Department of the Treasury, Financial Crimes Enforcement Network

Bank Secrecy Act Regulations

31 CFR chapter X; as amended effective February 20, 2024

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PARTS 1000–1009 [RESERVED]

PART 1010—GENERAL PROVISIONS

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* The Financial Crimes Enforcement Network (FinCEN) transferred its regulations from 31 CFR part 103 to 31 CFR chapter X effective March 1, 2011. FinCEN did not publish the appendixes in 31 CFR part 103 but made the material contained in the appendixes that is still required by the regulations available on its website. For interpretive guidance, *see* FinCEN's website: www.fincen.gov.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, section 314, Pub. L. 107–56, 115 Stat. 307; section 2006, Pub. L. 114–41, 129 Stat. 458–459; section 701, Pub. L. 114–74, 129 Stat. 599.

3–1700

SUBPART A—GENERAL DEFINITIONS

SECTION 1010.100—General Definitions

When used in this chapter and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart. Terms applicable to a particular type of financial institution or specific part or subpart of this chapter are located in that part or subpart. Terms may have different meanings in different parts or subparts.

(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 section 1010.340 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 1010.340, on one or more days.

(c) *Attorney General.* The Attorney General of the United States.

3–1700.1

(d) *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).

(e) *Bank Secrecy Act.* The Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311-5314 and 5316-5332 and notes thereto.

(f) *Beneficiary.* The person to be paid by the beneficiary's bank.

(g) *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.

* The Federal Reserve Act. This section was redesignated section 25A by act of Dec. 19, 1991 (105 Stat. 2281).

3–1700.11

(h) *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.

(i) *Business day.* As used in this chapter with respect to banks, business day means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

3–1700.2

(j) *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).

(k) *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.

(*l*) *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).

(m) *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.

(n) *Deposit account.* Deposit accounts include transaction accounts described in paragraph (ccc) of this section, savings accounts, and other time deposits.

(o) *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.

3–1700.21

(p) *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.

(q) *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.

(r) *Federal functional regulator.*

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Office of Thrift Supervision;

(5) The National Credit Union Administration;

(6) The Securities and Exchange Commission; or

(7) The Commodity Futures Trading Commission.

3–1700.3

(s) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, a bureau of the Department of the Treasury.

3–1700.31

(t) *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 (ff) 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 (t)(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 chapter 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 chapter prior to the time in its current business year that its gross annual gaming revenue exceeds $1,000,000.

(iii) Any reference in this chapter, other than in this paragraph (t)(5) and in paragraph (t)(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 chapter shall include a reference to ''card club'' to the extent provided in paragraph (t)(5)(iii) of this section.

(ii) For purposes of this paragraph (t)(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 chapter 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 chapter 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; or

(10) A mutual fund.

3–1700.4

(u) *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.

(v) *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.

(w) *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. Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), 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.

(x) *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).

(y) *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.

3–1700.41

(z) *Intermediary bank.* A receiving bank other than the originator's bank or the beneficiary's bank.

(aa) *Intermediary financial institution.* A receiving financial institution, other than the transmittor's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

(bb) *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).

(cc) *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.

3–1700.5

(dd) *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 section 1010.340), 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.

(ee) [Reserved]

3–1700.51

(ff) *Money services business.* A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) *Dealer in foreign exchange.* A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than $1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) *Check casher.*

(i) *In general.* A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at section 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than $1,000 for any person on any day in one or more transactions.

(ii) *Facts and circumstances; limitations.* Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term ''check casher'' shall not include:

(A) A person that sells prepaid access in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

(C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;

(D) A person that redeems its own checks; or

(E) A person that only holds a customer's check as collateral for repayment by the customer of a loan.

(3) *Issuer or seller of traveler's checks or money orders.* A person that

(i) Issues traveler's checks or money orders that are sold in an amount greater than $1,000 to any person on any day in one or more transactions; or

(ii) Sells traveler's checks or money orders in an amount greater than $1,000 to any person on any day in one or more transactions.

(4) *Provider of prepaid access.*

(i) *In general.* A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access.

(ii) *Considerations for provider determination.* In the absence of registration as the provider of prepaid access for a prepaid program by one of the participants in a prepaid access program, the provider of prepaid access is the person with principal oversight and control over the prepaid program. Which person exercises ''principal oversight and control'' is a matter of facts and circumstances. Activities that indicate ''principal oversight and control'' include:

(A) Organizing the prepaid program;

(B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded;

(C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;

(D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and

(E) Engaging in activity that demonstrates oversight and control of the prepaid program.

(iii) *Prepaid program.* A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is not a prepaid program if:

(A) It provides closed loop prepaid access to funds not to exceed $2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;

(B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency;

(C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or

(D)

(*1*) It provides prepaid access solely to:

(*i*) Employment benefits, incentives, wages or salaries; or

(*ii*) Funds not to exceed $1,000 maximum value and from which no more than $1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and

(*2*) It does not permit:

(*i*) Funds or value to be transmitted internationally;

(*ii*) Transfers between or among users of prepaid access within a prepaid program; or

(*iii*) Loading additional funds or the value of funds from non-depository sources.

(5) *Money transmitter.*

(i) *In general.*

(A) A person that provides money transmission services. The term ''money transmission services'' means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. ''Any means'' includes, but is not limited to, 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; an electronic funds transfer network; or an informal value transfer system; or

(B) Any other person engaged in the transfer of funds.

(ii) *Facts and circumstances; limitations.* Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term ''money transmitter'' shall not include a person that only:

(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;

(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (''SEC''), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or

to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides prepaid access; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

(6) *U.S. Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(7) *Seller of prepaid access.* Any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person:

(i) Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under section 1022.210(d)(1)(iv); or

(ii) Sells prepaid access (including closed loop prepaid access) to funds that exceed $10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.

(8) *Limitation.* For the purposes of this section, the term ''money services business'' shall not include:

(i) A bank or foreign bank;

(ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or

(iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.

(gg) *Mutual fund.* An ''investment company'' (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a-3)) that is an ''open-end company'' (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8).

(hh) *Option on a commodity.* Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

3–1700.6

(ii) *Originator.* The sender of the first payment order in a funds transfer.

(jj) *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.

(kk) *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.

(*ll*) *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.

(mm) *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.

3–1700.61

(nn) *Receiving bank.* The bank or foreign bank to which the sender's instruction is addressed.

(oo) *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.

(pp) *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.

(qq) *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.

3–1700.7

(rr) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ss) *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).

(tt) *Self-regulatory organization:*

(1) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(2) Means a ''registered entity'' or a ''registered futures association'' as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(uu) *Sender.* The person giving the instruction to the receiving financial institution.

(vv) *State.* The States of the United States and, wherever necessary to carry out the provisions of this chapter, the District of Columbia.

3–1700.71

(ww) *Prepaid access.* Access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

(xx) *Structure (structuring).* For purposes of section 1010.314, 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 sections 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313 of this chapter. ''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 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.

(yy) *Taxpayer Identification Number.* Taxpayer Identification Number (''TIN'') is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(zz) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Common-

wealth 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.

(aaa) [Reserved]

(bbb) *Transaction.*

(1) Except as provided in paragraph (bbb)(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 sections 1010.311, 1010.313, 1020.315, 1021.311, 1021.313, and other provisions of this chapter relating solely to the report required by those sections, 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.

(ccc) *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.

3–1700.8

(ddd) *Transmittal of funds.* A series of transactions beginning with the transmittor'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 transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor'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 transmittor's transmittal order. Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), 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.

(eee) *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.

(fff) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(ggg) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if

the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

3–1700.81

(hhh) *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.

(iii) *U.S. person.*

(1) A United States citizen; or

(2) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States. Non-U.S. person means a person that is not a U.S. person.

(jjj) *U.S. Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(kkk) *Closed loop prepaid access.* Prepaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system.

(*lll*) *Loan or finance company.* A person engaged in activities that take place wholly or in substantial part within the United States in one or more of the capacities listed below, whether or not on a regular basis or as an organized business concern. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States. For the purposes of this paragraph (*lll*), the term ''loan or finance company'' shall include a sole proprietor acting as a loan or finance company, and shall not include: A bank, a person registered with and functionally regulated or examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission, any government sponsored enterprise regulated by the Federal Housing Finance Agency, any Federal or state agency or authority administering mortgage or housing assistance, fraud prevention or foreclosure prevention programs, or an individual employed by a loan or finance company or financial institution under this part. A loan or finance company is not a financial institution as defined in the regulations in this part at 1010.100(t).

(1) *Residential mortgage lender or originator.* A residential mortgage lender or originator includes:

(i) *Residential mortgage lender.* The person to whom the debt arising from a residential mortgage loan is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement, or to whom the obligation is initially assigned at or immediately after settlement. The term ''residential mortgage lender'' shall not include an individual who finances the sale of the individual's own dwelling or real property.

(ii) *Residential mortgage originator.* A person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(iii) *Residential mortgage loan.* A loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on:

(A) A residential structure that contains one to four units, including, if used as a residence, an individual condominium unit, cooperative unit, mobile home or trailer; or

(B) Residential real estate upon which such a structure is constructed or intended to be constructed.

(2) [Reserved]

(mmm) *Housing government sponsored enterprise.*

(1) A ''housing government sponsored enterprise'' is one of the following ''Regulated Entities'' under 12 U.S.C. 4502(20) subject to the general supervision and regulation of the Federal Housing Finance Agency (FHFA):

(i) The Federal National Mortgage Association;

(ii) The Federal Home Loan Mortgage Corporation; or

(iii) Each Federal Home Loan Bank.

(2) The term ''housing government sponsored enterprise'' does not include any ''Entity-Affiliated Party,'' as defined in 12 U.S.C. 4502(11).

3–1701

SUBPART B—PROGRAMS

SECTION 1010.200—General

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X part for any additional program requirements. Unless otherwise indicated, the program requirements contained in this subpart B apply to all financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)).

3–1701.1

SECTION 1010.205—Exempted Anti-Money Laundering Programs for Certain Financial Institutions

(a) *Exempt financial institutions.* Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) 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 31 U.S.C. 5312(a)(2); and

(2) [Reserved]

(b) *Temporary exemption for certain financial institutions.*

(1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(i) Pawnbroker;

(ii) Travel agency;

(iii) Telegraph company;

(iv) Seller of vehicles, including automobiles, airplanes, and boats;

(v) Person involved in real estate closings and settlements;

(vi) Commodity pool operator;

(vii) Commodity trading advisor; or

(viii) Investment company.

(2) [Reserved]

(3) [Reserved]

(c) *Limitation on exemption.* The exemptions described in paragraph (b) of this section shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this chapter.

(d) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this chapter.

SECTION 1010.210—Anti-Money Laundering Programs

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X part for any additional anti-money laundering program requirements.

SECTION 1010.220—Customer Identification Program Requirements

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart B of its chapter X part for any additional customer identification program requirements.

3–1701.3

SECTION 1010.230—Beneficial Ownership Requirements for Legal Entity Customers

(a) *In general.* Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compli-

ance program required under 31 U.S.C. 5318(h) and its implementing regulations.

(b) *Identification and verification.* With respect to legal entity customers, the covered financial institution's customer due diligence procedures shall enable the institution to:

(1) Identify the beneficial owner(s) of each legal entity customer at the time a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of appendix A of this section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information; and

(2) Verify the identity of each beneficial owner identified to the covered financial institution, according to risk-based procedures to the extent reasonable and practicable. At a minimum, these procedures must contain the elements required for verifying the identity of customers that are individuals under section 1020.220(a)(2) of this chapter (for banks); section 1023.220(a)(2) of this chapter (for brokers or dealers in securities); section 1024.220(a)(2) of this chapter (for mutual funds); or section 1026.220(a)(2) of this chapter (for futures commission merchants or introducing brokers in commodities); provided, that in the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(*1*) of section 1020.220 of this chapter (for banks); section 1023.220 of this chapter (for brokers or dealers in securities); section 1024.220 of this chapter (for mutual funds); or section 1026.220 of this chapter (for futures commission merchants or introducing brokers in commodities). A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.

(c) *Account.* For purposes of this section, *account* has the meaning set forth in section 1020.100(a) of this chapter (for banks); section 1023.100(a) of this chapter (for brokers or dealers in securities); section 1024.100(a) of this chapter (for mutual funds); and section 1026.100(a) of this chapter (for futures commission merchants or introducing brokers in commodities).

(d) *Beneficial owner.* * For purposes of this section, *beneficial owner* means each of the following:

(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and

(2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:

(i) An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or

(ii) Any other individual who regularly performs similar functions.

(3) If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of paragraph (d)(1) of this section shall mean the trustee. If an entity listed in paragraph (e)(2) of this section owns directly or indirectly, through any contract, arrangement, understanding, rela-

* The number of individuals that satisfy the definition of ''beneficial owner,'' and therefore must be identified and verified pursuant to this section, may vary. Under paragraph (d)(1) of this section, depending on the factual circumstances, up to four individuals may need to be identified. Under paragraph (d)(2) of this section, only one individual must be identified. It is possible that in some circumstances the same person or persons might be identified pursuant to paragraphs (d)(1) and (2) of this section. A covered financial institution may also identify additional individuals as part of its customer due diligence if it deems appropriate on the basis of risk.

tionship or otherwise, 25 percent or more of the equity interests of a legal entity customer, no individual need be identified for purposes of paragraph (d)(1) of this section with respect to that entity's interests.

(e) *Legal entity customer.* For the purposes of this section:

(1) *Legal entity customer* means a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

(2) *Legal entity customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in section 1020.315(b)(2) through (5) of this chapter;

(iii) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of that Act;

(iv) An investment company, as defined in section 3 of the Investment Company Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(v) An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(vi) An exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 6 or 17A of that Act;

(vii) Any other entity registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(viii) A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the Commodity Futures Trading Commission;

(ix) A public accounting firm registered under section 102 of the Sarbanes-Oxley Act;

(x) A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C 1467a(n));

(xi) A pooled investment vehicle that is operated or advised by a financial institution excluded under paragraph (e)(2) of this section;

(xii) An insurance company that is regulated by a State;

(xiii) A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

(xiv) A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution;

(xv) A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities; and

(xvi) Any legal entity only to the extent that it opens a private banking account subject to section 1010.620 of this chapter.

(3) The following legal entity customers are subject only to the control prong of the beneficial ownership requirement:

(i) A pooled investment vehicle that is operated or advised by a financial institution not excluded under paragraph (e)(2) of this section; and

(ii) Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary.

(f) *Covered financial institution.* For the purposes of this section, *covered financial institution* has the meaning set forth in section 1010.605(e)(1) of this chapter.

(g) *New account.* For the purposes of this section, *new account* means each account

opened at a covered financial institution by a legal entity customer on or after the applicability date.

(h) *Exemptions.*

(1) Covered financial institutions are exempt from the requirements to identify and verify the identity of the beneficial owner(s) set forth in paragraphs (a) and (b)(1) and (2) of this section only to the extent the financial institution opens an account for a legal entity customer that is:

(i) At the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of $50,000;

(ii) To finance the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products;

(iii) To finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker;

(iv) To finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

(2) *Limitations on exemptions.*

(i) The exemptions identified in paragraphs (h)(1)(ii) through (iv) of this section do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.

(ii) If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv) of this section, then beneficial ownership of the legal entity customer must be identified and verified by the financial institution as required by this section, either at the time of initial remittance, or at the time such refund occurs.

(i) *Recordkeeping.* A covered financial institution must establish procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(1) *Required records.* At a minimum the record must include:

(i) For identification, any identifying information obtained by the covered financial institution pursuant to paragraph (b) of this section, including without limitation the certification (if obtained); and

(ii) For verification, a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.

(2) *Retention of records.* A covered financial institution must retain the records made under paragraph (i)(1)(i) of this section for five years after the date the account is closed, and the records made under paragraph (i)(1)(ii) of this section for five years after the record is made.

(j) *Reliance on another financial institution.* A covered financial institution may rely on the performance by another financial institution (including an affiliate) of the requirements of this section with respect to any legal entity customer of the covered financial institution that is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(1) Such reliance is reasonable under the circumstances;

(2) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(3) The other financial institution enters into a contract requiring it to certify annually to the covered financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the covered financial institution's procedures to comply with the requirements of this section.

3–1701.31

Appendix A to Section 1010.230—Certification Regarding Beneficial Owners of Legal Entity Customers

I. General Instructions

What is this form?

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a *legal entity* includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. *Legal entity* does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and Social Security number (or passport number or other similar information, in the case of foreign persons) for the following individuals (i.e., the *beneficial owners*):

(i) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation); *and*

(ii) An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of ''beneficial owner'' may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (e.g., the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (i.e., one individual under section (ii) and four 25 percent equity holders under section (i)).

The financial institution may also ask to see a copy of a driver's license or other identifying document for each beneficial owner listed on this form.

II. Certification of Beneficial Owner(s)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name and title of natural person opening account:

_____

_____

b. Name and address of legal entity for which the account is being opened:

_____

_____

c. The following information for each *individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:*

Name	Date of Birth	Address (Residential or Business Street Address)	*For U.S. Persons:* Social Security Number	*For Non-U.S. Persons:* Social Security Number, Passport Number and Country of Issuance, or other similar identification number[1]

(If no individual meets this definition, please write ''Not Applicable.'')

d. The following information for one *individual with significant responsibility for managing the legal entity listed above, such as:*

☐ *An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or*

☐ *Any other individual who regularly performs similar functions.* (If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

Name/Title	Date of Birth	Address (Residential or Business Street Address)	*For U.S. Persons:* Social Security Number	*For Non-U.S. Persons:* Social Security Number, Passport Number and Country of Issuance, or other similar identification number[1]

I, _____(*name of natural person opening account*), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: _____ Date: _____

Legal Entity Identifier_____ (Optional)

[1] In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

3–1702

SUBPART C—REPORTS REQUIRED TO BE MADE

SECTION 1010.300—General

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional reporting requirements. Unless otherwise indicated, the reporting requirements contained in this subpart C apply to all financial institutions.

SECTION 1010.301—Determination by the Secretary

The Secretary hereby determines that the reports required by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

SECTION 1010.305—[Reserved]

3–1702.1

SECTION 1010.306—Filing of Reports

(a) (1) A report required by section 1010. 311 or section 1021.311, shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A copy of each report filed pursuant to sections 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be retained by the financial institution for a period of five years from the date of the report.

(3) All reports required to be filed by sections 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be filed with FinCEN, unless otherwise specified.

(b) (1) A report required by section 1010. 340(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs and Border Protection.

(2) A report required by section 1010.340(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by section 1010.340 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs and Border Protection. Reports required by section 1010.340(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by section 1010.340(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs and Border Protection, Attention: Currency Transportation Reports, Washington, DC 20229.

3–1702.11

(c) Reports required to be filed by section 1010. 350 shall be filed with FinCEN on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by section 1010. 311, section 1010.313, section 1010.340, section 1010.350, section 1020.315, section 1021.311 or section 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by section 1010.311, section 1010.313, section 1010.350, section 1020.315, section 1021.311 or section 1021.313 of this chapter may be obtained from BSA E-Filing System. Forms to be used in making the reports required by section 1010.340 may be obtained from the U.S. Customs and Border Protection or FinCEN.

3–1702.2

SECTION 1010.310—Reports of Transactions in Currency

Sections 1010.310 through 1010.314 set forth the rules for the reporting by financial institutions of transactions in currency. Unless otherwise indicated, the transactions in currency reporting requirements in sections 1010.310

through 1010.314 apply to all financial institutions. Each financial institution should refer to subpart C of its chapter X part for any additional transactions in currency reporting requirements.

3–1702.3

SECTION 1010.311—Filing Obligations for Reports of Transactions in Currency

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 U.S. 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.

3–1702.4

SECTION 1010.312—Identification Required

Before concluding any transaction with respect to which a report is required under section 1010.311, section 1010.313, section 1020.315, section 1021.311 or section 1021.313 of this chapter, 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 driver's 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.

3–1702.5

SECTION 1010.313—Aggregation

(a) *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 the transactions in currency reporting requirements in this chapter.

(b) *Multiple transactions.* In the case of financial institutions other than casinos, for purposes of the transactions in currency reporting requirements in this chapter, 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 U.S. 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.

3–1702.6

SECTION 1010.314—Structured Transactions

No person shall for the purpose of evading the transactions in currency reporting requirements of this chapter with respect to such transaction:

(a) Cause or attempt to cause a domestic financial institution to fail to file a report re-

quired under the transactions in currency reporting requirements of this chapter;

(b) Cause or attempt to cause a domestic financial institution to file a report required under the transactions in currency reporting requirements of this chapter that contains a material omission or misstatement of fact; or

(c) Structure (as that term is defined in section 1010.100(xx)) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

SECTION 1010.315—Exemptions for Non-Bank Financial Institutions

A non-bank financial institution is not required to file a report otherwise required by section 1010.311 with respect to a transaction in currency between the institution and a commercial bank.

SECTION 1010.320—Reports of Suspicious Transactions

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart C of its financial institution part in this chapter for any additional suspicious transaction reporting requirements.

3–1702.7

SECTION 1010.330—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 sections 1010.311, 1010.313, 1020.315, 1021.311 or 1021.313 of this chapter.

(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 the same information 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).

3–1702.71

(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 TIN 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.

3–1702.72

(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.

3–1702.73

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

(1) *Currency.* The term *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.

3–1702.74

(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).

3–1702.75

(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.

3–1702.76

(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)) per-

taining 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.

3–1702.77

(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.

3–1702.78

(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.

3–1702.79

(d) *Exceptions to the reporting requirements of 31 U. S.C. 5331.*

(1) *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)(1)(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)(1)(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.

(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.

3–1702.80

(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.

3–1702.85

SECTION 1010.331—Reports Relating to Currency in Excess of $10,000 Received as Bail by Court Clerks

(a) *Reporting requirement.*

(1) *In general.* Any clerk of a Federal or State court who receives more than $10,000 in currency as bail for any individual charged with a specified criminal offense must make a report of information with respect to that receipt of currency. For purposes of this section, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail for purposes of this paragraph (a).

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

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

(1) The term *currency* means—

(i) The coin and currency of the United States, or of any other country, that circu-

late 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.

(2) The term *specified criminal offense* means—

(i) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(ii) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(iii) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

(iv) Any State criminal offense substantially similar to an offense described in this paragraph (b)(2) of this section.

(c) *Time, form, and manner 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–2(c)(2). The report must be filed at the time and in the manner specified in 26 CFR 1.6050I–2(c)(1) and (3), respectively.

(2) *Verification of identity.* A clerk required to make a report under this section must, in accordance with 26 CFR 1.6050I–2(c)(3)(ii), verify the identity of each payor of bail listed in the report.

3–1702.9

SECTION 1010.340—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.

3–1702.91

(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.

3–1702.92

(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;

* So in original. Probably should read "A Federal Reserve Bank."

(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.

3–1702.93

(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.

3–1702.94

SECTION 1010.350—Reports of Foreign Financial Accounts

(a) *In general.* Each United States 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 Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD-F 90-22.1), or any successor form. *See* paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.

(b) *United States person.* For purposes of this section, the term ''United States person'' means—
(1) A citizen of the United States;
(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of ''United States'' provided in 31 CFR 1010.100(hhh) rather than the definition of ''United States'' in 26 CFR 301.7701(b)-1(c)(2)(ii); and
(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

(c) *Types of reportable accounts.* For purposes of this section—
(1) *Bank account.* The term ''bank account'' means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.
(2) *Securities account.* The term ''securities account'' means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.
(3) *Other financial account.* The term ''other financial account'' means—
(i) An account with a person that is in the business of accepting deposits as a financial agency;
(ii) An account that is an insurance or annuity policy with a cash value;
(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on

or subject to the rules of a commodity exchange or association; or

(iv) *An account with—*

(A) *Mutual fund or similar pooled fund.* A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or

(B) *Other investment fund.* [Reserved]

(4) *Exceptions for certain accounts.*

(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.

(iii) An account in an institution known as a ''United States military banking facility'' (or ''United States military finance facility'') operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.

(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

(d) *Foreign country.* A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010.100(hhh).

(e) *Financial interest.* A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):

(1) *Owner of record or holder of legal title.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

(2) *Other financial interest.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is—

(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;

(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;

(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. See 26 U.S.C. 671-679 and the regulations thereunder to deter-

mine if a grantor has an ownership interest in the trust for the year; or

(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

(3) *Anti-avoidance rule.* A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

(f) *Signature or other authority.*

(1) *In general.* Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

(2) *Exceptions.*

(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. ''Authorized Service Provider'' means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.

(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.

(g) *Special rules.*

(1) *Financial interest in 25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide de-

tailed information concerning each account when so requested by the Secretary or his delegate.

(2) *Signature or other authority over 25 or more foreign financial accounts.* A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(3) *Consolidated reports.* An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.

(4) *Participants and beneficiaries in certain retirement plans.* Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

(5) *Certain trust beneficiaries.* A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust's foreign financial accounts.

3–1702.95

SECTION 1010.360—Reports of Transactions with Foreign Financial Agencies

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the *Federal Register*, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b). If a financial institution is given notice of a reporting requirement under this section by means other than publication in the *Federal Register*, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.

3–1702.96

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information:

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to sections 1010.410 and 1020.410.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

(i) Name of borrower;
(ii) Name of person acting for borrower;
(iii) Date and amount of loan;
(iv) Terms of repayment;
(v) Name of guarantor;
(vi) Rate of interest;
(vii) Method of disbursing proceeds;
(viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:
(i) Name of maker;
(ii) Date and amount of paper;
(iii) Due date;
(iv) Certificate number;
(v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:
(i) Name of corporation;
(ii) Type of stock;
(iii) Certificate number;
(iv) Number of shares;
(v) Date of certificate;
(vi) Name of registered holder;
(vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:
(i) Name of issuer;
(ii) Bond number;
(iii) Type of bond series;
(iv) Date issued;
(v) Due date;
(vi) Rate of interest;
(vii) Amount of transaction;
(viii) Name of registered holder.

(7) Certificates of deposit received or shipped by respondent financial institution—including the following information:
(i) Name and address of issuer;
(ii) Date issued;
(iii) Dollar amount;
(iv) Name of registered holder;
(v) Due date;
(vi) Rate of interest;
(vii) Certificate number;
(viii) Name and address of issuing agent.

3–1702.97

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

3–1702.98

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this chapter.

3–1702.99

(e) *Limitations.*

(1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an inves-

tigation for possible violation of any other Federal law.

(3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to the requirements of this chapter, or any other provision of state or Federal law, or otherwise maintained in the regular course of business.

