |
| Gambling | 1961(1)(A) | 10/27/86 |
| Arson | 1961(1)(A) | 10/27/86 |
| Robbery | 1961(1)(A) | 10/27/86 |
| Bribery | 1961(1)(A) | 10/27/86 |
| Extortion | 1961(1)(A) | 10/27/86 |
| Dealing in obscene matter | 1961(1)(A) | 10/27/86 |
| Dealing in a controlled substance or listed chemical (as defined in 21 U.S.C. § 802) | 1961(1)(A) | 10/27/86 |

| An offense against a foreign nation (with respect to a financial transaction occurring in whole or in part in the United States) involving: | Appearing in 18 U.S.C., section: | Effective date: |
|---|---|------------------------|
| The manufacture, importation, sale, or distribution of a controlled substance | 1956(c)(7)(B)(i) | 10/27/86 |
| Murder | 1956(c)(7)(B)(ii) | 4/24/96 |
| Kidnaping | 1956(c)(7)(B)(ii) | 10/28/92 |
| Robbery | 1956(c)(7)(B)(ii) | 10/28/92 |
| Extortion | 1956(c)(7)(B)(ii) | 10/28/92 |
| Destruction of property by means of explosive or fire or a crime of violence | 1956(c)(7)(B)(ii) | 4/24/96 |
| Fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in 12 U.S.C. § 3101(7)) | 1956(c)(7)(B)(iii) | 10/28/92 |
| Bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official | 1956(c)(7)(B)(iv) | 10/26/01 |
| Smuggling or export control violations (involving an item controlled on the U.S. munitions list, section 38 of the Arms Export Control Act (22 U.S.C. § 2778) or an item controlled under the Export Administration Act of 1977 (15 C.F.R. §§ 730-774)) | 1956(c)(7)(B)(v) | 10/26/01 |
| U.S. obligation by a multilateral treaty to extradite or prosecute the offender (if offender located within territory of the United States) | 1956(c)(7)(B)(vi) | 10/26/01 |

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