3–1702.991

SECTION 1010.370—Reports of Certain Domestic Transactions

(a) (1) 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/or reporting requirements are necessary to carry out the purposes of this chapter or to prevent persons from evading the reporting/recordkeeping requirements of this chapter, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions, or any domestic nonfinancial trade or business or group of domestic nonfinancial trades or businesses, in a geographic area, and any other person participating in the type of transaction, to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution or group of domestic financial institutions, or domestic nonfinancial trade or business or group of domestic nonfinancial trades or businesses is involved for the payment, receipt, or transfer of funds (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.

(2) The Secretary may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

(i) 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 the Title 31 provisions of the Bank Secrecy Act 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 funds which are involved in the reportable transaction with the depository institution; and

(ii) If no copy of any report described in paragraph (a)(2)(i) of this section is received by the depository institution in connection with any reportable transaction to which paragraph (a)(2)(i) applies, to submit (in addition to any report required under this subchapter 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.

(3) For purposes of paragraph (a)(2) of this section, the term reportable transaction means any transaction involving funds (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.

3–1702.992

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution or nonfinancial trade or business and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of funds or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in

funds equal to or exceeding an amount specified in the order.

3–1702.993

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

(1) The dollar amount of transactions subject to the reporting requirement in the order;

(2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

(3) The appropriate form for reporting the transactions required in the order;

(4) The address to which reports required in the order are to be sent or from which they will be picked up;

(5) The starting and ending dates by which such transactions specified in the order are to be reported;

(6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

3–1702.994

(d) (1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 180 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under section 1020.315 of this chapter prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term geographic area means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

(e) 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.

3–1702.995

SECTION 1010.380—Reports of Beneficial Ownership Information

(a) *Reports required; timing of reports.*

(1) *Initial report.* Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

(i) (A) Any domestic reporting company created on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(B) Any domestic reporting company created on or after January 1, 2025, shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(ii) (A) Any entity that becomes a foreign reporting company on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on

which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

(B) Any entity that becomes a foreign reporting company on or after January 1, 2025, shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

(iii) Any domestic reporting company created before January 1, 2024 and any entity that became a foreign reporting company before January 1, 2024 shall file a report not later than January 1, 2025.

(iv) Any entity that no longer meets the criteria for any exemption under paragraph (c)(2) of this section shall file a report within 30 calendar days after the date that it no longer meets the criteria for any exemption.

(2) *Updated report.*

(i) If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report in the form and manner specified in paragraph (b)(3) of this section within 30 calendar days after the date on which such change occurs.

(ii) If a reporting company meets the criteria for any exemption under paragraph (c)(2) of this section subsequent to the filing of an initial report, this change will be deemed a change with respect to information previously submitted to FinCEN, and the entity shall file an updated report.

(iii) If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and such individual dies, a change with respect to required information will be deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.

(iv) If a reporting company has reported information with respect to a parent or legal guardian of a minor child pursuant to paragraphs (b)(2)(ii) and (d)(3)(i) of this section, a change with respect to required information will be deemed to occur when the minor child attains the age of majority.

(v) With respect to an image of an identifying document required to be reported pursuant to paragraph (b)(1)(ii)(E) of this section, a change with respect to required information will be deemed to occur when the name, date of birth, address, or unique identifying number on such document changes.

(3) *Corrected report.* If any report under this section was inaccurate when filed and remains inaccurate, the reporting company shall file a corrected report in the form and manner specified in paragraph (b) of this section within 30 calendar days after the date on which such reporting company becomes aware or has reason to know of the inaccuracy. A corrected report filed under this paragraph (a)(3) within this 30-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate report was filed.

(b) *Content, form, and manner of reports.* Each report or application submitted under this section shall be filed with FinCEN in the form and manner that FinCEN shall prescribe in the forms and instructions for such report

or application, and each person filing such report or application shall certify that the report or application is true, correct, and complete.

(1) *Initial report.* An initial report of a reporting company shall include the following information:

(i) For the reporting company:

(A) The full legal name of the reporting company;

(B) Any trade name or ''doing business as'' name of the reporting company;

(C) A complete current address consisting of:

(*1*) In the case of a reporting company with a principal place of business in the United States, the street address of such principal place of business; and

(*2*) In all other cases, the street address of the primary location in the United States where the reporting company conducts business;

(D) The State, Tribal, or foreign jurisdiction of formation of the reporting company;

(E) For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and

(F) The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;

(ii) For every individual who is a beneficial owner of such reporting company, and every individual who is a company applicant with respect to such reporting company:

(A) The full legal name of the individual;

(B) The date of birth of the individual;

(C) A complete current address consisting of:

(*1*) In the case of a company applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business; or

(*2*) In any other case, the individual's residential street address;

(D) A unique identifying number and the issuing jurisdiction from one of the following documents:

(*1*) A non-expired passport issued to the individual by the United States government;

(*2*) A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;

(*3*) A non-expired driver's license issued to the individual by a State; or

(*4*) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described in paragraph (b)(1)(ii)(D)(*1*), (b)(1)(ii)(D)(*2*), or (b)(1)(ii)(D)(*3*) of this section; and (E) An image of the document from which the unique identifying number in paragraph (b)(1)(ii)(D) of this section was obtained.

(2) *Special rules.*

(i) *Reporting company owned by exempt entity*. If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entities, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.

(ii) *Minor child*. If a reporting company reports the information required under paragraph (b)(1) of this section with respect to a parent or legal guardian of a minor child consistent with paragraph (d)(3)(i) of this section, then the report shall indicate that such information relates to a parent or legal guardian.

(iii) *Foreign pooled investment vehicle*. If

an entity would be a reporting company but for paragraph (c)(2)(xviii) of this section, and is formed under the laws of a foreign country, such entity shall be deemed a reporting company for purposes of paragraphs (a) and (b) of this section, except the report shall include the information required under paragraph (b)(1) of this section solely with respect to an individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the entity, the entity shall report information with respect to the individual who has the greatest authority over the strategic management of the entity.

(iv) *Company applicant for existing companies*. Notwithstanding paragraph (b)(1)(ii) of this section, if a reporting company was created or registered before January 1, 2024, the reporting company shall report that fact, but is not required to report information with respect to any company applicant.

(3) *Contents of updated or corrected reports.*

(i) *Updated reports—in general*. An updated report required to be filed pursuant to paragraph (a)(2) of this section shall reflect any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.

(ii) *Updated reports—newly exempt entities*. An updated report required to be filed pursuant to paragraph (a)(2)(ii) of this section shall indicate that the filing entity is no longer a reporting company.

(iii) *Corrected reports*. A corrected report required to be filed pursuant to paragraph (a)(3) of this section shall correct all inaccuracies in the information previously reported to FinCEN.

(4) *FinCEN identifier.*

(i) *Application*.

(A) An individual may obtain a FinCEN identifier by submitting to FinCEN an application containing the information about the individual described in paragraph (b)(1) of this section.

(B) A reporting company may obtain a FinCEN identifier by submitting to FinCEN an application at or after the time that the entity submits an initial report required under paragraph (b)(1) of this section.

(C) Each FinCEN identifier shall be specific to each such individual or reporting company, and each such individual or reporting company (including any successor reporting company) may obtain only one FinCEN identifier.

(ii) *Use of the FinCEN identifier*.

(A) If an individual has obtained a FinCEN identifier and provided such FinCEN identifier to a reporting company, the reporting company may include such FinCEN identifier in its report in lieu of the information required under paragraph (b)(1) of this section with respect to such individual.

(B) A reporting company may report another entity's FinCEN identifier and full legal name in lieu of the information required under paragraph (b)(1)(ii) of this section with respect to the beneficial owners of the reporting company only if:

(*1*) The other entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company;

(*2*) An individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through an ownership interest in the other entity; and

(*3*) The beneficial owners of the other entity and of the reporting company are the same individuals.

(iii) *Updates and corrections*.

(A) Any individual that has obtained a FinCEN identifier shall update or correct any information previously submitted to FinCEN in an application for such FinCEN identifier.

(*1*) If there is any change with respect to required information previously submitted to FinCEN in such application, the individual shall file an updated application reflecting

such change within 30 calendar days after the date on which such change occurs.

(*2*) If any such application was inaccurate when filed and remains inaccurate, the individual shall file a corrected application correcting all inaccuracies within 30 calendar days after the date on which the individual becomes aware or has reason to know of the inaccuracy. A corrected application filed under this paragraph within this 30-day period will be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate application was submitted.

(B) Any reporting company that has obtained a FinCEN identifier shall file an updated or corrected report to update or correct any information previously submitted to FinCEN. Such updated or corrected report shall be filed at the same time and in the same manner as updated or corrected reports filed under paragraph (a) of this section.

(c) *Reporting company.*

(1) *Definition of reporting company.* For purposes of this section, the term ''reporting company'' means either a domestic reporting company or a foreign reporting company.

(i) The term ''domestic reporting company'' means any entity that is:

(A) A corporation;

(B) A limited liability company; or

(C) Created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

(ii) The term ''foreign reporting company'' means any entity that is:

(A) A corporation, limited liability company, or other entity;

(B) Formed under the law of a foreign country; and

(C) Registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

(2) *Exemptions.* Notwithstanding paragraph (c)(1) of this section, the term ''reporting company'' does not include:

(i) *Securities reporting issuer*. Any issuer of securities that is:

(A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*); or

(B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

(ii) *Governmental authority*. Any entity that:

(A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and

(B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

(iii) *Bank*. Any bank, as defined in:

(A) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)); or

(C) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)).

(iv) *Credit union*. Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(v) *Depository institution holding company*. Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(vi) *Money services business*. Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.

(vii) *Broker or dealer in securities*. Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).

(viii) *Securities exchange or clearing agency*. Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q–1).

(ix) *Other Exchange Act registered entity*. Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of this section that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(x) *Investment company or investment adviser*. Any entity that is:

(A) An investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2); and

(B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

(xi) *Venture capital fund adviser*. Any investment adviser that:

(A) Is described in section 203(*l*) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(*l*)); and

(B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

(xii) *Insurance company*. Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

(xiii) *State-licensed insurance producer*. Any entity that:

(A) Is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(B) Has an operating presence at a physical office within the United States.

(xiv) *Commodity Exchange Act registered entity*. Any entity that:

(A) Is a registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or

(B) Is:

(*1*) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B); and

(*2*) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

(xv) *Accounting firm*. Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).

(xvi) *Public utility*. Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

(xvii) *Financial market utility*. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).

(xviii) *Pooled investment vehicle*. Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section.

(xix) *Tax-exempt entity*. Any entity that is:

(A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined

without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status;

(B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or

(C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

(xx) *Entity assisting a tax-exempt entity*. Any entity that:

(A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(xix) of this section;

(B) Is a United States person;

(C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

(xxi) *Large operating company*. Any entity that:

(A) Employs more than 20 full time employees in the United States, with ''full time employee in the United States'' having the meaning provided in 26 CFR 54.4980H–1(a) and 54.4980H–3, except that the term ''United States'' as used in 26 CFR 54.4980H–1(a) and 54.4980H–3 has the meaning provided in section 1010.100(hhh);

(B) Has an operating presence at a physical office within the United States; and

(C) Filed a Federal income tax or information return in the United States for the previous year demonstrating more than $5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120–S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

(xxii) *Subsidiary of certain exempt entities*. Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraphs (c)(2)(i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), or (xxi) of this section.

(xxiii) *Inactive entity*. Any entity that:

(A) Was in existence on or before January 1, 2020;

(B) Is not engaged in active business;

(C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;

(D) Has not experienced any change in ownership in the preceding twelve month period;

(E) Has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve month period; and

(F) Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

(d) *Beneficial owner.* For purposes of this section, the term ''beneficial owner,'' with respect to a reporting company, means any individual who, directly or indirectly, either exercises

substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.

(1) *Substantial control.*

(i) *Definition of substantial control*. An individual exercises substantial control over a reporting company if the individual:

(A) Serves as a senior officer of the reporting company;

(B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);

(C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:

(*1*) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;

(*2*) The reorganization, dissolution, or merger of the reporting company;

(*3*) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

(*4*) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;

(*5*) Compensation schemes and incentive programs for senior officers;

(*6*) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;

(*7*) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or

(D) Has any other form of substantial control over the reporting company.

(ii) *Direct or indirect exercise of substantial control.* An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

(A) Board representation;

(B) Ownership or control of a majority of the voting power or voting rights of the reporting company;

(C) Rights associated with any financing arrangement or interest in a company;

(D) Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;

(E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or

(F) Any other contract, arrangement, understanding, relationship, or otherwise.

(2) *Ownership interests.*

(i) *Definition of ownership interest*. The term ''ownership interest'' means:

(A) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;

(B) Any capital or profit interest in an entity;

(C) Any instrument convertible, with or without consideration, into any share or instrument described in paragraph (d)(2)(i)(A), or (B) of this section, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in paragraph (d)(2)(i)(A), or (B) of this section, regardless of whether characterized as debt;

(D) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (d)(2)(i)(A), (B), or (C) of this

section without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

(E) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

(ii) *Ownership or control of ownership interest*. An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:

(A) Joint ownership with one or more other persons of an undivided interest in such ownership interest;

(B) Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;

(C) With regard to a trust or similar arrangement that holds such ownership interest:

(*1*) As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;

(*2*) As a beneficiary who:

(*i*) Is the sole permissible recipient of income and principal from the trust; or

(*ii*) Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or

(*3*) As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or

(D) Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.

(iii) *Calculation of the total ownership interests of a reporting company*. In determining whether an individual owns or controls at least 25 percent of the ownership interests of a reporting company, the total ownership interests that an individual owns or controls, directly or indirectly, shall be calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:

(A) Ownership interests of the individual shall be calculated at the present time, and any options or similar interests of the individual shall be treated as exercised;

(B) For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;

(C) For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:

(*1*) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or

(*2*) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and

(D) If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

(3) *Exceptions.* Notwithstanding any other provision of this paragraph (d), the term ''beneficial owner'' does not include:

(i) A minor child, as defined under the law of the State or Indian tribe in which a domestic reporting company is created

or a foreign reporting company is first registered, provided the reporting company reports the required information of a parent or legal guardian of the minor child as specified in paragraph (b)(2)(ii) of this section;

(ii) An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

(iii) An employee of a reporting company, acting solely as an employee, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee, provided that such person is not a senior officer as defined in paragraph (f)(8) of this section;

(iv) An individual whose only interest in a reporting company is a future interest through a right of inheritance;

(v) A creditor of a reporting company. For purposes of this paragraph (d)(3)(v), a creditor is an individual who meets the requirements of paragraph (d) of this section solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

(e) *Company applicant.* For purposes of this section, the term ''company applicant'' means:

(1) For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company as described in paragraph (c)(1)(i) of this section;

(2) For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company as described in paragraph (c)(1)(ii) of this section; and

(3) Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.

(f) *Definitions.* For purposes of this section, the following terms have the following meanings.

(1) *Employee.* The term ''employee'' has the meaning given the term in 26 CFR 54.4980H–1(a)(15).

(2) *FinCEN identifier.* The term ''FinCEN identifier'' means the unique identifying number assigned by FinCEN to an individual or reporting company under this section.

(3) *Foreign person.* The term ''foreign person'' means a person who is not a United States person.

(4) *Indian tribe.* The term ''Indian tribe'' has the meaning given the term ''Indian tribe'' in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(5) *Lawfully admitted for permanent residence.* The term ''lawfully admitted for permanent residence'' has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(6) *Operating presence at a physical office within the United States.* The term ''has an operating presence at a physical office within the United States'' means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

(7) *Pooled investment vehicle.* The term ''pooled investment vehicle'' means:

(i) Any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)); or

(ii) Any company that:

(A) Would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c)); and

(B) Is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission or will be so identified in the next annual updating amendment to Form ADV required to be filed by the

applicable investment adviser pursuant to rule 204–1 under the Investment Advisers Act of 1940 (17 CFR 275.204–1).

(8) *Senior officer.* The term ''senior officer'' means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function.

(9) *State.* The term ''State'' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

(10) *United States person.* The term ''United States person'' has the meaning given the term in section 7701(a)(30) of the Internal Revenue Code of 1986.

(g) *Reporting violations.* It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section. For purposes of this paragraph (g):

(1) The term ''person'' includes any individual, reporting company, or other entity.

(2) The term ''beneficial ownership information'' includes any information provided to FinCEN under this section.

(3) A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section.

(4) A person fails to report complete or updated beneficial ownership information to FinCEN if, with respect to an entity:

(i) such entity is required, pursuant to title 31, United States Code, section 5336, or its implementing regulations, to report information to FinCEN;

(ii) the reporting company fails to report such information to FinCEN; and

(iii) such person either causes the failure, or is a senior officer of the entity at the time of the failure.

3–1703

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED

SECTION 1010.400—General

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional recordkeeping requirements. Unless otherwise indicated, the recordkeeping requirements contained in this subpart D apply to all financial institutions.

SECTION 1010.401—Determination by the Secretary

The Secretary hereby determines that the records required to be kept by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

SECTION 1010.405—[Reserved]

3–1703.1

SECTION 1010.410—Records to Be Made and Retained by Financial Institutions

Each financial institution shall retain either the original or a 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 canceled 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 section 1010.370(a), not to exceed five years.

3–1703.11

(e) *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 (e) 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 transmittor'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 transmittor;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor 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:[1]

(*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.

3–1703.12

(2) *Transmittors other than established customers.* In the case of a transmittal order from a transmittor 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 transmittal order is made in person, prior to acceptance the transmittor's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmittor'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 of the lack thereof. If the

[1] For transmittals of funds effected through the Federal Conintued

Continued
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.

transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor'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 transmittal order accepted by the transmittor's financial institution is not made in person, the transmittor'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 transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor'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.

3–1703.13

(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 (e)(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.

3–1703.14

(4) *Retrievability.* The information that a transmittor's financial institution must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the transmittor's financial institution by reference to the name of the transmittor. If the transmittor is an established customer of the transmittor'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 (e)(1)(iii) and (e)(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 informa-

tion 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.

3–1703.15

(5) *Verification.* Where verification is required under paragraphs (e)(2) and (e)(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).

3–1703.16

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmittor 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; or

(J) A mutual fund; and

(ii) Transmittals of funds where both the transmittor and the recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same broker or dealer in securities.

3–1703.17

(f) Any transmittor'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 (f):

(1) A transmittor'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 transmittor;

(ii) The address of the transmittor, 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:[2]

(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 transmittor's financial institution.

[2] 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.

3–1703.18

(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 transmittor;

(ii) The address of the transmittor, 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 transmittor's financial institution.

3–1703.19

(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) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (f)(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 (f)(1)(iii) through (v), and the information specified in paragraph (f)(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 (f)(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.

3–1703.191

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (f)(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 (f)(2)(iii) through (f)(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 (f)(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

[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.

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 (f)(3)(i)(B) or (f)(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.

3–1703.192

(4) *Exceptions.* The requirements of this paragraph (f) shall not apply to transmittals of funds that are listed in paragraph (e)(6) of this section or section 1020.410(a)(6) of this chapter.

3–1703.2

SECTION 1010.415—Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

(a) No financial institution may issue or sell abank 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 accountholder 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 accountholder'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).

3–1703.21

(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).

3–1703.22

(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.

3–1703.3

SECTION 1010.420—Records to Be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts

Records of accounts required by section1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

3–1703.4

SECTION 1010.430—Nature of Records and Retention Period

(a) Wherever it is required that there be retained either the original or a copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this chapter to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this chapter, then such a record shall be prepared in writing by the financial institution.

3–1703.41

(c) The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this chapter shall be retained for a period of five years. Records or reports required to be kept pursuant to an order issued under section 1010.370 of this chapter shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

3–1703.5

SECTION 1010.440—Person Outside the United States

For the purposes of this chapter, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

3–1704

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1010.500—General

Sections 1010.505 through 1010.540 of this subpart E were issued pursuant to the requirements of section 314 of the USA PATRIOT Act. Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional special information sharing procedures.

3–1704.2

SECTION 1010.505—Definitions

For purposes of this subpart E, the following definitions apply:

(a) *Account* means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions, and includes, but is not limited to, a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(b) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

(c) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

(d) *Transaction.*

(1) Except as provided in paragraph (d)(2) of this section, the term ''transaction'' shall have the same meaning as provided in section 1010.100(bbb).

(2) For purposes of section 1010.520, a transaction shall not mean any transaction conducted through an account.

3–1704.3

SECTION 1010.520—Information Sharing Between Government Agencies and Financial Institutions

(a) *Definitions.* For purposes of this section:

(1) Financial institution means any financial institution described in 31 U.S.C. 5312(a)(2).

(2) Law enforcement agency means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtained under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering.*

(1) *In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form

and manner as FinCEN may prescribe. At a minimum, such certification must: State that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

3–1704.31

(3) *Obligations of a financial institution receiving an information request—*

(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attache in the case of a request by a foreign law enforcement agency, which has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

(A) Any current account maintained for a named suspect;

(B) Any account maintained for a named suspect during the preceding twelve months; and

(C) Any transaction, as defined by section 1010.505(d), conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution.

(ii) *Report to FinCEN.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN, in the manner and in the time frame specified in FinCEN's request, the following information:

(A) The name of such individual, entity, or organization;

(B) The number of each such account,

or in the case of a transaction, the date and type of each such transaction; and

(C) Any Social Security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when each such account was opened or each such transaction was conducted.

(iii) *Designation of contact person.* Upon receiving an information request under this section, a financial institution shall designate one person to be the point of contact at the institution regarding the request and to receive similar requests for information from FinCEN in the future. When requested by FinCEN, a financial institution shall provide FinCEN with the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, in such manner as FinCEN may prescribe. A financial institution that has provided FinCEN with contact information must promptly notify FinCEN of any changes to such information.

3–1704.32

(iv) *Use and security of information request.*

(A) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(*1*) Reporting to FinCEN as provided in this section;

(*2*) Determining whether to establish or maintain an account, or to engage in a transaction; or

(*3*) Assisting the financial institution in complying with any requirement of this chapter.

(B) (*1*) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attache in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(3)(iv)(B)(*1*) of this section, a financial institution authorized to share information under section 1010.540 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(v) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an account for, or to engage in a transaction with, any such individual, entity, or organization. Except as otherwise provided in an information request under this section, such a request shall not require a financial institution to report on future account opening activity or transactions or to treat a suspect list received under this section as a government

list for purposes of section 326 of Public Law 107-56.

3–1704.33

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a Federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State, or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

SECTION 1010.530—[Reserved]

3–1704.5

SECTION 1010.540—Voluntary Information Sharing Among Financial Institutions

(a) *Definitions.* For purposes of this section:

(1) *Financial institution.*

(i) Except as provided in paragraph (a)(1)(ii) of this section, the term ''financial institution'' means any financial institution described in 31 U.S.C. 5312(a)(2) that is required under this chapter to establish and maintain an anti-money laundering program, or is treated under this chapter as having satisfied the requirements of 31 U.S.C. 5318(h)(1).

(ii) For purposes of this section, a financial institution shall not mean any institution included within a class of financial institutions that FinCEN has designated as ineligible to share information under this section.

(2) Association of financial institutions means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(1) of this section.

(b) *Voluntary information sharing among financial institutions.*

(1) *In general.* Subject to paragraphs (b)(2), (b)(3), and (b)(4) of this section, a financial institution or an association of financial institutions may, under the protection of the safe harbor from liability described in paragraph (b)(5) of this section, transmit, receive, or otherwise share information with any other financial institution or association of financial institutions regarding individuals, entities, organizations, and countries for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.

(2) *Notice requirement.* A financial institution or association of financial institutions that intends to share information as described in paragraph (b)(1) of this section shall submit to FinCEN a notice described on FinCEN's Internet Web site, http://www.fincen.gov. Each notice provided pursuant to this paragraph (b)(2) shall be effective for the one year period beginning on the date of the notice. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new notice. Completed notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, http://www.fincen.gov., and entering the appropriate information as directed, or, if a financial institution does not have Internet access, by mail to: FinCEN, P.O. Box 39, Vienna, VA 22183.

3–1704.51

(3) *Verification requirement.* Prior to sharing information as described in paragraph (b)(1) of this section, a financial institution or an association of financial institutions must take reasonable steps to verify that the other financial institution or association of financial institutions with which it intends to share information has submitted to FinCEN the notice required by paragraph

(b)(2) of this section. A financial institution or an association of financial institutions may satisfy this paragraph (b)(3) by confirming that the other financial institution or association of financial institutions appears on a list that FinCEN will periodically make available to financial institutions or associations of financial institutions that have filed a notice with it, or by confirming directly with the other financial institution or association of financial institutions that the requisite notice has been filed.

(4) *Use and security of information.*

(i) Information received by a financial institution or an association of financial institutions pursuant to this section shall not be used for any purpose other than:

(A) Identifying and, where appropriate, reporting on money laundering or terrorist activities;

(B) Determining whether to establish or maintain an account, or to engage in a transaction; or

(C) Assisting the financial institution in complying with any requirement of this chapter.

(ii) Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information. The requirements of this paragraph (b)(4)(ii) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(5) *Safe harbor from certain liability.*

(i) *In general.* A financial institution or association of financial institutions that shares information pursuant to paragraph (b) of this section shall be protected from liability for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such sharing, to the full extent provided in subsection 314(b) of Public Law 107-56.

(ii) *Limitation.* Paragraph (b)(5)(i) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraphs (b)(2), (b)(3), or (b)(4) of this section.

3–1704.52

(c) *Information sharing between financial institutions and the federal government.* If, as a result of information shared pursuant to this section, a financial institution knows, suspects, or has reason to suspect that an individual, entity, or organization is involved in, or may be involved in terrorist activity or money laundering, and such institution is subject to a suspicious activity reporting requirement under this chapter or other applicable regulations, the institution shall file a Suspicious Activity Report in accordance with those regulations. In situations involving violations requiring immediate attention, such as when a reportable violation involves terrorist activity or is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and financial institution supervisory authorities in addition to filing timely a Suspicious Activity Report. A financial institution that is not subject to a suspicious activity reporting requirement is not required to file a Suspicious Activity Report or otherwise to notify law enforcement of suspicious activity that is detected as a result of information shared pursuant to this section. Such a financial institution is encouraged, however, to voluntarily report such activity to FinCEN.

(d) *No effect on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to this chapter or any other applicable regulations, or to otherwise contact directly a Federal agency concerning individuals or entities suspected of engaging in terrorist activity or money laundering.

3–1705

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES

SECTION 1010.600—General

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its chapter X part for any additional special standards of diligence; prohibitions; and special measures requirements.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

3–1705.1

SECTION 1010.605—Definitions

Except as otherwise provided, the following definitions apply for purposes of sections 1010.610 through 1010.630 and section 1010.670:

(a) *Beneficial owner* of an account means an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner.

(b) *Certification and recertification* mean the certification and recertification forms regarding correspondent accounts for foreign banks located on FinCEN's Internet Web site, http://www.fincen.gov.

(c) *Correspondent account.*

(1) The term *correspondent account* means:

(i) For purposes of section 1010.610(a), (d) and (e), an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution; and

(ii) For purposes of sections 1010.610(b) and (c), 1010.630 and 1010.670, an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

(2) For purposes of this definition, the term *account* :

(i) As applied to banks (as set forth in paragraphs (e)(1)(i) through (vii) of this section):

(A) Means any formal banking or business relationship established by a bank to provide regular services, dealings, and other financial transactions; and

(B) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit;

(ii) As applied to brokers or dealers in securities (as set forth in paragraph (e)(1)(viii) of this section) means any formal relationship established with a broker or dealer in securities to provide regular services to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral;

(iii) As applied to futures commission merchants and introducing brokers (as set forth in paragraph (e)(1)(ix) of this section) means any formal relationship established by a futures commission merchant to provide regular services, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity; and

(iv) As applied to mutual funds (as set forth in paragraph (e)(1)(x) of this section) means any contractual or other business relationship established between a person and a mutual fund to provide regular services to effect transactions in

securities issued by the mutual fund, including the purchase or sale of securities.

3–1705.11

(d) *Correspondent relationship* has the same meaning as correspondent account for purposes of sections 1010.630 and 1010.670.

(e) *Covered financial institution* means:

(1) For purposes of section 1010.610 and 1010.620:

(i) A bank required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1);

(ii) 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 (15 U.S.C. 78a *et seq*.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(iii) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq*.), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(iv) A mutual fund;

(2) For purposes of sections 1010.630 and 1010.670:

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

(ii) A commercial bank or trust company;

(iii) A private banker;

(iv) An agency or branch of a foreign bank in the United States;

(v) A credit union;

(vi) A savings association;

(vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq*.); and

(viii) 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 (15 U.S.C. 78a *et seq*.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

3–1705.12

(f) *Foreign financial institution.*

(1) The term *foreign financial institution* means:

(i) A foreign bank;

(ii) Any branch or office located outside the United States of any covered financial institution described in paragraphs (e)(1)(viii) through (x) of this section;

(iii) Any other person organized under foreign law (other than a branch or office of such person in the United States) that, if it were located in the United States, would be a covered financial institution described in paragraphs (e)(1)(viii) through (x) of this section; and

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A dealer in foreign exchange; or

(B) A money transmitter.

(2) For purposes of paragraph (f)(1)(iv) of this section, a person is not ''engaged in the business'' of a dealer in foreign exchange or a money transmitter if such transactions are merely incidental to the person's business.

(g) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(h) *Non-United States person or non-U.S. person* means a natural person who is neither a United States citizen nor is accorded the privilege of residing permanently in the United States pursuant to title 8 of the United States Code. For purposes of this paragraph (h), the definition of person in section 1010.100(mm) does not apply, notwithstanding paragraph (k) of this section.

(i) *Offshore banking license* means a license to conduct banking activities that prohibits the licensed entity from conducting banking ac-

tivities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

3–1705.13

(j) *Owner.*

(1) The term owner means any person who, directly or indirectly:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(iv) Voting securities or other voting interests means securities or other interests that entitle the holder to vote for or to select directors (or individuals exercising similar functions).

(k) *Person* has the meaning provided in section 1010.100(mm).

(*l*) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs one or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

3–1705.14

(m) *Private banking account* means an account (or any combination of accounts) maintained at a covered financial institution that:

(1) Requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000;

(2) Is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners of the account; and

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

(n) *Regulated affiliate.*

(1) The term *regulated affiliate* means a foreign shell bank that:

(i) 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

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) Affiliate means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) Control means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(o) *Secretary* means the Secretary of the Treasury.

3–1705.15

(p) *Senior foreign political figure.*

(1) The term *senior foreign political figure* means:

(i) A current or former:

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);

(B) Senior official of a major foreign political party; or

(C) Senior executive of a foreign government-owned commercial enterprise;

(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;

(iii) An immediate family member of any such individual; and

(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.

(2) For purposes of this definition:

(i) Senior official or executive means an individual with substantial authority over policy, operations, or the use of government-owned resources; and

(ii) Immediate family member means spouses, parents, siblings, children and a spouse's parents and siblings.

3–1705.2

SECTION 1010.610—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

(a) *In general.* A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

3–1705.21

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to

ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii) (A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank 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) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3) (i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) Owner means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(*1*) Members of the same family shall be considered to be one person; and

(*2*) Same family has the meaning provided in section 1010.605(j)(2)(ii).

(B) Publicly traded means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

3–1705.22

(c) *Foreign banks to be accorded enhanced due diligence.* The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed.* The due diligence program required by paragraphs (a) and (b) of this section shall include

procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

3–1705.23

(e) *Applicability rules for general due diligence.* The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) *General rules.*

(i) *Correspondent accounts established on or after July 5, 2006.* Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established on or after that date.

(ii) *Correspondent accounts established before July 5, 2006.* Effective October 2, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) *Special rules for certain banks.* Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in section 1010.605(e)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in section 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

3–1705.24

(f) *Applicability rules for enhanced due diligence.* The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) *General rules.*

(i) *Correspondent accounts established on or after February 5, 2008.* Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) *Correspondent accounts established before February 5, 2008.* Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) *Special rules for certain banks.* Until the requirements of paragraph (b) of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in section 1010.605(e)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in section 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) *Exemptions.*

(1) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or section 1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

3–1705.25

SECTION 1010.620—Due Diligence Programs for Private Banking Accounts

(a) *In general.* A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that

are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter.

(b) *Minimum requirements.* The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

3–1705.26

(c) *Special requirements for senior foreign political figures.*

(1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term proceeds of foreign corruption means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) *Special procedures when due diligence cannot be performed.* The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

3–1705.27

(e) *Applicability rules.* The provisions of this section apply to covered financial institutions as follows:

(1) *General rules.*

(i) *Private banking accounts established on or after July 5, 2006.* Effective July 5, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) *Private banking accounts established before July 5, 2006.* Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before July 5, 2006.

(2) *Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in section 1010.605(e)(1)(i) through (vi), (viii), or (ix).

(3) *Special rules for federally regulated trust banks or trust companies, and mutual funds.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a

covered financial institution listed in section 1010.605(e)(1)(vii) or (x).

(4) *Exemptions.*

(i) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or section 1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

3–1705.3

SECTION 1010.630—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

(a) *Requirements for covered financial institutions.*

(1) *Prohibition on correspondent accounts for foreign shell banks.*

(i) 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 shell bank.

(ii) 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 a foreign shell bank.

(iii) Nothing in paragraph (a)(1) of this section prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.*

(i) Except as provided in paragraph (a)(2)(ii) of this section, a covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account.

(ii) A covered financial institution need not maintain records of the owners of any foreign bank that is required to have on file with the Federal Reserve Board a Form FR Y-7 that identifies the current owners of the foreign bank as required by such form.

(iii) For purposes of paragraph (a)(2)(i) of this section, publicly traded refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(b) *Safe harbor.* Subject to paragraphs (c) and (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank.

3–1705.31

(c) *Interim verification.* If at any time a covered financial institution knows, suspects, or has reason to suspect, that any information contained in a certification or recertification provided by a foreign bank, or otherwise relied upon by the covered financial institution for purposes of this section, is no longer correct, the covered financial institution shall request that the foreign bank verify or correct such information, or shall take other appropriate measures to ascertain the accuracy of the information or to obtain correct information, as appropriate. See paragraph (d)(3) of this section for additional requirements if a foreign

bank fails to verify or correct the information or if a covered financial institution cannot ascertain the accuracy of the information or obtain correct information.

(d) *Closure of correspondent accounts.*

(1) *Accounts existing on October 28, 2002.* In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before March 31, 2003, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(2) *Accounts established after October 28, 2002.* In the case of any correspondent account established after October 28, 2002, if the covered financial institution has not obtained a certification (or recertification), or has not otherwise obtained documentation of the information required by such certification (or recertification) within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(3) *Verification of previously provided information.* In the case of a foreign bank with respect to which the covered financial institution undertakes to verify information pursuant to paragraph (c) of this section, if the covered financial institution has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the verification, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph (d), and shall not establish any other correspondent account with the concerned foreign bank, until it obtains from the foreign bank the certification or the recertification, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent account in accordance with this paragraph (d).

3–1705.32

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any correspondent account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to October 28, 2002.*

(1) *Definition.* For purposes of this paragraph (f) the term ''Interim Guidance'' means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001 and published in the Federal Register on November 27, 2001; or

(ii) The guidance issued in a document published in the *Federal Register* on December 28, 2001.

(2) *Use of Interim Guidance certification.* In the case of a correspondent account in

existence on October 28, 2002, the term ''certification'' as used in paragraphs (b), (c), (d)(1), and (d)(3) of this section shall also include the certification appended to the Interim Guidance, provided that such certification was requested prior to October 28, 2002 and obtained by the covered financial institution on or before December 26, 2002.

(3) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

SECTION 1010.640—[Reserved]

Special Measures under Section 311 of the USA Patriot Act and Law Enforcement Access to Foreign Bank Records

3–1705.4

SECTION 1010.651—Special Measures Against Burma

(a) *Definitions.* For purposes of this section:

(1) *Burmese banking institution* means any foreign bank, as that term is defined in section 1010.100(u), chartered or licensed by Burma, including branches and offices located outside Burma.

(2) *Correspondent account* has the same meaning as provided in section 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in section 1010.605(e)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

3–1705.41

(b) *Requirements for covered financial institutions.*

(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.*

(i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, di-

rective, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

3–1705.6

SECTION 1010.653—Special Measures Against Commercial Bank of Syria

(a) *Definitions.* For purposes of this section:

(1) *Commercial Bank of Syria* means any branch, office, or subsidiary of Commercial Bank of Syria operating in Syria or in any other jurisdiction, including Syrian Lebanese Commercial Bank.

(2) *Correspondent account* has the same meaning as provided in section 1010.605(c)(1)(ii).

(3) *Covered financial institution* includes:

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

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) 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 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

3–1705.61

(b) *Requirements for covered financial institutions.*

(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is open or maintained in the United States for, or on behalf of, Commercial Bank of Syria.

(2) *Due diligence of correspondent accounts to prohibit indirect use.*

(i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include:

(A) Notifying correspondent account holders that the correspondent account may not be used to provide Commercial Bank of Syria with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence

measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Commercial Bank of Syria shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Commercial Bank of Syria.

(3) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

3–1705.83

SECTION 1010.658—Special Measures Against FBME Bank, Ltd.

(a) *Definitions.* For purposes of this section:

(1) *FBME Bank, Ltd.* means all branches, offices, and subsidiaries of FBME Bank, Ltd. operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in section 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in section 1010.605(e)(1).

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions.*

(1) *Prohibition on use of correspondent accounts.* A covered financial institution shall not open or maintain a correspondent account in the United States for, or on behalf of, FBME Bank, Ltd.

(2) *Special due diligence of correspondent accounts to prohibit use.*

(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving FBME Bank, Ltd. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME Bank, Ltd., that such correspondents may not provide FBME Bank, Ltd. with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by FBME Bank, Ltd., to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving FBME Bank, Ltd.

(iii) A covered financial institution that obtains knowledge that a foreign correspondent account may be being used to process transactions involving FBME Bank, Ltd. shall take all appropriate steps to further investigate and prevent such

access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) of this section and, where necessary, termination of the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to FBME Bank Ltd.

(3) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

3–1705.84

SECTION 1010.659—Special Measures Against North Korea

(a) *Definitions.* For purposes of this section:

(1) *North Korean banking institution* means any bank organized under North Korean law, or any agency, branch, or office located outside the United States of such a bank.

(2) *North Korean financial institution* means all branches, offices, or subsidiaries of any foreign financial institution, as defined at section 1010.605(f), chartered or licensed by North Korea, wherever located, including any branches, offices, or subsidiaries of such a financial institution operating in any jurisdiction, and any branch or office within North Korea of any foreign financial institution.

(3) *Foreign bank* has the same meaning as provided in section 1010.100(u).

(4) *Correspondent account* has the same meaning as provided in section 1010.605(c)(1)(i).

(5) *Covered financial institution* has the same meaning as provided in section 1010.605(e)(1).

(6) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions.*

(1) *Opening or maintenance of correspondent accounts for a North Korean banking institution.* A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, a North Korean banking institution.

(2) *Prohibition on use of correspondent accounts involving North Korean financial institutions.* A covered financial institution shall take reasonable steps to not process a transaction for the correspondent account of a foreign bank in the United States if such a transaction involves a North Korean financial institution.

(3) *Special due diligence of correspondent accounts to prohibit use.*

(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving North Korean financial institutions. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to believe provide services to a North Korean financial institution that such correspondents may not provide a North Korean financial institution with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify

any use of its foreign correspondent accounts by a North Korean financial institution, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving North Korean financial institutions.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving a North Korean financial institution shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(3)(i)(A) of this section.

(ii) Nothing in this paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

3–1705.85

SECTION 1010.660—Special Measures Against Bank of Dandong

(a) *Definitions.* For purposes of this section:

(1) *Bank of Dandong* means all subsidiaries, branches, and offices of Bank of Dandong Co., Ltd. operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in section 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in section 1010.605(e)(1).

(4) *Foreign banking institution* means 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.

(5) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions.*

(1) *Opening or maintaining correspondent accounts for Bank of Dandong.* A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, Bank of Dandong.

(2) *Prohibition on use of correspondent accounts involving Bank of Dandong.* A covered financial institution shall take reasonable steps not to process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves Bank of Dandong.

(3) *Special due diligence of correspondent accounts to prohibit use.*

(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Bank of Dandong. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to believe provide services to Bank of Dandong that such correspondents may not provide Bank of Dandong with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by Bank of Dandong, to the extent that such use can be determined

from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving Bank of Dandong.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving Bank of Dandong shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(3)(i)(A) of this section.

(ii) Nothing in this paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

3–1705.86

SECTION 1010.661—Special Measures Against Iran

(a) *Definitions.* For purposes of this section:

(1) *Iranian financial institution* means any foreign financial institution, as defined at section 1010.605(f), organized under Iranian law wherever located, including any agency, branch, office, or subsidiary of such a financial institution operating in any jurisdiction, and any branch or office within Iran of any foreign financial institution.

(2) *Correspondent account* has the same meaning as provided in section 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in section 1010.605(e)(1).

(4) *Foreign bank* has the same meaning as provided in section 1010.100.

(5) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions.*

(1) *Opening or maintaining correspondent accounts for Iranian financial institutions.* A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, an Iranian financial institution, unless such account is authorized by United States Department of the Treasury's Office of Foreign Assets Control (OFAC).*

(2) *Prohibition on use of correspondent accounts.* A covered financial institution shall take reasonable steps to not process a transaction for the correspondent account of a foreign bank in the United States if such a transaction involves an Iranian financial institution, unless the transaction is authorized by, exempt from, or not prohibited under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*), any regulation, order, directive, or license issued pursuant thereto, or any other sanctions program administered by the Department of the Treasury's Office of Foreign Asset Control.

(3) *Special due diligence of correspondent accounts to prohibit use.*

(i) A covered financial institution shall apply special due diligence to the correspondent accounts of a foreign bank that is reasonably designed to guard against their use to process transactions involving Iranian financial institutions that are prohibited, and not authorized or exempt, pursuant to the IEEPA, any regulation, order, directive, or license issued pursuant thereto, or any other sanctions program administered by the Department of the Treasury's Office of Foreign Asset

* Note that covered financial institutions should block and report to OFAC any accounts that are blocked pursuant to any OFAC sanctions authority and therefore should continue to maintain such accounts in accordance with the Reporting Procedures and Penalties Regulations, 31 CFR part 501.

Control (''prohibited transactions''). At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to believe the correspondent account is being used to process transactions involving Iranian financial institutions that such prohibited transactions may not take place; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts for prohibited transactions involving Iranian financial institutions, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process prohibited transactions involving Iranian financial institutions.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process prohibited transactions involving Iranian financial institutions shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

3–1705.9

SECTION 1010.670—Summons or Subpoena of Foreign Bank Records; Termination of Correspondent Relationship

(a) *Definitions.* The definitions in section 1010.605 apply to this section.

(b) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and may 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. The summons or subpoena 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.

(c) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under paragraph (a)(2) of section 1010.630, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

3–1705.91

(d) *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:

(1) To comply with a summons or subpoena issued under paragraph (b) of this section; or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(e) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for termi-

nating a correspondent relationship in accordance with paragraph (d) of this section.

(f) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section 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.

3–1706

SUBPART G—ADMINISTRATIVE RULINGS

SECTION 1010.710—Scope

This subpart provides that the Director, FinCEN, or his designee, either unilaterally or upon request, may issue administrative rulings interpreting the application of this chapter.

3–1706.1

SECTION 1010.711—Submitting Requests

(a) Each request for an administrative ruling must be in writing and contain the following information:

(1) A complete description of the situation for which the ruling is requested,

(2) A complete statement of all material facts related to the subject transaction,

(3) A concise and unambiguous question to be answered,

(4) A statement certifying, to the best of the requestor's knowledge and belief, that the question to be answered is not applicable to any ongoing state or Federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship,

(5) A statement identifying any information in the request that the requestor considers to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and the reason therefor,

(6) If the subject situation is hypothetical, a statement justifying why the particular situation described warrants the issuance of a ruling,

(7) The signature of the person making the request, or

(8) If an agent makes the request, the signature of the agent and a statement certifying the authority under which the request is made.

3–1706.11

(b) A request filed by a corporation shall be signed by a corporate officer and a request filed by a partnership shall be signed by a partner.

(c) A request may advocate a particular proposed interpretation and may set forth the legal and factual basis for that interpretation.

(d) Requests shall be addressed to: Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

(e) The requester shall advise the Director, FinCEN, immediately in writing of any subsequent change in any material fact or statement submitted with a ruling request in conformity with paragraph (a) of this section.

3–1706.2

SECTION 1010.712—Nonconforming Requests

The Director, FinCEN, or his designee shall notify the requester if the ruling request does not conform with the requirements of section 1010.711. The notice shall be in writing and shall describe the requirements that have not been met. A request that is not brought into conformity with such requirements within 30 days from the date of such notice, unless extended for good cause by FinCEN, shall be treated as though it were withdrawn.

3–1706.3

SECTION 1010.713—Oral Communications

(a) The Director of FinCEN or his designee will not issue administrative rulings in response to oral requests. Oral opinions or ad-

vice by Treasury, Customs and Border Protection, the Internal Revenue Service, the Office of the Comptroller of the Currency, or any other bank supervisory agency personnel, regarding the interpretation and application of this chapter, do not bind FinCEN and carry no precedential value.

(b) A person who has made a ruling request in conformity with section 1010.711 may request an opportunity for oral discussion of the issues presented in the request. The request should be made to the Director, FinCEN, and any decision to grant such a conference is wholly within the discretion of the Director. Personal conferences or telephone conferences may be scheduled only for the purpose of affording the requester an opportunity to discuss freely and openly the matters set forth in the administrative ruling request. Accordingly, the conferees will not be bound by any argument or position advocated or agreed to, expressly or impliedly, during the conference. Any new arguments or facts put forth by the requester at the meeting must be reduced to writing by the requester and submitted in conformity with section 1010.711 before they may be considered in connection with the request.

3–1706.4

SECTION 1010.714—Withdrawing Requests

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

3–1706.5

SECTION 1010.715—Issuing Rulings

The Director, FinCEN, or his designee may issue a written ruling interpreting the relationship between this chapter and each situation for which such a ruling has been requested in conformity with section 1010.711. A ruling issued under this section shall bind FinCEN only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if FinCEN makes it available to the public through publication on the FinCEN Web site under the heading ''Administrative rulings'' or other appropriate forum. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. FinCEN will make every effort to respond to each requestor within 90 days of receiving a request. (Approved by the Office of Management and Budget under control number 1506-0050.)

3–1706.6

SECTION 1010.716—Modifying or Rescinding Rulings

(a) The Director, FinCEN, or his designee may modify or rescind any ruling made pursuant to section 1010.715:

(1) When, in light of changes in the statute or regulations, the ruling no longer sets forth the interpretation of the Director, FinCEN with respect to the described situation,

(2) When any fact or statement submitted in the original ruling request is found to be materially inaccurate or incomplete, or

(3) For other good cause.

(b) Any person may submit to the Director, FinCEN a written request that an administrative ruling be modified or rescinded. The request should conform to the requirements of section 1010.711, explain why rescission or modification is warranted, and refer to any reasons in paragraph (a) of this section that are relevant. The request may advocate an alternative interpretation and may set forth the legal and factual basis for that interpretation.

3–1706.61

(c) FinCEN shall modify an existing administrative ruling by issuing a new ruling that rescinds the relevant prior ruling. Once rescinded, an administrative ruling shall no longer have any precedential value.

(d) An administrative ruling may be modified or rescinded retroactively with respect to one or more parties to the original ruling request if the Director, FinCEN, determines that:

(1) A fact or statement in the original ruling request was materially inaccurate or incomplete,
(2) The requestor failed to notify in writing FinCEN of a material change to any fact or statement in the original request, or
(3) A party to the original request acted in bad faith when relying upon the ruling.

3–1706.7

SECTION 1010.717—Disclosing Information

(a) Any part of any administrative ruling, including names, addresses, or information related to the business transactions of private parties, may be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. If the request for an administrative ruling contains information which the requestor wishes to be considered for exemption from disclosure under the Freedom of Information Act, the requestor should clearly identify such portions of the request and the reasons why such information should be exempt from disclosure.

(b) A requestor claiming an exemption from disclosure will be notified, at least 10 days before the administrative ruling is issued, of a decision not to exempt any of such information from disclosure so that the underlying request for an administrative ruling can be withdrawn if the requestor so chooses.

3–1707

SUBPART H—ENFORCEMENT; PENALTIES; AND FORFEITURE

SECTION 1010.810—Enforcement

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter, is delegated to the Director, FinCEN.

(b) Authority to examine institutions to determine compliance with the requirements of this chapter is delegated as follows:

(1) To the Comptroller of the Currency with respect to those financial institutions regularly examined for safety and soundness by national bank examiners;
(2) To the Board of Governors of the Federal Reserve System with respect to those financial institutions regularly examined for safety and soundness by Federal Reserve bank examiners;
(3) To the Federal Deposit Insurance Corporation with respect to those financial institutions regularly examined for safety and soundness by FDIC bank examiners;
(4) To the Federal Home Loan Bank Board with respect to those financial institutions regularly examined for safety and soundness by FHLBB bank examiners;
(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.
(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80-1 *et seq.*);
(7) To the Commissioner of Customs and Border Protection with respect to sections 1010.340 and 1010.830;
(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and
(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.
(10) To the Federal Housing Finance Agency with respect to the housing government sponsored enterprises, as defined in section 1010.100(mmm) of this part.

3–1707.1

(c) Authority for investigating criminal violations of this chapter is delegated as follows:

(1) To the Commissioner of Customs and

Border Protection with respect to section 1010.340;

(2) To the Commissioner of Internal Revenue except with respect to section 1010.340.

(d) Authority for the imposition of civil penalties for violations of this chapter lies with the Director of FinCEN.

3–1707.12

(e) Periodic reports shall be made to the Director, FinCEN by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Director, FinCEN may direct. Evidence of specific violations of any of the requirements of this chapter may be submitted to the Director, FinCEN at any time.

3–1707.13

(f) The Director, FinCEN or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this chapter.

3–1707.14

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and sections 1010.350 and 1010.420 of this chapter has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. Such authority includes, with respect to 31 U.S.C. 5314 and 1010.350 and 1010.420 of this chapter, the authority to: assess and collect civil penalties under 31 U.S.C. 5321 and 31 CFR 1010.820; investigate possible civil violations of these provisions (in addition to the authority already provided at paragraph (c)(2)) of this section); employ the summons power of subpart I of this part 1010; issue administrative rulings under subpart G of this part 1010; and take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

3–1707.2

SECTION 1010.820—Civil Penalty

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this chapter or of any recordkeeping requirements of sections 1010.311, 1010.313, 1020.315, 1021.311 or 1021.313, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

3–1707.21

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this chapter or of the recordkeeping requirements of section 1010.420, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

3–1707.22

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of section 1010.420, under this chapter, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

3–1707.23

(d) For any failure to file a report required under section 1010.340 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under section 1010.830.

3–1707.24

(e) For any willful violation of section 1010.314 committed after January 26, 1987, the Secretary may assess upon any person a

civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

3–1707.25

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this chapter (except section 1010.350, section 1010.360 or section 1010.420), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

3–1707.27

(g) For each negligent violation of any requirement of this chapter, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

(h) For penalties that are assessed after August 1, 2016, *see* section 1010.821 for rules relating to the maximum amount of the penalty.

3–1707.28

SECTION 1010.821—Penalty Adjustment and Table

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, (''FCPIA Act''), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, FinCEN has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil monetary penalty provided by law within its jurisdiction that is subject to the FCPIA Act. The adjusted civil monetary penalty amounts replace the amounts published in the statutes authorizing the assessment of penalties.

(b) *Maximum civil monetary penalties.* The statutory penalty provisions and their adjusted maximum amounts or range of minimum and maximum amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts or range of minimum and maximum amounts. These maximum penalty amounts do not, however, limit the total amount of a penalty in the case of a penalty that may be imposed for each day a violation continues.

Table 1 of section 1010.821—Penalty adjustment table

U.S. Code citation	Civil monetary penalty description	Penalties as last amended by statute ($)	Maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed on or after January 25, 2024 ($)
12 U.S.C. 1829b(j)	Relating to recordkeeping violations for funds transfers	10,000	25,597
12 U.S.C. 1955	Willful or grossly negligent recordkeeping violations	10,000	25,597
31 U.S.C. 5318(k)(3)(C)	Failure to terminate correspondent relationship with foreign bank	10,000	17,315
31 U.S.C. 5321(a)(1)	General civil penalty provision for willful violations of Bank Secrecy Act requirements	25,000–100,000	69,733–278,937
31 U.S.C. 5321(a)(5)(B)(i)	Foreign financial agency transaction—Non-willful violation of transaction	10,000	16,117
31 U.S.C. 5321(a)(5)(C)(i)(I)	Foreign financial agency transaction—Willful violation of transaction	100,000	161,166
31 U.S.C. 5321(a)(6)(A)	Negligent violation by financial institution or non-financial trade or business	500	1,394
31 U.S.C. 5321(a)(6)(B)	Pattern of negligent activity by financial institution or non-financial trade or business	50,000	108,489
31 U.S.C. 5321(a)(7)	Violation of certain due diligence requirements, prohibition on correspondent accounts for shell banks, and special measures	1,000,000	1,731,383
31 U.S.C. 5330(e)	Civil penalty for failure to register as money transmitting business	5,000	10,289
31 U.S.C. 5336(h)(3)(A)(i)	Civil penalty for beneficial ownership information reporting violation	500	591
31 U.S.C. 5336(h)(3)(B)(i)	Civil penalty for unauthorized disclosure or use of beneficial ownership information	500	591

3–1707.3

SECTION 1010.830—Forfeiture of Currency or Monetary Instruments

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under section 1010.340 are subject to seizure and forfeiture to the United States if such report has not been filed as required in section 1010.360, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

3–1707.4

SECTION 1010.840—Criminal Penalty

(a) Any person who willfully violates any provision of title I of Public Law 91-508, or of this chapter authorized thereby may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by title I of Public Law 91-508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

(b) Any person who willfully violates any provision of title II of Public Law 91-508, or of this chapter authorized thereby, may, upon conviction thereof, be fined not more than $250,000 or be imprisoned not more than 5 years, or both.

(c) Any person who willfully violates any provision of title II of Public Law 91-508, or of this chapter authorized thereby, where the violation is either

(1) Committed while violating another law of the United States, or

(2) Committed as part of a pattern of any illegal activity involving more than $100,000 in any 12-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than 10 years, or both.

(d) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this chapter may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

3–1707.5

SECTION 1010.850—Enforcement Authority with Respect to Transportation of Currency or Monetary Instruments

(a) If a customs officer has reasonable cause to believe that there is a monetary instrument being transported without the filing of the report required by sections 1010.340 and 1010.360 of this chapter, he may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer reasonably believes is transporting such instrument.

(b) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under section 1010.340 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(c) This section is not in derogation of the authority of the Secretary under any other law or regulation.

3–1708

SUBPART I—SUMMONS

SECTION 1010.911—General

For any investigation for the purpose of civil enforcement of violations of the Bank Secrecy Act, or any regulation issued pursuant to the Bank Secrecy Act, the Secretary or delegate of the Secretary may summon a financial institution or an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of any of the records and reports required under the Bank Secrecy Act or this chapter to appear before the Secretary or his delegate, at a time and place named in the summons, and to give testimony, under oath, and be examined, and to produce such

books, papers, records, or other data as may be relevant or material to such investigation.

3–1708.2

SECTION 1010.912—Persons Who May Issue Summons

For purposes of this chapter, the following officials are hereby designated as delegates of the Secretary who are authorized to issue a summons under section 1010.911, solely for the purposes of civil enforcement of this chapter:

(a) *FinCEN.* The Director, FinCEN.

(b) *Internal Revenue Service.* Except with respect to section 1010.340 of this chapter, the Commissioner, the Deputy Commissioner, or a delegate of either official, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this chapter, the Chief (Criminal Investigation) or a delegate.

(c) *Customs and Border Protection.* With respect to section 1010.340 of this chapter, the Commissioner, the Deputy Commissioner, the Assistant Commissioner (Enforcement), Regional Commissioners, Assistant Regional Commissioners (Enforcement), and Special Agents in Charge.

3–1708.3

SECTION 1010.913—Contents of Summons

(a) *Summons for testimony.* Any summons issued under section 1010.911 of this chapter to compel the appearance and testimony of a person shall state:

(1) The name, title, address, and telephone number of the person before whom the appearance shall take place (who may be a person other than the persons who are authorized to issue such a summons under section 1010.912 of this chapter);

(2) The address to which the person summoned shall report for the appearance;

(3) The date and time of the appearance; and

(4) The name, title, address, and telephone number of the person who has issued the summons.

3–1708.31

(b) *Summons of books, papers, records, or data.* Any summons issued under section 1010.911 of this chapter to require the production of books, papers, records, or other data shall describe the materials to be produced with reasonable specificity, and shall state:

(1) The name, title, address, and telephone number of the person to whom the materials shall be produced (who may be a person other than the persons who are authorized to issue such a summons under section 1010.912 of this chapter);

(2) The address at which the person summoned shall produce the materials, not to exceed 500 miles from any place where the financial institution operates or conducts business in the United States;

(3) The specific manner of production, whether by personal delivery, by mail, or by messenger service;

(4) The date and time for production; and

(5) The name, title, address, and telephone number of the person who has issued the summons.

3–1708.4

SECTION 1010.914—Service of Summons

(a) *Who may serve.* Any delegate of the Secretary authorized under section 1010.912 of this chapter to issue a summons, or any other person authorized by law to serve summonses or other process, is hereby authorized to serve a summons issued under this chapter.

(b) *Manner of service.* Service of a summons may be made—

(1) Upon any person, by registered mail, return receipt requested, directed to the person summoned;

(2) Upon a natural person by personal delivery; or

(3) Upon any other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* The summons shall contain a certificate of service to be signed by the server of the summons. On the hearing of an application for enforcement of the summons, the certificate of service signed by the person serving the summons shall be evidence of the facts it states.

3–1708.5

SECTION 1010.915—Examination of Witnesses and Records

(a) *General.* Any delegate of the Secretary authorized under section 1010.912 of this chapter to issue a summons, or any officer or employee of the Treasury Department or any component thereof who is designated by that person (whether in the summons or otherwise), is hereby authorized to receive evidence and to examine witnesses pursuant to the summons. Any person authorized by law may administer any oaths and affirmations that may be required under this subpart.

(b) *Testimony taken under oath.* Testimony of any person under this chapter may be taken under oath, and shall be taken down in writing by the person examining the person summoned or shall be otherwise transcribed. After the testimony of a witness has been transcribed, a copy of that transcript shall be made available to the witness upon request, unless for good cause the person issuing the summons determines, under 5 U.S.C. 555, that a copy should not be provided. If such a determination has been made, the witness shall be limited to inspection of the official transcript of the testimony.

3–1708.51

(c) *Disclosure of summons, testimony, or records.* Unless the Secretary or a delegate of the Secretary listed under section 1010.912(a) of this chapter so authorizes in writing, or it is otherwise required by law, no delegate of the Secretary listed under section 1010.912 (b) or (c) of this chapter or other officer or employee of the Treasury Department or any component thereof shall—

(1) Make public the name of any person to whom a summons has been issued under this chapter, or release any information to the public concerning that person or the issuance of a summons to that person prior to the time and date set for that person's appearance or production of records; or

(2) Disclose any testimony taken (including the name of the witness) or material presented pursuant to the summons, to any person other than an officer or employee of the Treasury Department or of any component thereof. Nothing in the preceding sentence shall preclude a delegate of the Secretary, or other officer or employee of the Treasury Department or any component thereof, from disclosing testimony taken, or material presented pursuant to a summons issued under this chapter, to any person in order to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.

3–1708.6

SECTION 1010.916—Enforcement of Summons

In the case of contumacy by, or refusal to obey a summons issued to, any person under this chapter, the Secretary or any delegate of the Secretary listed under section 1010.912 of this chapter shall refer the matter to the Attorney General or delegate of the Attorney General (including any United States Attorney or Assistant United States Attorney, as appropriate), who may bring an action to compel compliance with the summons in any court of the United States within the jurisdiction of which the investigation which gave rise to the summons being or has been carried on, the jurisdiction in which the person summoned is a resident, or the jurisdiction in which the person summoned carries on business or may be found. When a referral is made by a delegate of the Secretary other than a delegate named in section 1010.912(a) of this chapter, prompt notification of the referral must be made to the Director, FinCEN. The court may issue an order requiring the person summoned to appear before the Secretary or delegate of the Secretary to produce books, papers, records,

or other data, to give testimony as may be necessary in order to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any case under this section may be served in any judicial district in which such person may be found.

3–1708.7

SECTION 1010.917—Payment of Expenses

Persons summoned under this chapter 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. The United States shall not be liable for any other expense incurred in connection with the production of books, papers, records, or other data under this chapter.

3–1709

SUBPART J—MISCELLANEOUS

SECTION 1010.920—Access to Records

Except as provided in sections 1020.410(b)(1), 1021.410(a), and 1023.410(a)(1), and except for the purpose of assuring compliance with the recordkeeping and reporting requirements of this chapter, this chapter does not authorize the Secretary or any other person to inspect or review the records required to be maintained by this chapter. Other inspection, review or access to such records is governed by other applicable law.

3–1709.2

SECTION 1010.930—Rewards for Informants

(a) If an individual provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of the provisions of the Bank Secrecy Act or of this chapter, the Secretary may pay a reward to that individual.

(b) The Secretary shall determine the amount of the reward to be paid under this section; however, any reward paid may not be more than 25 percent of the net amount of the fine, penalty or forfeiture collected, or $150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides original information described in paragraph (a) in the performance of official duties is not eligible for a reward under this section.

3–1709.3

SECTION 1010.940—Photographic or Other Reproductions of Government Obligations

Nothing herein contained shall require or authorize the reproduction of:

(a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(b) Any obligation or other security of any foreign government, the reproduction of which is prohibited by law.

3–1709.4

SECTION 1010.950—Availability of Information—General

(a) The Secretary has the discretion to disclose information reported under this chapter, other than information reported pursuant to section 1010.380, for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section. FinCEN may disclose information reported pursuant to section 1010.380 only as set forth in section 1010.955, and paragraphs (b) through (f) of this section shall not apply to the disclosure of such information.

(b) The Secretary may make any information set forth in any report received pursuant to this chapter available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and

stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(c) The Secretary may make any information set forth in any report received pursuant to this chapter available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(d) The Secretary may make any information set forth in any report received pursuant to this chapter available to any other department or agency of the United States that is a member of the Intelligence Community, as defined by Executive Order 12333 or any succeeding executive order, upon the request of the head of such department or agency made in writing and stating the particular information desired, the national security matter with which the information is sought and the official need therefor.

(e) Any information made available under this section to other department or agencies of the United States, any state or local government, or any foreign government shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding or matter in connection with which the information is sought.

(f) The Secretary may require that a State or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

3–1709.45

SECTION 1010.955—Availability of Beneficial Ownership Information Reported under This Part

(a) *Prohibition on disclosure.* Except as authorized in paragraphs (b), (c), and (d) of this section, information reported to FinCEN pursuant to section 1010.380 is confidential and shall not be disclosed by any individual who receives such information as—

(1) An officer, employee, contractor, or agent of the United States;

(2) An officer, employee, contractor, or agent of any State, local, or Tribal agency; or

(3) A director, officer, employee, contractor, or agent of any financial institution.

(b) *Disclosure of information by FinCEN.*

(1) *Disclosure to Federal agencies for use in furtherance of national security, intelligence, or law enforcement activity.* Upon receipt of a request from a Federal agency engaged in national security, intelligence, or law enforcement activity for information reported pursuant to section 1010.380 to be used in furtherance of such activity, FinCEN may disclose such information to such agency. For purposes of this paragraph (b)(1)—

(i) National security activity means activity pertaining to the national defense or foreign relations of the United States, as well as activity to protect against threats to the safety and security of the United States;

(ii) Intelligence activity means all activities conducted by elements of the United States Intelligence Community that are authorized pursuant to Executive Order 12333, as amended, or any succeeding executive order; and

(iii) Law enforcement activity means investigative and enforcement activities relating to civil or criminal violations of law. Such activity does not include the routine supervision or examination of a financial institution by a Federal regulatory agency with authority described in paragraph (b)(4)(ii)(A) of this section.

(2) *Disclosure to State, local, and Tribal law enforcement agencies for use in crimi-*

nal or civil investigations. Upon receipt of a request from a State, local, or Tribal law enforcement agency for information reported pursuant to section 1010.380 to be used in a criminal or civil investigation, FinCEN may disclose such information to such agency if a court of competent jurisdiction has authorized the agency to seek the information in a criminal or civil investigation. For purposes of this section—

(i) A court of competent jurisdiction is any court with jurisdiction over the investigation for which a State, local, or Tribal law enforcement agency requests information under this paragraph.

(ii) A State, local, or Tribal law enforcement agency is an agency of a State, local, or Tribal government that is authorized by law to engage in the investigation or enforcement of civil or criminal violations of law.

(3) *Disclosure for use in furtherance of foreign national security, intelligence, or law enforcement activity.* Upon receipt of a request for information reported pursuant to section 1010.380 from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, or on behalf of a foreign central authority or foreign competent authority (or like designation) under an applicable international treaty, agreement, or convention, FinCEN may disclose such information to such Federal agency for transmission to the foreign law enforcement agency, prosecutor, judge, foreign central authority, or foreign competent authority who initiated the request, provided that:

(i) The request is for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the foreign country; and

(ii) The request is:

(A) Made under an international treaty, agreement, or convention; or

(B) Made, when no such treaty, agreement, or convention is available, as an official request by a law enforcement, judicial, or prosecutorial authority of a foreign country determined by FinCEN, with the concurrence of the Secretary of State and in consultation with the Attorney General or other agencies as necessary and appropriate, to be a trusted foreign country.

(iii) For purposes of this paragraph (b)(3), a national security activity authorized under the laws of a foreign country is an activity pertaining to the national defense or foreign relations of a country other than the United States, as well as activity to protect against threats to the safety and security of that country.

(iv) For purposes of this paragraph (b)(3), an intelligence activity authorized under the laws of a foreign country is an activity conducted by a foreign government agency that is authorized under a foreign legal authority comparable to Executive Order 12333 that is applicable to the agency.

(4) *Disclosure to facilitate compliance with customer due diligence requirements.*

(i) *Financial institutions*. Upon receipt of a request from a financial institution subject to customer due diligence requirements under applicable law for information reported pursuant to section 1010.380 to be used in facilitating compliance with such requirements, FinCEN may disclose the information to the financial institution for that use, provided that the reporting company that reported the information to FinCEN consents to such disclosure. For purposes of this paragraph, customer due diligence requirements under applicable law mean any legal requirement or prohibition designed to counter money laundering or the financing of terrorism, or to safeguard the national security of the United States, to comply with which it is reasonably necessary for a financial institution to obtain or verify beneficial ownership information of a legal entity customer.

(ii) *Regulatory agencies*. Upon receipt of a request by a Federal functional regulator or other appropriate regulatory agency, FinCEN shall disclose to such agency any information disclosed to a financial institution pursuant to paragraph (b)(4)(i) of this section if the agency—

(A) Is authorized by law to assess, su-

pervise, enforce, or otherwise determine the compliance of such financial institution with customer due diligence requirements under applicable law;

(B) Will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section; and

(C) Has entered into an agreement with FinCEN providing for appropriate protocols governing the safekeeping of the information.

(5) *Disclosure to officers or employees of the Department of the Treasury.* Consistent with procedures and safeguards established by the Secretary—

(i) Information reported pursuant to section 1010.380 shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties the Secretary determines require such inspection or disclosure.

(ii) Officers and employees of the Department of the Treasury may obtain information reported pursuant to section 1010.380 for tax administration as defined in 26 U.S.C. 6103(b)(4).

(c) *Use of information.*

(1) *Use of information by authorized recipients.* Except as permitted under paragraph (c)(2) of this section, any person who receives information disclosed by FinCEN under paragraph (b) of this section shall not further disclose such information to any other person, and shall use such information only for the particular purpose or activity for which such information was disclosed. A Federal agency that receives information pursuant to paragraph (b)(3) of this section shall only use it to facilitate a response to a request for assistance pursuant to that paragraph.

(2) *Disclosure of information by authorized recipients.*

(i) Any officer, employee, contractor, or agent of a requesting agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(1) or (2) or (b)(4)(ii) of this section may disclose such information to another officer, employee, contractor, or agent of the same requesting agency for the particular purpose or activity for which such information was requested, consistent with the requirements of paragraph (d)(1)(i)(F) of this section, as applicable. Any officer, employee, contractor, or agent of the U.S. Department of the Treasury who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(5) of this section may disclose such information to another Treasury officer, employee, contractor, or agent for the particular purpose or activity for which such information was requested consistent with internal Treasury policies, procedures, orders or directives.

(ii) Any director, officer, employee, contractor, or agent of a financial institution who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(4)(i) of this section may disclose such information to another director, officer, employee, contractor, or agent of the same financial institution for the particular purpose or activity for which such information was requested, consistent with the requirements of paragraph (d)(2) of this section.

(iii) Any director, officer, employee, contractor, or agent of a financial institution that receives information disclosed by FinCEN pursuant to paragraph (b)(4)(i) of this section may disclose such information to the financial institution's Federal functional regulator, a self-regulatory organization that is registered with or designated by a Federal functional regulator pursuant to Federal statute, or other appropriate regulatory agency, provided that the Federal functional regulator, self-regulatory organization, or other appropriate regulatory agency meets the requirements identified in paragraphs (b)(4)(ii)(A) through (C) of this section. A financial institution may rely on a Federal functional regulator, self-regulatory organization, or other appropriate regulatory agency's representation that it meets the requirements.

(iv) Any officer, employee, contractor, or

agent of a Federal functional regulator that receives information disclosed by FinCEN pursuant to paragraph (b)(4)(ii) of this section may disclose such information to a self-regulatory organization that is registered with or designated by the Federal functional regulator, provided that the self-regulatory organization meets the requirements of paragraphs (b)(4)(ii)(A) through (C) of this section.

(v) Any officer, employee, contractor, or agent of a Federal agency that receives information from FinCEN pursuant to a request made under paragraph (b)(3) of this section may disclose such information to the foreign person on whose behalf the Federal agency made the request.

(vi) Any officer, employee, contractor, or agent of a Federal agency engaged in a national security, intelligence, or law enforcement activity, or any officer, employee, contractor, or agent of a State, local, or Tribal law enforcement agency, may disclose information reported pursuant to section 1010.380 that it has obtained directly from FinCEN pursuant to a request under paragraph (b)(1) or (2) of this section to a court of competent jurisdiction or parties to a civil or criminal proceeding.

(vii) Any officer, employee, contractor, or agent of a requesting agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(1), (b)(4)(ii), or (b)(5) of this section may disclose such information to any officer, employee, contractor, or agent of the United States Department of Justice for purposes of making a referral to the Department of Justice or for use in litigation related to the activity for which the requesting agency requested the information.

(viii) Any officer, employee, contractor, or agent of a State, local, or Tribal law enforcement agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(2) of this section may disclose such information to any officer, employee, contractor, or agent of another State, local, or Tribal agency for purposes of making a referral for possible prosecution by that agency, or for use in litigation related to the activity for which the requesting agency requested the information.

(ix) A law enforcement agency, prosecutor, judge, foreign central authority, or foreign competent authority of another country that receives information from a Federal agency pursuant to a request under paragraph (b)(3)(ii)(A) of this section may disclose and use such information consistent with the international treaty, agreement, or convention under which the request was made.

(x) FinCEN may by prior written authorization, or by protocols or guidance that FinCEN may issue, authorize persons to disclose information obtained pursuant to paragraph (b) of this section in furtherance of a purpose or activity described in that paragraph.

(d) *Security and confidentiality requirements.*

(1) *Security and confidentiality requirements for domestic agencies.*

(i) *General requirements.* To receive information under paragraph (b)(1), (2), or (3) or (b)(4)(ii) of this section, a Federal, State, local, or Tribal agency shall satisfy the following requirements:

(A) *Agreement.* The agency shall enter into an agreement with FinCEN specifying the standards, procedures, and systems to be maintained by the agency, and any other requirements FinCEN may specify, to protect the security and confidentiality of such information. Agreements shall include, at a minimum, descriptions of the information to which an agency will have access, specific limitations on electronic access to that information, discretionary conditions of access, requirements and limitations related to re-disclosure, audit and inspection requirements, and security plans outlining requirements and standards for personnel security, physical security, and computer security.

(B) *Standards and procedures.* The agency shall establish standards and procedures to protect the security and

confidentiality of such information, including procedures for training agency personnel on the appropriate handling and safeguarding of such information. The head of the agency, on a non-delegable basis, shall approve these standards and procedures.

(C) *Initial report and certification*. The agency shall provide FinCEN a report that describes the standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section and that includes a certification by the head of the agency, on a non-delegable basis, that the standards and procedures implement the requirements of this paragraph (d)(1).

(D) *Secure system for beneficial ownership information storage*. The agency shall, to the satisfaction of the Secretary, establish and maintain a secure system in which such information shall be stored.

(E) *Auditability*. The agency shall establish and maintain a permanent, auditable system of standardized records for requests pursuant to paragraph (b) of this section, including, for each request, the date of the request, the name of the individual who makes the request, the reason for the request, any disclosure of such information made by or to the requesting agency, and information or references to such information sufficient to reconstruct the reasons for the request.

(F) *Restrictions on personnel access to information*. The agency shall restrict access to information obtained from FinCEN pursuant to this section to personnel—

(*1*) Who are directly engaged in the activity for which the information was requested;

(*2*) Whose duties or responsibilities require such access;

(*3*) Who have received training pursuant to paragraph (d)(1)(i)(B) of this section or have obtained the information requested directly from persons who both received such training and received the information directly from FinCEN;

(*4*) Who use appropriate identity verification mechanisms to obtain access to the information; and

(*5*) Who are authorized by agreement between the agency and FinCEN to access the information.

(G) *Audit requirements*. The agency shall:

(*1*) Conduct an annual audit to verify that information obtained from FinCEN pursuant to this section has been accessed and used appropriately and in accordance with the standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section;

(*2*) Provide the results of that audit to FinCEN upon request; and

(*3*) Cooperate with FinCEN's annual audit of the adherence of agencies to the requirements established under this paragraph to ensure that agencies are requesting and using the information obtained under this section appropriately, including by promptly providing any information FinCEN requests in support of its annual audit.

(H) *Semi-annual certification*. The head of the agency, on a non-delegable basis, shall certify to FinCEN semiannually that the agency's standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section are in compliance with the requirements of this paragraph (d)(1). One of the semiannual certifications may be included in the annual report required under paragraph (d)(1)(i)(I) of this section.

(I) *Annual report on procedures*. The agency shall provide FinCEN a report annually that describes the standards and procedures that the agency uses to ensure the security and confidentiality of any information received pursuant to paragraph (b) of this section.

(ii) *Requirements for requests for disclosure*. A Federal, State, local, or Tribal agency that makes a request under para-

graph (b)(1), (2), or (3) or (b)(4)(ii) of this section shall satisfy the following requirements in connection with each request that it makes and in connection with all such information it receives.

(A) *Minimization*. The requesting agency shall limit, to the greatest extent practicable, the scope of such information it seeks, consistent with the agency's purposes for seeking such information.

(B) *Certifications and other requirements*.

(*1*) The head of a Federal agency that makes a request under paragraph (b)(1) of this section or their designee shall make a written certification to FinCEN, in the form and manner as FinCEN shall prescribe, that:

(*i*) The agency is engaged in a national security, intelligence, or law enforcement activity; and

(*ii*) The information requested is for use in furtherance of such activity, setting forth specific reasons why the requested information is relevant to the activity.

(*2*) The head of a State, local, or Tribal agency, or their designee, who makes a request under paragraph (b)(2) of this section shall submit to FinCEN a written certification, in the form and manner as FinCEN shall prescribe, that:

(*i*) A court of competent jurisdiction has authorized the agency to seek the information in a criminal or civil investigation; and

(*ii*) The requested information is relevant to the criminal or civil investigation, setting forth a description of the information the court has authorized the agency to seek.

(*3*) The head of a Federal agency, or their designee, who makes a request under paragraph (b)(3)(ii)(A) of this section shall:

(*i*) Retain for the agency's records the request for information under the applicable international treaty, agreement, or convention;

(*ii*) Submit to FinCEN, in the form and manner as FinCEN shall prescribe: the name, title, agency, and country of the foreign person on whose behalf the Federal agency is making the request; the title of the international treaty, agreement, or convention under which the request is being made; and a certification that the requested information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country.

(*4*) The head of a Federal agency, or their designee, who makes a request under paragraph (b)(3)(ii)(B) of this section shall submit to FinCEN, in the form and manner as FinCEN shall prescribe:

(*i*) A written explanation of the specific purpose for which the foreign person is seeking information under paragraph (b)(3)(ii)(B) of this section, along with an accompanying certification that the information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country and that the foreign person seeking information under paragraph (b)(3)(ii)(B) has been informed that the information may only be used only for the particular purpose or activity for which it is requested and must be handled consistent with the requirements of paragraph (d)(3) of this section;

(*ii*) The name, title, agency, and country of the foreign person on whose behalf the Federal agency is making the request; and

(*iii*) Any other information that

FinCEN requests in order to evaluate the request.

(*5*) The head of a Federal functional regulator or other appropriate regulatory agency, or their designee, who makes a request under paragraph (b)(4)(ii) of this section shall make a written certification to FinCEN, in the form and manner as FinCEN shall prescribe, that:

(*i*) The agency is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of a relevant financial institution with customer due diligence requirements under applicable law; and

(*ii*) The agency will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section.

(2) *Security and confidentiality requirements for financial institutions.* To receive information under paragraph (b)(4)(i) of this section, a financial institution shall satisfy the following requirements:

(i) *Geographic restrictions on information*. The financial institution shall not make information obtained from FinCEN under paragraph (b)(4)(i) of this section available to persons physically located in, and shall not store such information in, any of the following jurisdictions:

(A) The People's Republic of China;

(B) The Russian Federation; or

(C) A jurisdiction:

(*1*) That is a state sponsor of terrorism, as determined by the U.S. Department of State;

(*2*) That is the subject of comprehensive financial and economic sanctions imposed by the Federal Government, i.e., is a jurisdiction with a government whose property and interests in property within U.S. jurisdiction are blocked pursuant to U.S. sanctions authorities, or a jurisdiction subject to broad-based prohibitions on transactions by U.S. persons involving that jurisdiction, such as prohibitions on importing or exporting goods, services, or technology to the jurisdiction or dealing in goods or services originating from the jurisdiction, pursuant to U.S. sanctions authorities; or

(*3*) To which the Secretary has determined that allowing information obtained from FinCEN under paragraph (b)(4)(i) of this section to be made available would undermine the enforcement of the requirements of paragraph (d)(2) of this section or the national security of the United States.

(ii) *Safeguards*. The financial institution shall develop and implement administrative, technical, and physical safeguards reasonably designed to protect the security, confidentiality, and integrity of such information. These shall include:

(A) *Information procedures*. The financial institution shall:

(*1*) Apply such information procedures as the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information, modified as needed to account for any unique requirements imposed under this section; or

(*2*) If the institution is not subject to section 501 of the Gramm-Leach-Bliley Act, apply such information procedures with regard to the protection of its customers' nonpublic personal information as are required, recommended, or authorized under applicable law and are at least as protective of the security and confidentiality of customer information as procedures that satisfy the standards of section 501 of the Gramm-Leach-Bliley Act.

(B) *Notification of information demand*. The financial institution shall notify FinCEN within three business days of receipt of any foreign govern-

ment subpoena or legal demand under which the financial institution would have to disclose any information the financial institution has received pursuant to a request under paragraph (b)(4)(i) of this section.

(iii) *Consent to obtain information*. Before making a request for information regarding a reporting company under paragraph (b)(4)(i) of this section, the financial institution shall obtain and document the consent of the reporting company to request such information. The documentation of the reporting company's consent shall be maintained for 5 years after it is last relied upon in connection with a request for information under paragraph (b)(4)(i) of this section.

(iv) *Certification*. For each request for information regarding a reporting company under paragraph (b)(4)(i) of this section, the financial institution shall make a certification to FinCEN in such form and manner as FinCEN shall prescribe that the financial institution:

(A) Is requesting the information to facilitate its compliance with customer due diligence requirements under applicable law;

(B) Has obtained and documented the consent of the reporting company to request the information from FinCEN; and

(C) Has fulfilled all other requirements of paragraph (d)(2) of this section.

(3) *Security and confidentiality requirements for foreign recipients of information.*

(i) To receive information under paragraph (b)(3)(ii)(A) of this section, a foreign person on whose behalf a Federal agency made the request under that paragraph shall comply with all applicable handling, disclosure, and use requirements of the international treaty, agreement, or convention under which the request was made.

(ii) To receive information under paragraph (b)(3)(ii)(B) of this section, a foreign person on whose behalf a Federal agency made the request under that paragraph shall ensure that the following requirements are satisfied:

(A) *Standards and procedures*. A foreign person who receives information pursuant to paragraph (b)(3)(ii)(B) of this section shall establish standards and procedures to protect the security and confidentiality of such information, including procedures for training personnel who will have access to it on the appropriate handling and safeguarding of such information.

(B) *Secure system for beneficial ownership information storage*. Such information shall be maintained in a secure system that complies with the security standards the foreign person applies to the most sensitive unclassified information it handles.

(C) *Minimization*. To the greatest extent practicable, the scope of information sought shall be limited, consistent with the purposes for seeking such information.

(D) *Restrictions on personnel access to information*. Access to such information shall be limited to persons—

(*1*) Who are directly engaged in the activity described in paragraph (b)(3) of this section for which the information was requested;

(*2*) Whose duties or responsibilities require such access; and

(*3*) Who have undergone training on the appropriate handling and safeguarding of information obtained pursuant to this section.

(e) *Administration of requests.*

(1) *Form and manner of requests.* Requests for information under paragraph (b) of this section shall be submitted to FinCEN in such form and manner as FinCEN shall prescribe.

(2) *Rejection of requests.*

(i) FinCEN will reject a request under paragraph (b)(4) of this section, and may reject any other request made pursuant to this section, if such request is not submitted in the form and manner prescribed by FinCEN.

(ii) FinCEN may reject any request, or otherwise decline to disclose any information in response to a request made un-

der this section, if FinCEN, in its sole discretion, finds that, with respect to the request:

(A) The requester has failed to meet any requirement of this section;

(B) The information is being requested for an unlawful purpose; or

(C) Other good cause exists to deny the request.

(3) *Suspension of access.*

(i) FinCEN may permanently debar or temporarily suspend, for any period of time, any individual requester or requesting entity from receiving or accessing information under paragraph (b) of this section if FinCEN, in its sole discretion, finds that:

(A) The individual requester or requesting entity has failed to meet any requirement of this section;

(B) The individual requester or requesting entity has requested information for an unlawful purpose; or

(C) Other good cause exists for such debarment or suspension.

(ii) FinCEN may reinstate the access of any individual requester or requesting entity that has been suspended or debarred under this paragraph (e)(3) upon satisfaction of any terms or conditions that FinCEN deems appropriate.

(f) *Violations.*

(1) *Unauthorized disclosure or use.* Except as authorized by this section, it shall be unlawful for any person to knowingly disclose, or knowingly use, the beneficial ownership information obtained by the person, directly or indirectly, through:

(i) A report submitted to FinCEN under section 1010.380; or

(ii) A disclosure made by FinCEN pursuant to paragraph (b) of this section.

(2) For purposes of paragraph (f)(1) of this section, unauthorized use shall include accessing information without authorization, and shall include any violation of the requirements described in paragraph (d) of this section in connection with any access.

3–1709.5

SECTION 1010.960—Disclosure

All reports required under this chapter and all records of such reports are specifically exempted from disclosure under section 552 of title 5, United States Code.

3–1709.6

SECTION 1010.970—Exceptions, Exemptions, and Reports

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this chapter. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly Stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

3–1709.61

(c) (1) The Secretary may, as an alternative to the reporting and recordkeeping requirements for casinos in sections 1010.306(a), 1021.311, and 1021.410, grant exemptions to the casinos in any State whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter.

(2) In order for a State regulatory system to qualify for an exemption on behalf of its casinos, the State must provide:

(i) That the Treasury Department be allowed to evaluate the effectiveness of the State's regulatory system by periodic oversight review of that system;

(ii) That the reports required under the State's regulatory system be submitted to the Treasury Department within 15 days of receipt by the State;

(iii) That any records required to be maintained by the casinos relevant to any matter under this chapter and to which the State has access or maintains under its regulatory system be made available

to the Treasury Department within 30 days of request;

(iv) That the Treasury Department be provided with periodic status reports on the State's compliance efforts and findings;

(v) That all but minor violations of the State requirements be reported to Treasury within 15 days of discovery; and

(vi) That the State will initiate compliance examinations of specific institutions at the request of Treasury within a reasonable time, not to exceed 90 days where appropriate, and will provide reports of these examinations to Treasury within 15 days of completion or periodically during the course of the examination upon the request of the Secretary. If for any reason the State were not able to conduct an investigation within a reasonable time, the State will permit Treasury to conduct the investigation.

(3) Revocation of any exemption under this subsection shall be in the sole discretion of the Secretary.

3–1709.7

SECTION 1010.980—Dollars as Including Foreign Currency

Wherever in this chapter an amount is Stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

PARTS 1011–1019 [RESERVED]

PART 1020—RULES FOR BANKS

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1020.100 Definitions

Subpart B—Programs

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1020.200 General
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Subpart D—Records Required to Be Maintained by Banks

Section
1020.400 General
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Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

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1020.500 General
1020.520 Special information sharing procedures to deter money laundering and terrorist activity for banks
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1020.540 Voluntary information sharing among financial institutions

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Banks

Section
1020.600 General
1020.610 Due diligence programs for correspondent accounts for foreign financial institutions
1020.620 Due diligence programs for private banking accounts
1020.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process
1020.640 [Reserved]
1020.670 Summons or subpoena of foreign

bank records; termination of correspondent relationship

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

3–1710

SUBPART A—DEFINITIONS

SECTION 1020.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1020. Unless otherwise indicated, for purposes of this part:

(a) *Account*. For purposes of section 1020.220:

(1) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(2) *Account* does not include:

(i) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(ii) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(iii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Customer*. For the purposes of section 1020.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in section 1020.315(b)(2) through (b)(4); or

(iii) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

3–1710.5

SUBPART B—PROGRAMS

SECTION 1020.200—General

Banks are subject to the program requirements set forth and cross referenced in this subpart. Banks should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to banks.

3–1710.6

SECTION 1020.210—Anti-Money Laundering Program Requirements for Banks

(a) *Anti-money laundering program requirements for banks regulated by a federal functional regulator, including banks, savings associations, and credit unions.* A bank regulated by a federal functional regulator shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that:

(1) Complies with the requirements of sections 1010.610 and 1010.620 of this chapter;

(2) Includes, at a minimum:

(i) A system of internal controls to assure ongoing compliance;

(ii) Independent testing for compliance to be conducted by bank personnel or by an outside party;

(iii) Designation of an individual or indi-

viduals responsible for coordinating and monitoring day-to-day compliance;

(iv) Training for appropriate personnel; and

(v) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in section 1010.230 of this chapter); and

(3) Complies with the regulation of its federal functional regulator governing such programs.

(b) *Anti-money laundering program requirements for banks lacking a federal functional regulator including, but not limited to, private banks, non-federally insured credit unions, and certain trust companies.* A bank lacking a federal functional regulator shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the bank establishes and maintains a written anti-money laundering program that:

(1) Complies with the requirements of sections 1010.610 and 1010.620 of this chapter; and

(2) Includes, at a minimum:

(i) A system of internal controls to assure ongoing compliance with the Bank Secrecy Act and the regulations set forth in 31 CFR chapter X;

(ii) Independent testing for compliance to be conducted by bank personnel or by an outside party;

(iii) Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;

(iv) Training for appropriate personnel; and

(v) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(A) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in section 1010.230); and

(3) Is approved by the board of directors or, if the bank does not have a board of directors, an equivalent governing body within the bank. The bank shall make a copy of its anti-money laundering program available to the Financial Crimes Enforcement Network or its designee upon request.

3–1710.7

SECTION 1020.220—Customer Identification Program Requirements for Banks

(a) *Customer Identification Program: minimum requirements.*

(1) *In general.* A bank required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1) must implement a written Customer Identification Program (CIP) appropriate for the bank's size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the anti-money laundering compliance program.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented

by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required.*

(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (a)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: A taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.*

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (a)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

3–1710.71

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safe-

* When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

guard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

3–1710.72

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered

when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

3–1710.73

(5) (i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

3–1710.74

(b) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will

make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(c) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

3–1711

SUBPART C—REPORTS REQUIRED TO BE MADE BY BANKS

SECTION 1020.300—General

Banks are subject to the reporting requirements set forth and cross referenced in this subpart. Banks should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to banks.

SECTION 1020.310—Reports of Transactions in Currency

The reports of transactions in currency requirements for banks are located in subpart C of part 1010 of this chapter and this subpart.

SECTION 1020.311—Filing Obligations

Refer to section 1010.311 of this chapter for reports of transactions in currency filing obligations for banks.

SECTION 1020.312—Identification Required

Refer to section 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by banks.

SECTION 1020.313—Aggregation

Refer to section 1010.313 of this chapter for reports of transactions in currency aggregation requirements for banks.

SECTION 1020.314—Structured Transactions

Refer to section 1010.314 of this chapter for rules regarding structured transactions for banks.

3–1711.2

SECTION 1020.315—Transactions of Exempt Persons

(a) *General.* No bank is required to file a report otherwise required by section 1010.311 with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(b) *Exempt person.* For purposes of this section, an exempt person is:

(1) A bank, to the extent of such bank's domestic operations;

(2) A department or agency of the United States, of any State, or of any political subdivision of any State;

(3) 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;

(4) 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 Capital Markets Companies'' heading), provided that, for purposes of this paragraph (b)(4), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(5) Any subsidiary, other than a bank, of

any entity described in paragraph (b)(4) 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 (b)(5), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(6) 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 section, a ''non-listed business''), other than an enterprise specified in paragraph (e)(8) of this section, that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Frequently engages in transactions in currency with the bank in excess of $10,000; and

(iii) 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

(7) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this section, a ''payroll customer'') that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and

(iii) 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.

3–1711.21

(c) *Designation of certain exempt persons.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, a bank must designate an exempt person by filing FinCEN Form 110. Such designation must occur by the close of the 30-calendar 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 section. The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (e)(6) of this section.

(2) *Special rules.*

(i) A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(A) Any of the twelve Federal Reserve Banks; or

(B) Any exempt person as described in paragraphs (b)(1) to (3) of this section.

(ii) Notwithstanding subparagraphs (b)(6)(i) and (b)(7)(i) of this section, and if the requirements under this section are otherwise satisfied, a bank may designate a non-listed business or a payroll customer, as described in paragraphs (b)(6) and (7) of this section, as an exempt person before the customer has maintained a transaction account at the bank for at least two months if the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency.

3–1711.22

(d) *Annual review.* At least once each year, a bank must review the eligibility of an exempt person described in paragraphs (b)(4) to (7) of this section to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the application of the monitoring system required to be maintained by paragraph (h)(2) of this section to each existing account of an exempt person described in paragraphs (b)(6) or (b)(7) of this section.

3–1711.23

(e) *Operating rules.*

(1) *General rule.* Subject to the specific rules of this section, 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 (b) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this section, 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 (h)(2) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (h)(2) of this section.

(2) *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 (b)(2) or (b)(3) 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 (b)(3) 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.

3–1711.24

(3) *Stock exchange listings.* In determining whether a person is described in paragraph (b)(4) 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 site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

(4) *Listed company subsidiaries.* In determining whether a person is described in paragraph (b)(5) of this section, a bank may rely upon:

(i) Any reasonably authenticated corporate officer's certificate;

(ii) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(iii) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(5) *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.

(6) *Affiliated banks.* The designation required by paragraph (c) 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.

3–1711.25

(7) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (b)(6) 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 (b)(7) of this section, as applicable.

(8) *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 section: 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 are derived from one or more of the ineligible business activities listed in this paragraph (e)(8).

(9) *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 section, 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 section, is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(10) *Documentation.* The records maintained by a bank to document its compliance with and administration of the rules of this section shall be maintained in accordance with the provisions of section 1010.430.

3–1711.26

(f) *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 (a) of this section.

(g) *Limitation on liability.*

(1) No bank shall be subject to penalty under this chapter for failure to file a report required by section 1010.311 with respect to a transaction in currency by an exempt person with respect to which the requirements of this section have been satisfied, unless the bank:

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

(ii) Has reason to believe that the customer does not meet the criteria established by this section for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(2) Subject to the specific terms of this section, 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 section to the extent it continues to treat that customer as an exempt person until the completion of that customer's next required periodic review, which as required by paragraph (d) of this section for an exempt person described in paragraph (b)(4) to (7) of this section, shall occur no less than once each year.

(3) 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.

3–1711.27

(h) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.*

(1) Nothing in this section relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by section 1020.320 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 section 1020.320(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this chapter (except the obligation to report transactions in currency pursuant to this chapter to the extent provided in this section). 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 transactions trends or patterns, may trigger the obligation of a bank under section 1020.320.

(2) Consistent with its annual review obligations under paragraph (d) 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 business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (h)(1) of this section and section 1020.320 with respect to all exempt persons.

(i) *Revocation.* Without any action on the part of the Department of the Treasury and subject to the limitation on liability contained in paragraph (g)(2) of this section:

(1) The status of an entity as an exempt person under paragraph (b)(4) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(2) The status of a subsidiary as an exempt person under paragraph (b)(5) 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. (Approved by the Office of Management and Budget under control number 1506-0012.)

3–1711.3

SECTION 1020.320—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 chapter or of any other regulations promulgated under the Bank Secrecy Act; 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.

3–1711.31

(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.

3–1711.32

(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 or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

3–1711.33

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by Banks.*

(i) *General rule.* No bank, and no director, officer, employee, or agent of any bank, shall disclose a SAR or any information that would reveal the existence of a SAR. Any bank, and any director, officer, employee, or agent of any bank that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a bank, or any director, officer, employee, or agent of a bank, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the bank for compliance with the Bank Secrecy Act, or any State regulatory author-

ity administering a State law that requires the bank to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the bank complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(*i*) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(*ii*) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a bank, or any director, officer, employee, or agent of the bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A bank, and any director, officer, employee, or agent of any bank, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

3–1711.34

(g) *Compliance.* Banks shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of title 12 of the Code of Federal Regulations.

3–1711.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY BANKS

SECTION 1020.400—General

Banks are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Banks should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to banks.

3–1711.7

SECTION 1020.410—Records to Be Made and Retained by Banks

(a) Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of $3,000 or more, and is required to retain either the original or a copy or reproduction of each of the following:

(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 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 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 copy, or electronic record of the payment order.

3–1711.71

(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 (a)(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.

3–1711.72

(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 (a)(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

[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.

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.

3–1711.73

(4) *Retrievability.* The information that an originator's bank must retain under paragraphs (a)(1)(i) and (a)(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 (a)(1)(iii) and (a)(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.

3–1711.74

(5) *Verification.* Where verification is required under paragraphs (a)(2) and (a)(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).

3–1711.75

(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;

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; 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.

(b) (1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, and before October 1, 2003, or each deposit or share account opened with a bank after June 30, 1972, and before October 1, 2003, a bank shall, within 30 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 30-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if it has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (c)(11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction. Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (b)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (b)(1) of this section need not be secured for accounts or transactions with the following:

(i) Agencies and instrumentalities of Federal, State, local or foreign governments;

(ii) Judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court;

(iii) Aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families;

(iv) Aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families;

(v) Aliens temporarily residing in the United States for a period not to exceed 180 days;

(vi) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government;

(vii) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter,

(viii) A person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10;

(ix) A person opening a Christmas club, vacation club and similar installment savings programs, provided the annual interest is less than $10; and

(x) Non-resident aliens who are not engaged in a trade or business in the United States.

(4) In instances described in paragraphs (b)(3)(viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its

best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(5) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(c) Each bank shall, in addition, retain either the original or a copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are:

(i) Dividend checks,

(ii) Payroll checks,

(iii) Employee benefit checks,

(iv) Insurance claim checks,

(v) Medical benefit checks,

(vi) Checks drawn on government agency accounts,

(vii) Checks drawn by brokers or dealers in securities,

(viii) Checks drawn on fiduciary accounts,

(ix) Checks drawn on other financial institutions, or

(x) Pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (c)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or 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;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification number as determined under section 6109 of the Internal

Revenue Code of 1986, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

3–1712

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1020.500—General

Banks are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Banks should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to banks.

SECTION 1020.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Banks

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1020.530—[Reserved]

SECTION 1020.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1712.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES

SECTION 1020.600—General

Banks are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Banks should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to banks.

SECTION 1020.610—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

(a) Refer to section 1010.610 of this chapter.

(b) [Reserved]

SECTION 1020.620—Due Diligence Programs for Private Banking Accounts

(a) Refer to section 1010.620 of this chapter.

(b) [Reserved]

SECTION 1020.630—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

(a) Refer to section 1010.630 of this chapter.

(b) [Reserved]

SECTION 1020.640—[Reserved]

SECTION 1020.670—Summons or Subpoena of Foreign Bank Records; Termination of Correspondent Relationship

(a) Refer to section 1010.670 of this chapter.

(b) [Reserved]

PART 1021—RULES FOR CASINOS AND CARD CLUBS

Subpart A—Definitions

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

3–1714

SUBPART A—DEFINITIONS

SECTION 1021.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1021. Unless otherwise indicated, for purposes of this part:

(a) *Business year* means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.

(b) *Casino account number* means any and all numbers by which a casino identifies a customer.

(c) *Customer* includes every person which is involved in a transaction to which this chapter applies with a casino, whether or not that person participates, or intends to participate, in the gaming activities offered by that casino.

(d) *Gaming day* means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for business, accounting, and tax

purposes. For purposes of the regulations contained in this chapter, each casino may have only one gaming day, common to all of its divisions.

(e) *Machine-readable* means capable of being read by an automated data processing system.

3–1714.5

SUBPART B—PROGRAMS

SECTION 1021.200—General

Casinos and card clubs are subject to the program requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to casinos and card clubs.

3–1714.7

SECTION 1021.210—Anti-Money Laundering Program Requirements for Casinos

(a) *Requirements for casinos.* A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in paragraph (b) of this section.

(b) *Compliance programs.*

(1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this chapter.

(2) At a minimum, each compliance program shall provide for:

(i) A system of internal controls to assure ongoing compliance;

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terror- ist financing risks posed by the products and services provided by the casino;

(iii) Training of casino personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required by this chapter, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(iv) An individual or individuals to assure day-to-day compliance;

(v) Procedures for using all available information to determine:

(A) When required by this chapter, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to section 1021.320;

(C) Whether any record as described in subpart D of part 1010 of this chapter or subpart D of this part 1021 must be made and retained; and

(vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.

3–1715

SUBPART C—REPORTS REQUIRED TO BE MADE BY CASINOS AND CARD CLUBS

SECTION 1021.300—General

Casinos and card clubs are subject to the reporting requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to casinos and card clubs.

SECTION 1021.310—Reports of Transactions in Currency

The reports of transactions in currency requirements for casinos are located in subpart C of part 1010 of this chapter and this subpart.

3–1715.1

SECTION 1021.311—Filing Obligations

Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.

(a) Transactions in currency involving cash in include, but are not limited to:

(1) Purchases of chips, tokens, and other gaming instruments;

(2) Front money deposits;

(3) Safekeeping deposits;

(4) Payments on any form of credit, including markers and counter checks;

(5) Bets of currency, including money plays;

(6) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(7) Purchases of a casino's check;

(8) Exchanges of currency for currency, including foreign currency; and

(9) Bills inserted into electronic gaming devices.

(b) Transactions in currency involving cash out include, but are not limited to:

(1) Redemptions of chips, tokens, tickets, and other gaming instruments;

(2) Front money withdrawals;

(3) Safekeeping withdrawals;

(4) Advances on any form of credit, including markers and counter checks;

(5) Payments on bets;

(6) Payments by a casino to a customer based on receipt of funds through wire transfers;

(7) Cashing of checks or other negotiable instruments;

(8) Exchanges of currency for currency, including foreign currency;

(9) Travel and complimentary expenses and gaming incentives; and

(10) Payment for tournament, contests, and other promotions.

(c) Other provisions of this chapter notwithstanding, casinos are exempted from the reporting obligations found in this section and section 1021.313 for the following transactions in currency or currency transactions:

(1) Transactions between a casino and a dealer in foreign exchange, or between a casino and a check casher, as those terms are defined in section 1010.100(ff) of this Chapter, so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in paragraphs (a)(8), (b)(7), and (b)(8) of this section;

(2) Cash out transactions to the extent the currency is won in a money play and is the same currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;

(3) Bills inserted into electronic gaming devices in multiple transactions (unless a casino has knowledge pursuant to section 1021.313 in which case this exemption would not apply); and

(4) Jackpots from slot machines or video lottery terminals.

SECTION 1021.312—Identification Required

Refer to section 1010.312 of this chapter for identification requirements for reports of transaction in currency filed by casinos and card clubs.

3–1715.2

SECTION 1021.313—Aggregation

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 section, 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.

SECTION 1021.314—Structured Transactions

Refer to section 1010.314 of this chapter for rules regarding structured transactions for casinos.

SECTION 1021.315—Exemptions

Refer to section 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for casinos.

3–1715.3

SECTION 1021.320—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 chapter or of any other regulations promulgated under the Bank Secrecy Act;

(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 (''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 SAR 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 SAR under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SAR 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 SAR. 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 SAR if required by this section.

(c) *Exceptions.* A casino is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A casino shall main-

tain 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 as such and maintained by the casino, and shall be deemed to have been filed with the SAR. A casino shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that the casino complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by casinos.*

(i) *General rule.* No casino, and no director, officer, employee, or agent of any casino, shall disclose a SAR or any information that would reveal the existence of a SAR. Any casino, and any director, officer, employee, or agent of any casino that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a casino, or any director, officer, employee, or agent of a casino, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the casino for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the casino complies with the Bank Secrecy Act, or any tribal regulatory authority administering a tribal law that requires the casino to comply with the Bank Secrecy Act or otherwise authorizes the tribal regulatory authority to ensure that casino complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a casino, or any director, officer, employee, or agent of the casino, of a SAR, or any information that would reveal the existence of a SAR, within the casino's corporate organizational structure for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act (BSA). For pur-

poses of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* A casino, and any director, officer, employee, or agent of any casino, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Casinos shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after March 25, 2003.

3–1715.4

SECTION 1021.330—Exceptions to the Reporting Requirements of 31 U.S.C. 5331

(a) *Receipt of currency by certain casinos having gross annual gaming revenue in excess of $1,000,000. 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 section 1010.306, section 1021.311, or section 1021.313 and is subject to the recordkeeping requirements of section 1021.410, 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.

(b) *Casinos exempt under section 1010.970(c).* Pursuant to section 1010.970, the Secretary may exempt from the reporting and recordkeeping requirements under section 1010.306, section 1021.311, section 1021.313 or section 1021.410 casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(c) *Reporting of currency received in a nongaming business.* Non-gaming 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 (a) or (b) of this section must report with respect to currency in excess of $10,000 received in its non-gaming businesses.

(d) *Example.* The following example illustrates the application of the rules in paragraphs (a) and (c) 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 sections 1010.306, 1021.311, and 1021.313. 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 (a) 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 sections 1010.306, 1021.311, and 1021.313.

3–1715.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY CASINOS AND CARD CLUBS

SECTION 1021.400—General

Casinos and card clubs are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to casinos and card clubs.

3–1715.7

SECTION 1021.410—Additional Records to Be Made and Retained by Casinos

(a) With respect to each deposit of funds, account opened or line of credit extended after the effective date of these regulations, a casino shall, at the time the funds are deposited, the account is opened or credit is extended, secure and maintain a record of the name, permanent address, and social security number of the person involved. Where the deposit, account or credit is in the names of two or more persons, the casino shall secure the name, permanent address, and social security number of each person having a financial interest in the deposit, account or line of credit. The name and address of such person shall be verified by the casino at the time the deposit is made, account opened, or credit extended. The verification shall be made by examination of a document of the type described in section 1010.312 of this chapter, and the specific identifying information shall be recorded in the manner described in section 1010.312 of this chapter. In the event that a casino has been unable to secure the required social security number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and it maintains a list containing the names and permanent addresses of those persons from who it has been unable to obtain social security numbers and makes the names and addresses of those persons available to the Secretary upon request. Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

(b) In addition, each casino shall retain either the original or a copy or reproduction of each of the following:

(1) A record of each receipt (including but not limited to funds for safekeeping or front money) of funds by the casino for the account (credit or deposit) of any person. The record shall include the name, permanent address and social security number of the person from whom the funds were received, as well as the date and amount of the funds received. If the person from whom the funds were received is a non-resident alien, the person's passport number or a description of some other government document used to verify the person's identity shall be obtained and recorded;

(2) A record of each bookkeeping entry comprising a debit or credit to a customer's deposit account or credit account with the casino;

(3) Each statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction (including deposits, receipts, withdrawals, disbursements or transfers) in or with respect to, a customer's deposit account or credit account with the casino;

(4) A record of each extension of credit in excess of $2,500, the terms and conditions of such extension of credit, and repayments. The record shall include the customer's name, permanent address, social security number, and the date and amount of the transaction (including repayments). If the customer or person for whom the credit extended is a non-resident alien, his passport number or description of some other government document used to verify his identity shall be obtained and recorded;

(5) A record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States (including but not limited to communications by wire, letter, or telephone). If the transfer outside the United States is on behalf of a third

party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the transfer is received from outside the United States on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the person for whom the transaction is being made is a non-resident alien the record shall also include the person's name, his passport number or a description of some other government document used to verify his identity;

(6) Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account with the casino or to trace a check deposited with the casino through the casino's records to the bank of deposit;

(7) All records, documents or manuals required to be maintained by a casino under state and local laws or regulations, regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question.

(8) All records which are prepared or used by a casino to monitor a customer's gaming activity.

(9) (i) A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of $3,000 or more:

(A) Personal checks (excluding instruments which evidence credit granted by a casino strictly for gaming, such as markers);

(B) Business checks (including casino checks);

(C) Official bank checks;

(D) Cashier's checks;

(E) Third-party checks;

(F) Promissory notes;

(G) Traveler's checks; and

(H) Money orders.

(ii) The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (e.g., casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.

(10) A copy of the compliance program described in section 1021.210(b).

(11) In the case of card clubs only, records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency transaction logs, and records of all activity at cages or similar facilities, including, without limitation, cage control logs.

(c) (1) Casinos which input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by section 1010.410 of this chapter or this section on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media.

(2) All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are described in section 1010.410 of this chapter and this section and that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period of time such records are required to be retained.

3–1716

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY FOR CASINOS AND CARD CLUBS

SECTION 1021.500—General

Casinos and card clubs are subject to the special information sharing procedures to deter

money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to casinos and card clubs.

SECTION 1021.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Casinos and Card Clubs

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1021.530—[Reserved]

SECTION 1021.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1716.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR CASINOS AND CARD CLUBS

SECTION 1021.600—General

Casinos and card clubs are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to casinos and card clubs.

SECTION 1021.610—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

(a) Refer to section 1010.610 of this chapter.

(b) [Reserved]

SECTION 1021.620—Due Diligence Programs for Private Banking Accounts

(a) Refer to section 1010.620 of this chapter.

(b) [Reserved]

SECTION 1021.630—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

(a) Refer to section 1010.630 of this chapter.

(b) [Reserved]

SECTION 1021.640—[Reserved]

SECTION 1021.670—Summons or Subpoena of Foreign Bank Records; Termination of Correspondent Relationship

(a) Refer to section 1010.670 of this chapter.

(b) [Reserved]

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

Subpart A—Definitions

Subpart B—Programs

Subpart C—Reports Required to Be Made by Money Services Businesses

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

3–1718

SUBPART A—DEFINITIONS

SECTION 1022.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein.

3–1718.5

SUBPART B—PROGRAMS

SECTION 1022.200—General

Money services businesses are subject to the program requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to money services businesses.

3–1718.7

SECTION 1022.210—Anti-Money Laundering Programs for Money Services Businesses

(a) Each money services business, as defined by section 1010. 100(ff) of this chapter, shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this chapter.

(i) Policies, procedures, and internal controls developed and implemented under

this section shall include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification, including as set forth in paragraph (d)(1)(iv) of this section;

(B) Filing Reports;

(C) Creating and retaining records;

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in section 1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1).

(iv) A money services business that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed $10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.

(2) Designate a person to assure day to day compliance with the program and this chapter. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this chapter;

(ii) The compliance program is updated as necessary to reflect current requirements of this chapter, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this chapter.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Compliance date.* A money services business must develop and implement an antimoney laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

3–1719

SUBPART C—REPORTS REQUIRED TO BE MADE BY MONEY SERVICES BUSINESSES

SECTION 1022.300—General

Money services businesses are subject to the reporting requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart C of part

1010 of this chapter for reporting requirements contained in that subpart which apply to money services businesses.

SECTION 1022.310—Reports of Transactions in Currency

The reports of transactions in currency requirements for money services businesses are located in subpart C of part 1010 of this chapter and this subpart.

SECTION 1022.311—Filing Obligations

Refer to section 1010.311 of this chapter for reports of transactions in currency filing obligations for money services businesses.

SECTION 1022.312—Identification Required

Refer to section 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by money services businesses.

SECTION 1022.313—Aggregation

Refer to section 1010.313 of this chapter for reports of transactions in currency aggregation requirements for money services businesses.

SECTION 1022.314—Structured Transactions

Refer to section 1010.314 of this chapter for rules regarding structured transactions for money services businesses.

SECTION 1022.315—Exemptions

Refer to section 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for money services businesses.

3–1719.2

SECTION 1022.320—Reports by Money Services Businesses of Suspicious Transactions

(a) *General.*

(1) Every money services business described in section 1010.100(ff)(1), (3), (4), (5), (6), and (7) of this chapter, 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 chapter or of any other regulations promulgated under the Bank Secrecy Act; 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.

3–1719.21

(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 (c) of this section.

(2) *Where to file.* The SAR shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) *When to file.* A money services business subject to this section is required to file each SAR 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 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. 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 if required by this section.

(c) *Retention of records.* A money services business 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 as such and maintained by the money services business, and shall be deemed to have been filed with the SAR. A money services business shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act.

3–1719.22

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by money services businesses.*

(i) *General rule.* No money services business, and no director, officer, employee, or agent of any money services business, shall disclose a SAR or any information that would reveal the existence of a SAR. Any money services business, and any director, officer, employee, or agent of any money services business that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section

and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a money services business, or any director, officer, employee, or agent of a money services business, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the money services business for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the money services business to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the money services business complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a money services business, or any director, officer, employee, or agent of the money services business, of a SAR, or any information that would reveal the existence of a SAR, within the money services business's corporate organizational structure for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A money services business, and any director, officer, employee, or agent of any money services business, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Money services businesses shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section applies to transactions occurring after December 31, 2001.

3–1719.3

SECTION 1022.380—Registration of Money Services Businesses

(a) *Registration requirement.*

(1) *In general.* Except as provided in paragraph (a)(3) of this section, relating to agents, and except for sellers of prepaid access as defined in section 1010.100(ff)(7) of this chapter to the extent that they are not already agents, each money services business (whether or not licensed as a money services business by any State) must register with FinCEN. Each provider of prepaid access must identify each prepaid program for which it is the provider of prepaid

access. Each money services business must, as part of its 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.

(2) *Foreign-located money services business.* Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the United States as a money services business shall designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process with respect to compliance with this chapter, and shall identify the address of the location within the United States for records pertaining to paragraph (b)(1)(iii) of this section.

(3) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see section 1010.100(ff) of this chapter, is not required to register under this section, but a money services business that engages in activities described in section 1010.100(ff) of this chapter 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.

(4) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

3–1719.31

(b) *Registration procedures.*

(1) *In general.*

(i) A money services business must be registered by filing such form as FinCEN may specify with FinCEN (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 section 1010.430(d) of this chapter.

(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 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.

3–1719.32

(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.

3–1719.33

(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 section 1010.430(d) of this chapter.

(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 section 1010.100(ff) of this chapter;

(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 of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of 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).

3–1719.34

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C. 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Applicability date.* This section is applicable as of September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

3–1719.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY MONEY SERVICES BUSINESSES

SECTION 1022.400—General

Money services businesses are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to money services businesses.

3–1719.7

SECTION 1022.410—Additional Records to Be Made and Retained by Dealers in Foreign Exchange

(a) (1) After July 7, 1987, each dealer in foreign exchange shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the dealer in foreign exchange shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or

credit line is in the names of two or more persons, the dealer in foreign exchange shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a dealer in foreign exchange has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

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(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the dealer in foreign exchange.

3–1719.72

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

3–1719.73

(b) Each dealer in foreign exchange shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or

transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such account through its internal recordkeeping system to its depository institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the dealer in foreign exchange to prepare an accurate balance sheet and income statement.

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

3–1719.8

SECTION 1022.420—Additional Records to Be Maintained By Providers and Sellers of Prepaid Access

With respect to transactions relating to providers and sellers of prepaid access described in section 1010.100(ff)(4) and (7) that are subject to the requirements of this chapter, each provider of prepaid access shall maintain access to transactional records for a period of five years. The provider of prepaid access, as defined in section 1010.100(ff)(4), shall maintain access to transactional records generated in the ordinary course of business that would be needed to reconstruct prepaid access activation, loads, reloads, purchases, withdrawals, transfers, or other prepaid-related transactions.

3–1720

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1022.500—General

Money services businesses are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Money services businesses should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to money services businesses.

SECTION 1022.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Money Services Businesses

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1022.530—[Reserved]

SECTION 1022.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1720.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR MONEY SERVICES BUSINESSES

SECTION 1022.600—General

Money services businesses are subject to the special standards of diligence; prohibitions; and special measures requirements set forth

and cross referenced in this subpart. Money services businesses should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to money services businesses.

SECTION 1022.610—[Reserved]

SECTION 1022.620—[Reserved]

SECTION 1022.630—[Reserved]

SECTION 1022.640—[Reserved]

SECTION 1022.670—[Reserved]

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

Subpart A—Definitions

Section
1023.100 Definitions

Subpart B—Programs

Section
1023.200 General
1023.210 Anti-money laundering program requirements for brokers or dealers in securities
1023.220 Customer identification programs for broker-dealers

Subpart C—Reports Required to Be Made by Brokers or Dealers in Securities

Section
1023.300 General
1023.310 Reports of transactions in currency
1023.311 Filing obligations
1023.312 Identification required
1023.313 Aggregation
1023.314 Structured transactions
1023.315 Exemptions
1023.320 Reports by brokers or dealers in securities of suspicious transactions

Subpart D—Records Required to Be Maintained by Brokers or Dealers in Securities

Section
1023.400 General
1023.410 Additional records to be made and retained by brokers or dealers in securities

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

Section
1023.500 General
1023.520 Special information sharing procedures to deter money laundering and terrorist activity for brokers or dealers in securities
1023.530 [Reserved]
1023.540 Voluntary information sharing among financial institutions

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Brokers or Dealers in Securities

Section
1023.600 General
1023.610 Due diligence programs for correspondent accounts for foreign financial institutions
1023.620 Due diligence programs for private banking accounts
1023.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process
1023.640 [Reserved]
1023.670 Summons or subpoena of foreign bank account records; termination of correspondent relationship

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

3–1722

SUBPART A—DEFINITIONS

SECTION 1023.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1023. Unless otherwise indicated, for purposes of this part:

(a) *Account.* For purposes of section 1023.220:

(1) *Account* means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(2) *Account* does not include:

(i) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11).

(c) *Commission* means, for the purposes of section 1023.220, the United States Securities and Exchange Commission.

(d) *Customer.* For purposes of section 1023.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity; or

(B) An entity that is not a legal person.

(2) Customer does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(ii) A person described in section 1020.315(b)(2) through (4) of this chapter; or

(iii) A person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(e) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

3–1722.5

SUBPART B—PROGRAMS

SECTION 1023.200—General

Brokers or dealers in securities are subject to the program requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to brokers or dealers in securities.

3–1722.7

SECTION 1023.210—Anti-Money Laundering Program Requirements for Brokers or Dealers in Securities

A broker or dealer in securities shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the broker-dealer implements and maintains a written anti-money laundering program approved by senior management that:

(a) Complies with the requirements of sections 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs;

(b) Includes, at a minimum:

(1) The establishment and implementation of policies, procedures, and internal controls reasonably designed to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Independent testing for compliance to

be conducted by the broker-dealer's personnel or by a qualified outside party;

(3) Designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the program;

(4) Ongoing training for appropriate persons; and

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in section 1010.230 of this chapter); and

(c) Complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Securities Exchange Act of 1934 by the appropriate Federal functional regulator in consultation with FinCEN.

3–1722.8

SECTION 1023.220—Customer Identification Programs for Broker-Dealers

(a) *Customer identification program: minimum requirements.*

(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (''CIP'') appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of this section. The CIP must be a part of the broker-dealer's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) (A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) for a non-U.S. person, one or more of the following: A taxpayer identification number, a passport

number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.*

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

3–1722.81

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will

* When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

3–1722.82

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a-4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

3–1722.83

(5) (i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a

broker-dealer may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

3–1722.84

(b) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o-4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o-5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

3–1723

SUBPART C—REPORTS REQUIRED TO BE MADE BY BROKERS OR DEALERS IN SECURITIES

SECTION 1023.300—General

Brokers or dealers in securities are subject to the reporting requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to brokers or dealers in securities.

SECTION 1023.310—Reports of Transactions in Currency

The reports of transactions in currency requirements for brokers or dealers in securities are located in subpart C of part 1010 of this chapter and this subpart.

SECTION 1023.311—Filing Obligations

Refer to section 1010.311 of this chapter for reports of transactions in currency filing obligations for brokers or dealers in securities.

SECTION 1023.312—Identification Required

Refer to section 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by brokers or dealers in securities.

SECTION 1023.313—Aggregation

Refer to section 1010.313 of this chapter for reports of transactions in currency aggregation requirements for brokers or dealers in securities.

SECTION 1023.314—Structured Transactions

Refer to section 1010.314 of this chapter for rules regarding structured transactions for brokers or dealers in securities.

SECTION 1023.315—Exemptions

Refer to section 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for brokers or dealers in securities.

3–1723.3

SECTION 1023.320—Reports by Brokers or Dealers in Securities of Suspicious Transactions

(a) *General.*

(1) Every broker or dealer in securities within the United States (for purposes of this section, a ''broker-dealer'') 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 broker-dealer may also file with FinCEN 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. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer 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 chapter or of any other regulations promulgated under the Bank Secrecy Act;

(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 broker-dealer 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 broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

3–1723.31

(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 SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-

dealer of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR 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 terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR. Broker-dealers 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 if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

3–1723.32

(c) *Exceptions.*

(1) A broker-dealer is not required to file a SAR to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f-1;

(ii) A violation otherwise required to be reported under this section of any of the Federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a-8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE-3, Form U-4, or Form U-5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term ''Federal securities laws'' means the ''securities laws,'' as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) *Retention of records.* A broker-dealer 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 as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR. A broker-dealer shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act, upon request; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities and Exchange Commission.

3–1723.33

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by brokers or dealers in securities.*

(i) *General rule.* No broker-dealer, and no director, officer, employee, or agent of any broker-dealer, shall disclose a SAR or any information that would reveal the existence of a SAR. Any broker-dealer, and any director, officer, employee, or agent of any broker-dealer that is subpoenaed or otherwise requested to disclose a

SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by a broker-dealer, or any director, officer, employee, or agent of a broker-dealer, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the broker-dealer for compliance with the Bank Secrecy Act; or to any SRO that examines the broker-dealer for compliance with the requirements of this section, upon the request of the Securities Exchange Commission; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(*i*) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(*ii*) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a broker-dealer, or any director, officer, employee, or agent of the broker-dealer, of a SAR, or any information that would reveal the existence of a SAR, within the broker-dealer's corporate organizational structure for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by self-regulatory organizations.* Any self-regulatory organization registered with the Securities and Exchange Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties with the consent of the Securities Exchange Commission, in a manner consistent with title II of the Bank Secrecy Act. For purposes of this section, ''self-regulatory duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding.

(f) *Limitation on liability.* A broker-dealer, and any director, officer, employee, or agent of any broker-dealer, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Broker-dealers shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the

requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after December 30, 2002.

3–1723.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY BROKERS OR DEALERS IN SECURITIES

SECTION 1023.400—General

Brokers or dealers in securities are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to brokers or dealers in securities.

3–1723.7

SECTION 1023.410—Additional Records to Be Made and Retained by Brokers or Dealers in Securities

(a) (1) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, and before October 1, 2003, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall within 30 days from the date such account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a broker or dealer has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if: It has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. Where a person is a nonresident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

3–1723.71

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the broker or dealer.

(3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local, or foreign governments,

(ii) Accounts for aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attaches of foreign embassies, and legations, and for the members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

3–1723.72

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in 17 CFR 240.17a-3(a)(1), (2), (3), (5), (6), (7), (8), and (9);

(3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place, outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

3–1724

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1023.500—General

Brokers or dealers in securities are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to brokers or dealers in securities.

SECTION 1023.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Brokers or Dealers in Securities

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1023.530—[Reserved]

SECTION 1023.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1724.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR BROKERS OR DEALERS IN SECURITIES

SECTION 1023.600—General

Brokers or dealers in securities are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to brokers or dealers in securities.

SECTION 1023.610—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

(a) Refer to section 1010.610 of this chapter.

(b) [Reserved]

SECTION 1023.620—Due Diligence Programs for Private Banking Accounts

(a) Refer to section 1010.620 of this chapter.

(b) [Reserved]

SECTION 1023.630—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

(a) Refer to section 1010.630 of this chapter.

(b) [Reserved]

SECTION 1023.640—[Reserved]

SECTION 1023.670—Summons or Subpoena of Foreign Bank Account Records; Termination of Correspondent Relationship

(a) Refer to section 1010.670 of this chapter.

(b) [Reserved]

PART 1024—RULES FOR MUTUAL FUNDS

Subpart A—Definitions

Subpart B—Programs

Subpart C—Reports Required to Be Made by Mutual Funds

Subpart D—Records Required to Be Maintained by Mutual Funds

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Mutual Funds

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

3–1726

SUBPART A—DEFINITIONS

SECTION 1024.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1024. Unless otherwise indicated, for purposes of this part:

(a) *Account.* For purposes of section 1024.220:

(1) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(2) *Account* does not include:

(i) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Commission* means the United States Securities and Exchange Commission.

(c) *Customer.* For purposes of section 1024.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in section 1020.315(b)(2) through (4) of this chapter; or

(iii) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(d) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

3–1726.5

SUBPART B—PROGRAMS

SECTION 1024.200—General

Mutual funds are subject to the program requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to mutual funds.

3–1726.7

SECTION 1024.210—Anti-Money Laundering Programs for Mutual Funds

(a) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the U.S. Securities and Exchange Commission.

(b) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program;

(4) Provide ongoing training for appropriate persons; and

(5) Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose

of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in section 1010.230 of this chapter).

3–1726.8

SECTION 1024.220—Customer Identification Programs for Mutual Funds

(a) *Customer identification program: minimum requirements.*

(1) *In general.* A mutual fund must implement a written Customer Identification Program (''CIP'') appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the mutual fund's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required.*

(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.*

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for,

* When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

3–1726.81

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual

fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

3–1726.82

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The mutual fund must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by the Department of the Treasury in consultation with the Federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all Federal directives issued in connection with such lists.

3–1726.83

(5) (i) *Customer notice.* The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions.* The CIP may include procedures specifying

when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

3–1726.84

(b) *Exemptions.* The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

3–1727

SUBPART C—REPORTS REQUIRED TO BE MADE BY MUTUAL FUNDS

SECTION 1024.300—General

Mutual funds are subject to the reporting requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to mutual funds.

SECTION 1024.310—Reports of Transactions in Currency

The reports of transactions in currency requirements for mutual funds are located in subpart C of part 1010 of this chapter and this subpart.

SECTION 1024.311—Filing Obligations

Refer to section 1010.311 of this chapter for reports of transactions in currency filing obligations for mutual funds.

SECTION 1024.312—Identification Required

Refer to section 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by mutual funds.

SECTION 1024.313—Aggregation

Refer to section 1010.313 of this chapter for reports of transactions in currency aggregation requirements for mutual funds.

SECTION 1024.314—Structured Transactions

Refer to section 1010.314 of this chapter for rules regarding structured transactions for mutual funds.

SECTION 1024.315—Exemptions

Refer to section 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for mutual funds.

3–1727.2

SECTION 1024.320—Reports by Mutual Funds of Suspicious Transactions

(a) *General.*

(1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) (''Investment Company Act'') that is an open-end company (as defined in section 5 of the Invest-

ment Company Act (15 U.S.C. 80a-5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a ''mutual fund''), shall file with the Financial Crimes Enforcement Network, 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 mutual fund may also file with the Financial Crimes Enforcement Network 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. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least $5,000, and the mutual fund 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 chapter or any other regulations promulgated under the Bank Secrecy Act;

(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 mutual fund 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 mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words ''joint filing'' in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

3–1727.21

(b) *Filing and notification 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 (c) of this section.

(2) *Where to file.* Form SAR shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR.

(3) *When to file.* A Form SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR 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.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR.

(5) *Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission.* Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866-556-3974 in addition to filing timely a Form SAR if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* A mutual fund shall maintain a copy of any Form SAR filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR. The mutual fund shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

3–1727.22

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by mutual funds.*

(i) *General rule.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, shall disclose a SAR or any information that would reveal the existence of a SAR. Any mutual fund, and any director, officer, employee, or agent of any mutual fund that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a mutual fund, or any director, officer, employee, or agent of a mutual fund, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by a mutual fund, or any director, officer, employee, or agent of the mutual fund, of a SAR, or any information that would reveal the existence of a SAR, within the mutual fund's corporate organizational structure for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any infor-

mation that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A mutual fund, and any director, officer, employee, or agent of any mutual fund, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Mutual funds shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section applies to transactions occurring after October 31, 2006.

3–1727.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY MUTUAL FUNDS

SECTION 1024.400—General

Mutual funds are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to mutual funds.

SECTION 1024.410—Recordkeeping

Refer to section 1010.410 of this chapter.

3–1728

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1024.500—General

Mutual funds are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to mutual funds.

SECTION 1024.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Mutual Funds

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1024.530—[Reserved]

SECTION 1024.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1728.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR MUTUAL FUNDS

SECTION 1024.600—General

Mutual funds are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to mutual funds.

SECTION 1024.610—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institution

(a) Refer to section 1010.610 of this chapter.

(b) [Reserved]

SECTION 1024.620—Due Diligence Programs for Private Banking Accounts

(a) Refer to section 1010.620 of this chapter.

(b) [Reserved]

SECTION 1024.630—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

(a) Refer to section 1010.630 of this chapter.

(b) [Reserved]

SECTION 1024.640—[Reserved]

SECTION 1024.670—[Reserved]

PART 1025—RULES FOR INSURANCE COMPANIES

Subpart A—Definitions

Section
1025.100 Definitions

Subpart B—Programs

Section
1025.200 General
1025.210 Anti-money laundering programs for insurance companies

Subpart C—Reports Required to Be Made by Insurance Companies

Section
1025.300 General
1025.310 [Reserved]
1025.315 [Reserved]
1025.320 Reports by insurance companies of suspicious transactions
1025.330 Reports relating to currency in excess of $10,000 received in a trade or business

Subpart D—Records Required to Be Maintained by Insurance Companies

Section
1025.400 General
1025.410 Recordkeeping

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

Section
1025.500 General
1025.520 Special information sharing procedures to deter money laundering and terrorist activity for insurance companies
1025.530 [Reserved]
1025.540 Voluntary information sharing among financial institutions

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Insurance Companies

Section
1025.600 [Reserved]
1025.610 [Reserved]
1025.620 [Reserved]
1025.630 [Reserved]
1025.640 [Reserved]
1025.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

SUBPART A—DEFINITIONS

SECTION 1025.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1025. Unless otherwise indicated, for purposes of this part:

(a) *Annuity contract* means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(b) *Covered product* means:

(1) A permanent life insurance policy, other than a group life insurance policy;
(2) An annuity contract, other than a group annuity contract; or
(3) Any other insurance product with features of cash value or investment.

(c) *Group annuity contract* means a master contract providing annuities to a group of persons under a single contract.

(d) *Group life insurance policy* means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(e) *Insurance agent* means a sales and/or service representative of an insurance company. The term ''insurance agent'' encompasses any person that sells, markets, distributes, or services an insurance company's covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(f) *Insurance broker* means a person who, by acting as the customer's representative, arranges and/or services covered products on behalf of the customer.

(g) *Insurance company or insurer.*
(1) Except as provided in paragraph (g)(2) of this section, the term ''insurance company'' or ''insurer'' means any person engaged within the United States as a business in the issuing or underwriting of any covered product.
(2) The term ''insurance company'' or ''insurer'' does not include an insurance agent or insurance broker.

(h) *Permanent life insurance policy* means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

3–1730.5

SUBPART B—PROGRAMS

SECTION 1025.200—General

Insurance companies are subject to the program requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to insurance companies.

3–1730.7

SECTION 1025.210—Anti-Money Laundering Programs for Insurance Companies

(a) *In general.* Not later than May 2, 2006, each insurance company shall develop and implement a written anti-money laundering program applicable to its covered products that is reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. An insurance company shall make a copy of its anti-money laundering program available to the Department of the Treasury, the Financial Crimes Enforcement Network, or their designee upon request.

(b) *Minimum requirements.* At a minimum, the program required by paragraph (a) of this section shall:
(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its covered products. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this chapter, integrating the company's insurance agents and insurance brokers into its anti-money laundering program, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring compliance by the company's insurance agents and insurance brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. An insurance company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's insurance agents and insurance brokers with their obligations under the program. The scope and frequency of the testing shall be commensurate with the risks posed by the insurance company's covered products. Such testing may be conducted by a third party or by any officer or employee of the insurance company, other than the person designated in paragraph (b)(2) of this section.

(c) *Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an anti-money laundering program pursuant to section 1023.210 of this chapter and complies with such program.

(d) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act and of this chapter.

3–1731

SUBPART C—REPORTS REQUIRED TO BE MADE BY INSURANCE COMPANIES

SECTION 1025.300—General

Insurance companies are subject to the reporting requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to insurance companies.

SECTION 1025.310—[Reserved]

SECTION 1025.315—[Reserved]

3–1731.3

SECTION 1025.320—Reports by Insurance Companies of Suspicious Transactions

(a) *General.*

(1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network 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 the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted

by, at, or through an insurance company, and involves or aggregates at least $5,000 in funds or other assets, and the insurance company 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 chapter or of any other regulations promulgated under the Bank Secrecy Act;

(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 insurance company 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 insurance company to facilitate criminal activity.

(3) (i) An insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Accordingly, an insurance company shall establish and implement policies and procedures reasonably designed to obtain customer-related information necessary to detect suspicious activity from all relevant sources, including from its insurance agents and insurance brokers, and shall report suspicious activity based on such information.

(ii) Certain insurance agents may have a separate obligation to report suspicious activity pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the financial institutions involved in the transaction, as long as the report filed contains all relevant facts, including the names of both institutions and the words ''joint filing'' in the narrative section, and both institutions maintain a copy of the report filed, along with any supporting documentation.

(iii) An insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund in section 1024.320(a)(1) of this chapter shall file reports of suspicious transactions pursuant to section 1024.320 of this chapter.

(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 the Financial Crimes Enforcement Network as indicated in the instructions to the SAR.

(3) *When to file.* A SAR shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR 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 that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866-556-3974 in addition to filing timely a SAR if required by this section.

(c) *Exception.* An insurance company is not required to file a SAR to report the submission to it of false or fraudulent information to obtain a policy or make a claim, unless the

company has reason to believe that the false or fraudulent submission relates to money laundering or terrorist financing.

(d) *Retention of records.* An insurance company 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 as such and maintained by the insurance company and shall be deemed to have been filed with the SAR. When an insurance company has filed or is identified as a filer in a joint Suspicious Activity Report, the insurance company shall maintain a copy of such joint report (together with copies of any supporting documentation) for a period of five years from the date of filing. An insurance company shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act, upon request.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by insurance companies.*

(i) *General rule.* No insurance company, and no director, officer, employee, or agent of any insurance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any insurance company, and any director, officer, employee, or agent of any insurance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an insurance company, or any director, officer, employee, or agent of an insurance company, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the insurance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the insurance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the institution complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by an insurance company, or any director, officer, employee, or agent of the insurance company, of a SAR, or any information that would reveal the existence of a SAR, within the insurance company's corporate organizational structure for purposes consistent with title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a

SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(f) *Limitation on liability.* An insurance company, and any director, officer, employee, or agent of any insurance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Insurance companies shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company complies with the reporting requirements applicable to such activities pursuant to section 1023.320 of this chapter.

(i) *Applicability date.* This section applies to transactions occurring after May 2, 2006.

SECTION 1025.330—Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business

Refer to section 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by insurance companies.

3–1731.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY INSURANCE COMPANIES

SECTION 1025.400—General

Insurance companies are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to insurance companies.

SECTION 1025.410—Recordkeeping

Refer to section 1010.410.

3–1732

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1025.500—General

Insurance companies are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Insurance companies should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to insurance companies.

SECTION 1025.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Insurance Companies

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1025.530—[Reserved]

SECTION 1025.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1732.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR INSURANCE COMPANIES

SECTION 1025.600—[Reserved]

SECTION 1025.610—[Reserved]

SECTION 1025.620—[Reserved]

SECTION 1025.630—[Reserved]

SECTION 1025.640—[Reserved]

SECTION 1025.670—[Reserved]

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

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1026.100 Definitions

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1026.530 [Reserved]
1026.540 Voluntary information sharing among financial institutions

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Futures

Commission Merchants and Introducing Brokers in Commodities

Section

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307; section 701, Pub. L. 114-74, 129 Stat. 599.

3–1734

SUBPART A—DEFINITIONS

SECTION 1026.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1026. Unless otherwise indicated, for the purposes of this part:

(a) *Account.* For purposes of section 1026.220:

(1) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity.

(2) *Account* does not include:

(i) An account that the futures commission merchant acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Commodity* means any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(c) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(d) *Customer.* For purposes of section 1026.220:

(1) *Customer* means:

(i) A person that opens a new account with a futures commission merchant; and

(ii) An individual who opens a new account with a futures commission merchant for:

(A) An individual who lacks legal capacity; or

(B) An entity that is not a legal person.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(ii) A person described in section 1020.315(b)(2) through (4) of this chapter; or

(iii) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(3) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a customer of both the futures commission merchant and the introducing broker for the purposes of this section.

(e) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(f) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange

Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(g) *Introducing broker* means any person registered or required to be registered as an introducing broker with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(h) *Option* means an agreement, contract or transaction described in section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

3–1734.5

SUBPART B—PROGRAMS

SECTION 1026.200—General

Futures commission merchants and introducing brokers in commodities are subject to the program requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

3–1734.6

SECTION 1026.210—Anti-Money Laundering Program Requirements for Futures Commission Merchants and Introducing Brokers in Commodities

A futures commission merchant and an introducing broker in commodities shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the futures commission merchant or introducing broker in commodities implements and maintains a written anti-money laundering program approved by senior management that:

(a) Complies with the requirements of sections 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs;

(b) Includes, at a minimum:

(1) The establishment and implementation of policies, procedures, and internal controls reasonably designed to prevent the financial institution from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Independent testing for compliance to be conducted by the futures commission merchant or introducing broker in commodities' personnel or by a qualified outside party;

(3) Designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the program;

(4) Ongoing training for appropriate persons;

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in section 1010.230 of this chapter); and

(c) Complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs, provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Commodity Exchange Act by the appropriate Federal functional regulator in consultation with FinCEN.

3–1734.7

SECTION 1026.220—Customer Identification Programs for Futures Commission Merchants and Introducing Brokers

(a) *Customer identification program: minimum requirements.*

(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (a)(2) of this section.

(i) (A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: A taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.*

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

* When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

3–1734.71

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

3–1734.72

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

3–1734.73

(5) (i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

3–1734.74

(b) *Exemptions.* The CFTC, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the CFTC or any type of account from the requirements of this section. In issuing such exemptions, the CFTC and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

3–1735

SUBPART C—REPORTS REQUIRED TO BE MADE BY FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

SECTION 1026.300—General

Futures commission merchants and introducing brokers in commodities are subject to the reporting requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

SECTION 1026.310—Reports of Transactions in Currency

The reports of transactions in currency requirements for futures commission merchants and introducing brokers in commodities are located in subpart C of part 1010 of this chapter and this subpart.

SECTION 1026.311—Filing Obligations

Refer to section 1010.311 of this chapter for reports of transactions in currency filing obligations for futures commission merchants and introducing brokers in commodities.

SECTION 1026.312—Identification Required

Refer to section 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by futures commission merchants and introducing brokers in commodities.

SECTION 1026.313—Aggregation

Refer to section 1010.313 of this chapter for reports of transactions in currency aggregation requirements for futures commission merchants and introducing brokers in commodities.

SECTION 1026.314—Structured Transactions

Refer to section 1010.314 of this chapter for rules regarding structured transactions for futures commission merchants and introducing brokers in commodities.

SECTION 1026.315—Exemptions

Refer to section 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for futures commission merchants and introducing brokers in commodities.

3–1735.3

SECTION 1026.320—Reports by Futures Commission Merchants and Introducing Brokers in Commodities of Suspicious Transactions

(a) *General.*

(1) Every futures commission merchant (''FCM'') and introducing broker in commodities (''IB-C'') within the United States 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. An FCM or IB-C may also file with FinCEN 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. Filing a report of a suspicious transaction does not relieve an FCM or IB-C from the responsibility of complying with any other reporting requirements imposed by the CFTC or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (''CEA''), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB-C, it involves or aggregates funds or other assets of at least $5,000, and the FCM or IB-C 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 chapter or of any other regulations promulgated under the Bank Secrecy Act;

(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 FCM or IB-C 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 FCM or IB-C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB-C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB-Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

3–1735.31

(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 SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB-C of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, an FCM or IB-C may delay filing a SAR 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 terrorist financing or ongoing money laundering schemes, the FCM or IB-C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR. FCMs and IB-Cs 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 if required by this section. The FCM or IB-C may also, but is not required to, contact the CFTC to report in such situations.

3–1735.32

(c) *Exceptions.*

(1) An FCM or IB-C is not required to file a SAR to report—

(i) A robbery or burglary committed or attempted of the FCM or IB-C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB-C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB-C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8-R, 8-T, U-5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient record for the purposes of this paragraph (c)(2).

3–1735.33

(d) *Retention of records.* An FCM or IB-C 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 as such and maintained by the FCM or IB-C, and shall be deemed to have been filed with the SAR. An FCM or IB-C shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB-C for compliance with the BSA, upon request; or to any registered futures association or registered entity (as defined in the Commodity Exchange Act, 7 U.S.C. 21 and 7 U.S.C. 1(a)(29)) (collectively, a self-regulatory organization (''SRO'')) that examines the FCM or IB-C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission.

(e) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (e). For purposes of this paragraph (e) only, a SAR shall include any suspicious activity re-

port filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by futures commission merchants and introducing brokers in commodities.*

(i) *General rule.* No FCM or IB-C, and no director, officer, employee, or agent of any FCM or IB-C, shall disclose a SAR or any information that would reveal the existence of a SAR. Any FCM or IB-C, and any director, officer, employee, or agent of any FCM or IB-C that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (e)(1) shall not be construed as prohibiting:

(A) The disclosure by an FCM or IB-C, or any director, officer, employee, or agent of an FCM or IB-C, of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the FCM or IB-C for compliance with the BSA; or to any SRO that examines the FCM or IB-C for compliance with the requirements of this section, upon the request of the Commodity Futures Trading Commission; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures:

(*i*) To another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(*ii*) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by an FCM or IB-C, or any director, officer, employee, or agent of the FCM or IB-C, of a SAR, or any information that would reveal the existence of a SAR, within the FCM's or IB-C's corporate organizational structure for purposes consistent with title II of the BSA as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with title II of the BSA. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of nonpublic information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(3) *Prohibition on disclosures by self-regulatory organizations.* Any self-regulatory organization registered with or designated by the Commodity Futures Trading Commission, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR except as necessary to fulfill self-regulatory duties upon the request of the Commodity Futures Trading Commission, in a manner consistent with title II of the BSA. For purposes of this section, ''self-regulatory duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of nonpublic information or a request for use in a private legal proceeding.

3–1735.34

(f) *Limitation on liability.* An FCM or IB-C, and any director, officer, employee, or agent of any FCM or IB-C, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* FCMs or IB-Cs shall be examined by FinCEN or its delegatees for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after May 18, 2004.

3–1735.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

SECTION 1026.400—General

Futures commission merchants and introducing brokers in commodities are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

SECTION 1026.410—Recordkeeping

Refer to section 1010.410 of this chapter.

3–1736

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1026.500—General

Futures commission merchants and introducing brokers in commodities are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

SECTION 1026.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Futures Commission Merchants and Introducing Brokers in Commodities

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1026.530—[Reserved]

SECTION 1026.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1736.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

SECTION 1026.600—General

Futures commission merchants and introduc-

ing brokers in commodities are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart F of part 1010 of this chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

SECTION 1026.610—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

(a) Refer to section 1010.610 of this chapter.

(b) [Reserved]

SECTION 1026.620—Due Diligence Programs for Private Banking Accounts

(a) Refer to section 1010.620 of this chapter.

(b) [Reserved]

SECTION 1026.630—Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

(a) Refer to section 1010.630 of this chapter.

(b) [Reserved]

SECTION 1026.640—[Reserved]

SECTION 1026.670—Summons or Subpoena of Foreign Bank Records; Termination of Correspondent Relationship

(a) Refer to section 1010.670 of this chapter.

(b) [Reserved]

PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

Subpart A—Definitions

Subpart B—Programs

Subpart C—Reports Required to Be Made by Dealers in Precious Metals, Precious Stones, or Jewels

Subpart D—Records Required to Be Maintained by Dealers in Precious Metals, Precious Stones, or Jewels

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307.

3–1738

SUBPART A—DEFINITIONS

SECTION 1027.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1027. Unless otherwise indicated, for purposes of this part:

(a) *Covered goods* means:

(1) Jewels (as defined in paragraph (c) of this section);

(2) Precious metals (as defined in paragraph (d) of this section);

(3) Precious stones (as defined in paragraph (e) of this section); and

(4) Finished goods (including, but not limited to, jewelry, numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods;

(b) *Dealer.*

(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the term ''dealer'' means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:

(i) Purchased more than $50,000 in covered goods; and

(ii) Received more than $50,000 in gross proceeds from the sale of covered goods.

(2) For purposes of this section, the term ''dealer'' does not include:

(i) A retailer (as defined in paragraph (f) of this section), unless the retailer, during the prior calendar or tax year, purchased more than $50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply); or

(ii) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

(3) For purposes of paragraph (b) of this section, the terms ''purchase'' and ''sale'' do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(4) For purposes of paragraph (b) of this section and section 1027.210(a), the terms ''purchase'' and ''sale'' do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

(5) For purposes of applying the $50,000 thresholds in paragraphs (b)(1) and (b)(2)(i) of this section to finished goods defined in paragraph (a)(4) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

(c) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(d) *Precious metal* means:

(1) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(2) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (d)(1) of this section.

(e) *Precious stone* means a substance with

gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(f) *Retailer* means a person engaged within the United States in the business of sales primarily to the public of covered goods.

3–1738.5

SUBPART B—PROGRAMS

SECTION 1027.200—General

Dealers in precious metals, precious stones, or jewels are subject to the program requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

3–1738.7

SECTION 1027.210—Anti-Money Laundering Programs for Dealers in Precious Metals, Precious Stones, or Jewels

(a) *Anti-money laundering program requirement.*

(1) Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods. The program must be approved by senior management. A dealer shall make its anti-money laundering program available to the Department of Treasury through FinCEN or its designee upon request.

(2) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the $50,000 threshold contained in section 1027.100(b)(2)(i), the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases.

(b) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this chapter.

(i) For purposes of making the risk assessment required by paragraph (b)(1) of this section, a dealer shall take into account all relevant factors including, but not limited to:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, requirements of this chapter, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (b)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (b)(2) of this section or a person involved in the operation of the program.

(c) *Implementation date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of January 1, 2006, or six months after the date a dealer becomes subject to the requirements of this section.

3–1739

SUBPART C—REPORTS REQUIRED TO BE MADE BY DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

SECTION 1027.300—General

Dealers in precious metals, precious stones, or jewels are subject to the reporting requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

SECTION 1027.310—[Reserved]

SECTION 1027.315—[Reserved]

SECTION 1027.320—[Reserved]

SECTION 1027.330—Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business

Refer to section 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by dealers in precious metals, precious stones, or jewels.

3–1739.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

SECTION 1027.400—General

Dealers in precious metals, precious stones, or jewels are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

SECTION 1027.410—Recordkeeping

Refer to section 1010.410 of this chapter.

3–1740

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1027.500—General

Dealers in precious metals, precious stones, or jewels are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

SECTION 1027.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Dealers in Precious Metals, Precious Stones, or Jewels

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1027.530—[Reserved]

SECTION 1027.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1740.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

SECTION 1027.600—[Reserved]

SECTION 1027.610—[Reserved]

SECTION 1027.620—[Reserved]

SECTION 1027.630—[Reserved]

SECTION 1027.640—[Reserved]

SECTION 1027.670—[Reserved]

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

Subpart A—Definitions

Section
1028.100 Definitions

Subpart B—Programs

Section
1028.200 General
1028.210 Anti-money laundering programs for operators of credit card systems

Subpart C—Reports Required to Be Made by Operators of Credit Card Systems

Section

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314, Pub. L. 107-56, 115 Stat. 307.

3–1742

SUBPART A—DEFINITIONS

SECTION 1028.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in section 1010.100 of this chapter, the definition in this section is what applies to part 1028. Unless otherwise indicated, for purposes of this part:

(a) *Acquiring institution* means a person authorized by the operator of a credit card system to contract, directly or indirectly, with merchants or other persons to process transactions, including cash advances, involving the operator's credit card.

(b) *Credit card* has the same meaning as in 15 U.S.C. 1602(k). It includes charge cards as defined in 12 CFR 226.2(15).

(c) *Foreign bank* means any organization that is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country of its principal banking operations; and receives deposits in the regular course of its business. For purposes of this definition:

(1) The term *foreign bank* includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(2) The term *foreign bank* does not include:

(i) A U.S. agency or branch of a foreign bank; and

(ii) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(d) *Issuing institution* means a person authorized by the operator of a credit card system to issue the operator's credit card.

(e) *Operator of a credit card system* means any person doing business in the United States that operates a system for clearing and settling transactions in which the operator's credit card, whether acting as a credit or debit card, is used to purchase goods or services or to obtain a cash advance. To fall within this definition, the operator must also have authorized another person (whether located in the United States or not) to be an issuing or acquiring institution for the operator's credit card.

(f) *Operator's credit card* means a credit card capable of being used in the United States that:

(1) Has been issued by an issuing institution; and

(2) Can be used in the operator's credit card system.

3–1742.5

SUBPART B—PROGRAMS

SECTION 1028.200—General

Operators of credit card systems are subject to the program requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to operators of credit card systems.

3–1742.7

SECTION 1028.210—Anti-Money Laundering Programs for Operators of Credit Card Systems

(a) *Anti-money laundering program requirement.* Effective July 24, 2002, each operator of a credit card system shall develop and implement a written anti-money laundering program reasonably designed to prevent the operator of a credit card system from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. Operators of credit card systems must make their anti-money laundering programs available to the Department of the Treasury or the appropriate Federal regulator for review.

(b) *Minimum requirements.* At a minimum, the program must:

(1) Incorporate policies, procedures, and internal controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering or terrorist financing risk assessment, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities;

(ii) For purposes of making the risk assessment required by paragraph (b)(1)(i) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in section 1010.605(g) and (n) of this chapter;

(B) A person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, *et seq.*) or the International Banking Act (12 U.S.C. 3101, *et seq.*) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated 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; and

(F) A person located in, or operating

under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(iii) That the operator is in compliance with all applicable provisions of subchapter II of chapter 53 of title 31, United States Code and this chapter;

(2) Designate a compliance officer who will be responsible for assuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in risk factors or the risk assessment, current requirements of this chapter, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (b)(3) of this section;

(3) Provide for education and training of appropriate personnel concerning their responsibilities under the program; and

(4) Provide for an independent audit to monitor and maintain an adequate program. The scope and frequency of the audit shall be commensurate with the risks posed by the persons authorized to issue or accept the operator's credit card. Such audit may be conducted by an officer or employee of the operator, so long as the reviewer is not the person designated in paragraph (b)(2) of this section or a person involved in the operation of the program.

3–1743

SUBPART C—REPORTS REQUIRED TO BE MADE BY OPERATORS OF CREDIT CARD SYSTEMS

SECTION 1028.300—General

Operators of credit card systems are subject to the reporting requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to operators of credit card systems.

SECTION 1028.310—[Reserved]

SECTION 1028.315—[Reserved]

SECTION 1028.320—[Reserved]

SECTION 1028.330—Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business

Refer to section 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by operators of credit card systems.

3–1743.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY OPERATORS OF CREDIT CARD SYSTEMS

SECTION 1028.400—General

Operators of credit card systems are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to operators of credit card systems.

SECTION 1028.410—Recordkeeping

Refer to section 1010.410 of this chapter.

3–1744

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1028.500—General

Operators of credit card systems are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to subpart E of part 1010 of

this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to operators of credit card systems.

SECTION 1028.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Operators of Credit Card Systems

(a) Refer to section 1010.520.

(b) [Reserved]

SECTION 1028.530—[Reserved]

SECTION 1028.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1744.5

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS; AND SPECIAL MEASURES FOR OPERATORS OF CREDIT CARD SYSTEMS

SECTION 1028.600—[Reserved]

SECTION 1028.610—[Reserved]

SECTION 1028.620—[Reserved]

SECTION 1028.630—[Reserved]

SECTION 1028.640—[Reserved]

SECTION 1028.670—[Reserved]

PART 1029—RULES FOR LOAN OR FINANCE COMPANIES

Subpart A—Definitions

Section
1029.100 Definitions

Subpart B—Programs

Section
1029.200 General
1029.210 Anti-money laundering programs for loan or finance companies

Subpart C—Reports Required to Be Made by Loan or Finance Companies

Section
1029.300 General
1029.310 [Reserved]
1029.315 [Reserved]
1029.320 Reports by loan or finance companies of suspicious transactions
1029.330 Reports relating to currency in excess of $10,000 received in a trade or business

Subpart D—Records Required to Be Maintained by Loan or Finance Companies

Section
1029.400 General

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

Section
1029.500 General
1029.520 Special information sharing procedures to deter money laundering and terrorist activity for loan or finance companies
1029.530 [Reserved]
1029.540 Voluntary information sharing among financial institutions

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Loan or Finance Companies

Section
1029.600 [Reserved]
1029.610 [Reserved]
1029.620 [Reserved]
1029.630 [Reserved]
1029.640 [Reserved]
1029.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314 Pub. L. 107-56, 115 Stat. 307.

3–1745

SUBPART A—DEFINITIONS

SECTION 1029.100—Definitions

Refer to section 1010.100 of this Chapter for general definitions not noted herein.

3–1745.1

SUBPART B—PROGRAMS

SECTION 1029.200—General

Loan or finance companies are subject to the program requirements set forth and cross referenced in this subpart. Loan or finance companies should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to loan or finance companies.

3–1745.2

SECTION 1029.210—Anti-Money Laundering Programs for Loan or Finance Companies

(a) *Anti-money laundering program requirements for loan or finance companies.* Each loan or finance company shall develop and implement a written anti-money laundering program that is reasonably designed to prevent the loan or finance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. A loan or finance company shall make a copy of its anti-money laundering program available to the Financial Crimes Enforcement Network or its designee upon request.

(b) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the loan or finance company's assessment of the money laundering and terrorist financing risks associated with its products and services. Policies, procedures, and internal controls developed and implemented by a loan or finance company under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this part, integrating the company's agents and brokers into its anti-money laundering program, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring compliance by the company's agents and brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. A loan or finance company may satisfy this requirement with respect to its employees, agents, and brokers by directly training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the loan or finance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's agents and brokers with their obligations under the program. The scope and frequency of the testing shall be commensurate with the risks posed by the company's products and services. Such testing may be conducted by a third party or by any officer or employee of the loan or finance company, other than the person designated in paragraph (b)(2) of this section.

(c) *Compliance.* Compliance with this section shall be examined by FinCEN or its delegates, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act and of this part.

(d) *Compliance date.* A loan or finance com-

pany must develop and implement an anti-money laundering program that complies with the requirements of this section by August 13, 2012.

3–1745.3

SUBPART C—REPORTS REQUIRED TO BE MADE BY LOAN OR FINANCE COMPANIES

SECTION 1029.300—General

Loan or finance companies are subject to the reporting requirements set forth and cross referenced in this subpart. Loan or finance companies should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to loan or finance companies.

SECTION 1029.310—[Reserved]

SECTION 1029.315—[Reserved]

3–1745.4

SECTION 1029.320—Reports by Loan or Finance Companies of Suspicious Transactions

(a) *General.*

(1) Every loan or finance company 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 loan or finance company may also file with FinCEN 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 this section if it is conducted or attempted by, at, or through a loan or finance company, it involves or aggregates funds or other assets of at least $5,000, and the loan or finance company 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 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. 5311-5314, 5316-5332;

(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 loan or finance company 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 loan or finance company to facilitate criminal activity.

(3) More than one loan or finance company may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this part. In those instances, no more than one report is required to be filed by the loan or finance company(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution involved in the transaction, the report complies with all instructions applicable to joint filings, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) *Filing and notification procedures.*

(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (''SAR''), and collect-

ing and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in accordance with the instructions to the SAR.

(3) *When to file.* A SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting loan or finance company of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, a loan or finance company may delay filing a SAR 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.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a loan or finance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR.

(5) *Voluntary notification to FinCEN.* Any loan or finance company wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the FinCEN's Financial Institutions Hotline at 1–866-556-3974 in addition to filing timely a SAR if required by this section.

(c) *Retention of records.* A loan or finance company shall maintain a copy of any SAR filed by the loan or finance company or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any SAR that it files (or is filed on its behalf), for a period of five years from the date of filing the SAR. Supporting documentation shall be identified as such and maintained by the loan or finance company, and shall be deemed to have been filed with the SAR. The loan or finance company shall make all supporting documentation available to FinCEN, or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the loan or finance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a State law that requires the loan or finance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the loan or finance company complies with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this part.

(1) *Prohibition on disclosures by loan or finance companies.*

(i) *General rule.* No loan or finance company, and no director, officer, employee, or agent of any loan or finance company, shall disclose a SAR or any information that would reveal the existence of a SAR. Any loan or finance company, and any director, officer, employee, or agent of any loan or finance company that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, paragraph (d)(1) of this section shall not be construed as prohibiting:

(A) The disclosure by a loan or finance company, or any director, officer, employee, or agent of a loan or finance company of:

(*1*) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, any Federal regulatory authority that examines the loan or finance company for compliance with the Bank Secrecy Act, or any State regulatory authority administering a

State law that requires the loan or finance company to comply with the Bank Secrecy Act or otherwise authorizes the State authority to ensure that the loan or finance company complies with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including, but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR.

(B) The sharing by a loan or finance company, or any director, officer, employee, or agent of the loan or finance company, of a SAR, or any information that would reveal the existence of a SAR, within the loan or finance company's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, state, local, territorial, or tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, official duties shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A loan or finance company, and any director, officer, employee, or agent of any loan or finance company, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Loan or finance companies shall be examined by FinCEN or its delegates under the terms of the Bank Secrecy Act, for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this part.

(g) *Compliance date.* This section applies to transactions initiated after an anti-money laundering program required by section 1029.210 of this part is required to be implemented.

SECTION 1029.330—Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business

Refer to section 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by loan or finance companies.

3–1745.5

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY LOAN OR FINANCE COMPANIES

SECTION 1029.400—General

Loan or finance companies are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Loan or finance companies should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart which apply to loan or finance companies.

3–1745.6

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

SECTION 1029.500—General

Loan or finance companies are subject to the special information sharing procedures to de-

ter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Loan or finance companies should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to loan or finance companies.

SECTION 1029.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Loan or Finance Companies

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1029.530—[Reserved]

SECTION 1029.540—Voluntary Information Sharing Among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

3–1745.7

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS, AND SPECIAL MEASURES FOR LOAN OR FINANCE COMPANIES

SECTION 1029.600—[Reserved]

SECTION 1029.610—[Reserved]

SECTION 1029.620—[Reserved]

SECTION 1029.630—[Reserved]

SECTION 1029.640—[Reserved]

SECTION 1029.670—[Reserved]

PART 1030—RULES FOR HOUSING GOVERNMENT SPONSORED ENTERPRISES

Subpart A—Definitions

Section
1030.100 Definitions

Subpart B—Programs

Section
1030.200 General
1030.210 Anti-money laundering programs for housing government sponsored enterprises

Subpart C—Reports Required to Be Made by Housing Government Sponsored Enterprises

Section
1030.300 General
1030.310–1030.315 [Reserved]
1030.320 Reports by housing government sponsored enterprises of suspicious transactions
1030.330 Reports relating to currency in excess of $10,000 received in a trade or business

Subpart D—Records Required to Be Maintained by Housing Government Sponsored Enterprises

Section
1030.400 General

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

Section
1030.500 General
1030.520 Special information sharing procedures to deter money laundering and terrorist activity for housing government sponsored enterprises
1030.530 [Reserved]
1030.540 Voluntary information sharing among financial institutions

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Housing Government Sponsored Enterprises

Section
1030.600–1030.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, section 314 Pub. L. 107-56, 115 Stat. 307.

3–1746

SUBPART A—DEFINITIONS

SECTION 1030.100—Definitions

Refer to section 1010.100 of this chapter for general definitions not noted herein.

3–1746.1

SUBPART B—PROGRAMS

SECTION 1030.200—General

Housing government sponsored enterprises are subject to the program requirements set forth and cross referenced in this subpart. Housing government sponsored enterprises should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart that apply to housing government sponsored enterprises.

3–1746.12

SECTION 1030.210—Anti-Money Laundering Programs for Housing Government Sponsored Enterprises

(a) *Anti-money laundering program requirements for housing government sponsored enterprises.* Each housing government sponsored enterprise shall develop and implement a written anti-money laundering program that is reasonably designed to prevent the housing government sponsored enterprise from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. A housing government sponsored enterprise shall make a copy of its anti-money laundering program available to the Financial Crimes Enforcement Network or its designee upon request.

(b) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the housing government sponsored enterprise's assessment of the money laundering and terrorist financing risks associated with its products and services. Policies, procedures, and internal controls developed and implemented by a housing government sponsored enterprise under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this part, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. A housing government sponsored enterprise may satisfy this requirement by training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the housing government sponsored enterprise.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risks posed by the housing government sponsored enterprise's products and services. Such testing may be conducted by a third party or by any officer or employee of the housing government sponsored enterprise, other than the person designated in paragraph (b)(2) of this section.

(c) *Compliance.* Compliance with this section shall be examined by FinCEN or its delegate, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of

this section may constitute a violation of the Bank Secrecy Act and of this chapter.

(d) *Compliance date.* A housing government sponsored enterprise must develop and implement an anti-money laundering program that complies with the requirements of this section on or before August 25, 2014.

3–1746.2

SUBPART C—REPORTS REQUIRED TO BE MADE BY HOUSING GOVERNMENT SPONSORED ENTERPRISES

SECTION 1030.300—General

Housing government sponsored enterprises are subject to the reporting requirements set forth and cross referenced in this subpart. Housing government sponsored enterprises should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart that apply to housing government sponsored enterprises.

SECTIONS 1030.310–1030.315–[Reserved]

3–1746.26

SECTION 1030.320—Reports by Housing Government Sponsored Enterprises of Suspicious Transactions

(a) *General.*

(1) Every housing government sponsored enterprise 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 housing government sponsored enterprise may also file with FinCEN 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 this section if it is conducted or attempted by, at, or through a housing government sponsored enterprise, it involves or aggregates funds or other assets of at least $5,000, and the housing government sponsored enterprise 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 chapter or any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular housing government sponsored enterprise customer would normally be expected to engage, and the housing government sponsored enterprise 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 housing government sponsored enterprise to facilitate criminal activity.

(3) More than one housing government sponsored enterprise may have an obligation to report the same transaction under this section, and financial institutions involved in that same transaction may have separate obligations to report suspicious activity with respect to that transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the housing government sponsored enterprise(s) and any financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each housing government sponsored enterprise or financial institution involved in the transaction, the report complies with all instructions applicable to joint filings, and each institution maintains a copy of the re-

port filed, along with any supporting documentation.

(b) *Filing and notification 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 (c) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in accordance with the instructions to the SAR.

(3) *When to file.* A SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting housing government sponsored enterprise of facts that may constitute a basis for filing a SAR under this section. If no suspect is identified on the date of such initial detection, a housing government sponsored enterprise may delay filing a SAR 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.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a housing government sponsored enterprise shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR.

(5) *Voluntary notification to FinCEN.* Any housing government sponsored enterprise wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline in addition to filing timely a SAR if required by this section.

(c) *Retention of records.* A housing government sponsored enterprise shall maintain a copy of any SAR filed by the housing government sponsored enterprise or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any SAR that it files (or is filed on its behalf), for a period of five years from the date of filing the SAR. Supporting documentation shall be identified as such and maintained by the housing government sponsored enterprise, and shall be deemed to have been filed with the SAR. A housing government sponsored enterprise shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the housing government sponsored enterprise for compliance with the Bank Secrecy Act, upon request.

(d) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) *Prohibition on disclosures by housing government sponsored enterprises.*

(i) *General rule.* No housing government sponsored enterprise, and no director, officer, employee, or agent of any housing government sponsored enterprise, shall disclose a SAR or any information that would reveal the existence of a SAR. Any housing government sponsored enterprise, and any director, officer, employee, or agent of any housing government sponsored enterprise that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a housing government sponsored enterprise, or any director, officer, employee, or agent of a housing government sponsored enterprise of:

(*1*) A SAR, or any information that would reveal the existence of a

SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the housing government sponsored enterprise for compliance with the Bank Secrecy Act; or

(*2*) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another housing government sponsored enterprise or a financial institution, or any director, officer, employee, or agent of a housing government sponsored enterprise or financial institution, for the preparation of a joint SAR; or

(B) The sharing by a housing government sponsored enterprise, or any director, officer, employee, or agent of the housing government sponsored enterprise, of a SAR, or any information that would reveal the existence of a SAR, within the housing government sponsored enterprise's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosures by government authorities.* A Federal, State, local, territorial, or tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, ''official duties'' shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) *Limitation on liability.* A housing government sponsored enterprise, and any director, officer, employee, or agent of any housing government sponsored enterprise, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Housing government sponsored enterprises shall be examined by FinCEN or its delegate for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section is effective when an anti-money laundering program required by section 1030.210 of this part is required to be implemented.

3–1746.27

SECTION 1030.330—Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business

Refer to section 1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by housing government sponsored enterprises.

3–1746.3

SUBPART D—RECORDS REQUIRED TO BE MAINTAINED BY HOUSING GOVERNMENT SPONSORED ENTERPRISES

SECTION 1030.400—General

Housing government sponsored enterprises are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Housing government sponsored enterprises should also refer to subpart D of part 1010 of this chapter for recordkeeping requirements contained in that subpart that apply to housing government sponsored enterprises.

3–1746.4

SUBPART E—SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY

LAUNDERING AND TERRORIST ACTIVITY

SECTION 1030.500—General

Housing government sponsored enterprises are subject to special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Housing government sponsored enterprises should also refer to subpart E of part 1010 of this chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart that apply to housing government sponsored enterprises.

3–1746.42

SECTION 1030.520—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity for Housing Government Sponsored Enterprises

(a) Refer to section 1010.520 of this chapter.

(b) [Reserved]

SECTION 1030.530—[Reserved]

3–1746.44

SECTION 1030.540—Voluntary Information Sharing among Financial Institutions

(a) Refer to section 1010.540 of this chapter.

(b) [Reserved]

SUBPART F—SPECIAL STANDARDS OF DILIGENCE; PROHIBITIONS, AND SPECIAL MEASURES FOR HOUSING GOVERNMENT SPONSORED ENTERPRISES

SECTIONS 1030.600–1030.670—[Reserved]

PARTS 1031–1059 [RESERVED]

PART 1060—PROVISIONS RELATING TO THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010

Section

AUTHORITY: Pub. L. 111-195, 124 Stat. 1312.

SECTION 1060.100—[Reserved]

SECTION 1060.200—[Reserved]

3–1748

SECTION 1060.300—Reporting Obligations on Foreign Bank Relationships with Iranian-Linked Financial Institutions Designated Under IEEPA and IRGC-Linked Persons Designated Under IEEPA

(a) *General.*

(1) Upon receiving a written request from FinCEN, a bank (as defined in 31 CFR 1010.100(d)) that maintains a correspondent account (as defined in 31 CFR 1010.605(c)(1)(ii)) for a specified foreign bank (as defined in 31 CFR 1010.100(u)) shall inquire of the foreign bank, and report to FinCEN, with respect to any correspondent account maintained by such foreign

bank for an Iranian-linked financial institution designated under IEEPA; any transfer of funds for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account; and any transfer of funds for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA processed by such foreign bank within the preceding 90 calendar days.

(2) For the purposes of this section, an ''Iranian-linked financial institution designated under IEEPA'' means a financial institution designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism. For the purposes of this section, an ''IRGC-linked person designated under IEEPA'' means Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to the International Emergency Economic Powers Act (or listed in an annex to an Executive order issued pursuant to such Act).*

(b) *Duty to inquire.* Upon receiving a written request from FinCEN, a bank that maintains a correspondent account for a specified foreign bank shall inquire of such foreign bank for the purpose of having such foreign bank certify: whether it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA; whether it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account; and whether it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA. Upon such inquiry, a bank shall request that the foreign bank agree to notify the bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response.

(c) *Filing procedures.*

(1) *What to file.* Upon receiving a written request from FinCEN, a bank shall report to FinCEN, in such format and manner as may be prescribed by FinCEN, the following information for any specified foreign bank:

(i) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The full name(s) on the correspondent account and the correspondent account number(s);

(C) Applicable information regarding whether the correspondent account has been blocked or otherwise restricted;

(D) Other applicable identifying information for the correspondent account; and

(E) The approximate value in U.S. dollars of transactions processed through the correspondent account within the preceding 90 calendar days;

* Section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (''CISADA''), Public Law 111-195, 124 Stat. 1312, provides the Secretary of the Treasury with authority to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that the Secretary finds knowingly engages in certain specified activities. Those specified activities include facilitating a significant transaction or transactions or providing significant financial services for a financial institution whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran's support for international terrorism, or for Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property or interests in property are blocked pursuant to that Act.

(ii) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The identity of the system or means by which such transfer(s) of funds was processed;

(C) The full name on the account(s) and the account number(s), if applicable;

(D) Other applicable identifying information for such transfer(s) of funds; and

(E) The approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iii) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, and the following related information:

(A) The name of the IRGC-linked person designated under IEEPA;

(B) The identity of the system or means by which such transfer(s) of funds was processed;

(C) The full name on the account(s) and the account number(s), if applicable;

(D) Other applicable identifying information for such transfer(s) of funds; and

(E) The approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

(iv) The name of any specified foreign bank, for which the bank maintains a correspondent account, that certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA;

(v) The name of any specified foreign bank, for which the bank maintains a correspondent account, that the bank cannot determine does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, and/or has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, together with the reason(s) for this, such as the failure of the foreign bank to respond to the inquiry by or a request from the bank, the failure of the foreign bank to certify its response, or if the bank has information that is inconsistent with the certification;

(vi) The name of any specified foreign bank, for which the bank maintains a correspondent account, that notifies the bank that it has established a new correspondent account for an Iranian-linked financial institution designated under IEEPA at any time within 365 calendar days from the date of the foreign bank's initial response, and the following related information:

(A) The name of the Iranian-linked financial institution designated under IEEPA;

(B) The full name(s) on the correspondent account and the correspondent account number(s);

(C) Applicable information regarding whether the correspondent account has been blocked or otherwise restricted; and

(D) Other applicable identifying information for the correspondent account;

(vii) If applicable, confirmation that the bank does not maintain a correspondent account for the specified foreign bank(s), but only in instances in which FinCEN specifically requests that the bank report such information; and

(viii) If applicable, the name of any specified foreign bank, for which the bank maintains a correspondent account, that provides a certification to the bank after the 45-calendar-day deadline, along with all applicable related information associated with that certification.

(2) *When to file.*

(i) A bank shall report to FinCEN within 45-calendar-days of the date of the request from FinCEN.

(ii) Reports based on subsequent notifications received from a foreign bank regarding the establishment of a new correspondent account for an Iranian-linked financial institution designated under IEEPA shall be due within 10 calendar days of receipt of the notification.

(iii) Reports based on certifications received from a foreign bank after the 45 calendar day deadline shall be due within 10 calendar days of receipt of the certification.

(d) *Retention of records.* A bank shall maintain for a period of five years a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to an inquiry under this section.

(e) *No other action required.* Nothing in this section shall be construed to require a bank to take any action, or to decline to take any action, other than the requirements identified in this section, with respect to an account established for, or a transaction engaged in with, a foreign bank. However, nothing in this section relieves a bank of any other applicable regulatory obligation.

SECTION 1060.400—[Reserved]

SECTION 1060.500—[Reserved]

SECTION 1060.600—[Reserved]

SECTION 1060.700—[Reserved]

3–1748.5

SECTION 1060.800—Penalties

A person violating any requirement under this part is subject to the penalties provided for in sections 5321(a) and 5322 of title 31, United States Code, in the same manner and to the same extent as such penalties would apply to any person that is otherwise subject to such section 5321(a) or 5322.

PARTS 1061–1099 [RESERVED]

Bank Secrecy Act

3–1750

Public Law 91-508, known as the Bank Secrecy Act, was enacted October 26, 1970. Title I, chapter 1, of that act amended the Federal Deposit Insurance Act and the National Housing Act. Title I, chapter 2, was codified at 12 U.S.C. 1951-1959. Title II, the Currency and Foreign Transactions Reporting Act, was restated and recodified, at 31 U.S.C. 5311-5322, by Public Law 97-258 of September 13, 1982.

U.S. CODE, TITLE 12, CHAPTER 21—FINANCIAL RECORDKEEPING

SECTION 1951—Congressional Findings and Declaration of Purpose

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 1953(b) of this title have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 1952 of this title may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

[12 USC 1951. Bank Secrecy Act Â§ 121 (84 Stat. 1116).]

3–1751

SECTION 1952—Reports on Ownership and Control

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured institutions of any type with respect to their ownership, control, and managements and any changes therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such reports as he determines in respect of such ownership, control, and managements and changes therein.

[12 USC 1952. Bank Secrecy Act Â§ 122 (84 Stat. 1116).]

3–1752

SECTION 1953—Recordkeeping and Procedures

(a) *Regulations.* If the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b), has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b) of this section, any records or evidence of any type which the Secretary is authorized under section 1829b of this title to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

3–1753

(b) The authority of the Secretary of the Treasury under subsection (a) extends to any financial institution (as defined in section 5312(a)(2) of title 31, United States Code), other than any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any insured institution (as defined in section 401(a) of the National Housing Act), and any partner, officer, director, or employee of any such financial institution.

(c) *Acceptance of automated records.* The Secretary shall permit an uninsured bank or financial institution to retain or maintain records referred to in subsection (a) in electronic or automated form, subject to terms and conditions established by the Secretary.

[12 USC 1953. Bank Secrecy Act Â§ 123 (84 Stat. 1116). As amended by acts of Nov. 18, 1988 (102 Stat. 4357); Sept. 23, 1994 (108 Stat. 2221); Oct. 26, 2001 (115 Stat. 327); and Dec. 17, 2004 (118 Stat. 3746).]

3–1754

SECTION 1954—Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

[12 USC 1954. Bank Secrecy Act Â§ 124 (84 Stat. 1117).]

3–1755

SECTION 1955—Civil Penalties

(a) For each willful or grossly negligent violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, or any person willfully causing a violation of the regulation, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully or through gross negligence participates in the violation, a civil penalty not exceeding $10,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

[12 USC 1955. Bank Secrecy Act Â§ 125 (84 Stat. 1117). As amended by acts of Nov. 18, 1988 (102 Stat. 4357) and Oct. 28, 1992 (106 Stat. 4067).]

3–1756

SECTION 1956—Criminal Penalty

Whoever willfully violates any regulation under this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

[12 USC 1956. Bank Secrecy Act § 126 (84 Stat. 1118).]

3–1757

SECTION 1957—Additional Criminal Penalty in Certain Cases

Whoever willfully violates, or willfully causes a violation of any regulation under this chapter, section 1829b of this title, or section 1730d of this title, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

[12 USC 1957. Bank Secrecy Act § 127 (84 Stat. 1118). As amended by act of Oct. 28, 1992 (106 Stat. 4067).]

3–1758

SECTION 1958—Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this chapter and sections 1730d and 1829b of this chapter and section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) and may delegate such responsibility to the appro-

priate bank supervisory agency, or other supervisory agency. The Secretary may rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that the category of financial institution is required to comply with this chapter and section 21 of the Federal Deposit Insurance Act (and regulations prescribed under this chapter and section 21 of the Federal Deposit Insurance Act), or the State supervisory agency examines the category of financial institution for compliance with this chapter and section 21 of the Federal Deposit Insurance Act (and regulations prescribed under this chapter and section 21 of the Federal Deposit Insurance Act).

[12 USC 1958. Bank Secrecy Act Â§ 128 (84 Stat. 1118). As amended by act of Aug. 8, 2014 (128 Stat. 1829).]

3–1759

SECTION 1959—Administrative Procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5 shall apply to all proceedings under this chapter, section 1829b of this title, and section 1730d of this title.

[12 USC 1959. Bank Secrecy Act Â§ 129 (84 Stat. 1118).]

3–1760

U.S. CODE, TITLE 31, CHAPTER 53, SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

SECTION 5311—Declaration of Purpose

It is the purpose of this subchapter (except section 5315) to—

(1) require certain reports or records that are highly useful in—

(A) criminal, tax, or regulatory investigations, risk assessments, or proceedings; or

(B) intelligence or counterintelligence activities, including analysis, to protect against terrorism;

(2) prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism;

(3) facilitate the tracking of money that has been sourced through criminal activity or is intended to promote criminal or terrorist activity;

(4) assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institutions, products, or services to—

(A) protect the financial system of the United States from criminal abuse; and

(B) safeguard the national security of the United States; and

(5) establish appropriate frameworks for information sharing among financial institutions, their agents and service providers, their regulatory authorities, associations of financial institutions, the Department of the Treasury, and law enforcement authorities to identify, stop, and apprehend money launderers and those who finance terrorists.

[31 USC 5311. Previously 31 USC 1051 (Bank Secrecy Act Â§ 202 (84 Stat. 1118)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 995); and amended by acts of Oct. 26, 2001 (115 Stat. 326) and Jan. 1, 2021 (134 Stat. 4549).]

3–1761

SECTION 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, a transaction in money, credit, securities or gold, or a service provided with respect to money, securities, futures, precious metals, stones and jewels, or value that substitutes for currency.

3–1762

(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, or a business engaged in the exchange of currency, funds, or value that substitutes for currency or funds;

(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 currency, funds, or value that substitutes for currency, 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.

3–1763

(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;

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5333, 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; and

(D) as the Secretary shall provide by regulation, value that substitutes for any monetary instrument described in subparagraph (A), (B), or (C).

(4) 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.

3–1764

(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) 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.

[31 USC 5312. Previously 31 USC 1052(a)-(i) and (*l*) (Bank Secrecy Act Â§ 203(a)-(i) and (*l*) (84 Stat. 1118)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 995). Amended by acts of Oct. 27, 1986 (100 Stat. 3207-33); Nov. 18, 1988 (102 Stat. 4357); Sept. 23, 1994 (108 Stat. 2247, 2252); Oct. 26, 2001 (115 Stat. 315, 328, 335); Dec. 17, 2004 (118 Stat. 3746); and Jan. 1, 2021 (134 Stat. 4553).]

3–1765

SECTION 5313—Reports on Domestic Coin and Currency Transactions

(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.

3–1766

(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).

3–1767

(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.

3–1767.1

(d) *Mandatory exemptions from reporting requirements.*

(1) 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 reports on which have little or no value for law enforcement purposes.

(2) 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).

3–1767.2

(e) *Discretionary exemptions from reporting requirements.*

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

3–1767.3

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

(B) 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) 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) 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.

3–1767.4

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

(1) 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) 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 at 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.

3–1767.5

(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.

[31 USC 5313. Previously 31 USC 1081-1083 (Bank Secrecy Act Â§Â§ 221-223 (84 Stat. 1122)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 996). Amended by act of Sept. 23, 1994 (108 Stat. 2243).]

3–1768

SECTION 5314—Records and Reports on Foreign Financial Agency Transactions

(a) Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. The records and reports shall contain the following information in the way and to the extent the Secretary prescribes:

(1) the identity and address of participants in a transaction or relationship.

(2) the legal capacity in which a participant is acting.

(3) the identity of real parties in interest.

(4) a description of the transaction.

3–1769

(b) The Secretary may prescribe—

(1) a reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;

(2) a foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;

(3) the magnitude of transactions subject to a requirement or a regulation under this section;

(4) the kind of transaction subject to or exempt from a requirement or a regulation under this section; and

(5) other matters the Secretary considers necessary to carry out this section or a regulation under this section.

(c) A person shall be required to disclose a record required to be kept under this section or under a regulation under this section only as required by law.

[31 USC 5314. Previously 31 USC 1121 and 1122 (Bank Secrecy Act Â§Â§ 241 and 242 (84 Stat. 1124)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 997). Amended by acts of Oct. 28, 1992 (106 Stat. 4059) and Sept. 23, 1994 (108 Stat. 2254). Act of October 18, 1992, called for subsections (g) and (h) to be added at the end of section 5314, but was added at the end of section 5318 as the probable intent of Congress (House Report No. 102-1017, 102 Cong., 2 Sess., p. 404).]

3–1770

SECTION 5315—Reports on Foreign Currency Transactions

(a) Congress finds that—

(1) moving mobile capital can have a significant impact on the proper functioning of the international monetary system;

(2) it is important to have the most feasible current and complete information on the kind and source of capital flows, including transactions by large United States businesses and their foreign affiliates; and

(3) additional authority should be provided to collect information on capital flows under section 5(b) of the Trading With the Enemy Act (50 App. U.S.C. 5(b)) and section 8 of the Bretton Woods Agreement Act (22 U.S.C. 286f).

3–1771

(b) In this section, ''United States person'' and ''foreign person controlled by a United States person'' have the same meanings given those terms in section 7(f)(2)(A) and (C), respectively, of the Securities and Exchange Act of 1934 (15 U.S.C. 78g(f)(2)(A), (C)).

(c) The Secretary of the Treasury shall prescribe regulations consistent with subsection (a) of this section requiring reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The regulations shall require that a report contain information and be submitted at the time and in the way, with reasonable exceptions and classifications, necessary to carry out this section.

[31 USC 5315. Previously 31 USC 1141 and 1142 (Pub. L. 93 110 (87 Stat. 353)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 997).]

3–1772

SECTION 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.

3–1773

(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 sec-

tion 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.

3–1773.1

(d) 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).

[31 USC 5316. Previously 31 USC 1101 (Bank Secrecy Act Â§ 231 (84 Stat. 1122)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 998). Amended by acts of Oct. 12, 1984 (98 Stat. 2135) and Oct. 27, 1986 (100 Stat. 3207-26, 3207-94).]

3–1774

SECTION 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.

3–1774.1

(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.

3–1775

(c) *Forfeiture.*

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

(2) (A) 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.

(B) (i) Property may only be seized by the Internal Revenue Service pursuant to subparagraph (A) by reason of a claimed violation of section 5324 if the property to be seized was derived from an illegal source or the funds were structured for the purpose of concealing the violation of a criminal law or regulation other than section 5324.

(ii) Not later than 30 days after property is seized by the Internal Revenue Service pursuant to subparagraph (A), the Internal Revenue Service shall—

(I) make a good faith effort to find all persons with an ownership interest in such property; and

(II) provide each such person so found with a notice of the seizure and of the person's rights under clause (iv).

(iii) The Internal Revenue Service may apply to a court of competent jurisdiction for one 30-day extension of the notice requirement under clause (ii) if the Internal Revenue Service can establish probable cause of an imminent threat to national security or personal safety necessitating such extension.

(iv) If a person with an ownership interest in property seized pursuant to subparagraph (A) by the Internal Revenue Service requests a hearing by a court of competent jurisdiction within 30 days after the date on which notice is provided under subclause (ii), such property shall be returned unless the court holds an adversarial hearing and finds within 30 days of such request (or such longer period as the court may provide, but only on request of an interested party) that there is probable cause to believe that there is a violation of section 5324 involving such property and probable cause to believe that the property to be seized was derived from an illegal source or the funds were structured for the purpose of concealing the violation of a criminal law or regulation other than section 5324.

[31 USC 5317. Previously 31 USC 1102 and 1105 (Bank Secrecy Act Â§Â§ 232 and 235 (84 Stat. 1123)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 999). Amended by acts of Oct. 12, 1984 (98 Stat. 2135); Oct. 27, 1986 (100 Stat. 3207-22, 3207-34); Oct. 28, 1992 (106 Stat. 4065); Oct. 26, 2001 (115 Stat. 335, 338); and July 1, 2019 (133 Stat. 986).]

3–1776

SECTION 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 subsections (b)(2) and (h)(4), 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, including the collection and reporting of certain information as the Secretary of the Treasury may prescribe by regulation, to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering, the financing of terrorism, or other forms of illicit finance;

(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;

(6) rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that—

(A) the category of financial institution is required to comply with this subchapter and regulations prescribed under this subchapter; or

(B) the State supervisory agency examines the category of financial institution for compliance with this subchapter and regulations prescribed under this subchapter; and

(7) 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.

3–1776.1

(b) *Limitations on summons power.*

(1) 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) 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.

3–1776.2

(c) *Administrative aspects of summons.*

(1) 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 operates or conducts business in the United States.

(2) 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) 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.

3–1776.3

(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.

3–1776.4

(e) *Contumacy or refusal.*

(1) 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) 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) 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) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

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

3–1776.5

(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.

3–1776.6

(g) *Reporting of suspicious transactions.*

(1) 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) (A) 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) neither the financial institution, director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), nor any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported; and

(ii) no current or former officer or employee of or contractor for the Federal Government or of or for 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) (i) 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) 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).

3–1776.7

(3) (A) 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) 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) (A) 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) 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) 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.

(5) (A) In this paragraph, the terms ''Bank Secrecy Act,'' ''Federal functional regulator,'' ''State bank supervisor,'' and ''State credit union supervisor'' have the meanings given the terms in section 6003 of the Anti-Money Laundering Act of 2020.

(B) In imposing any requirement to report any suspicious transaction under this subsection, the Secretary of the Treasury, in consultation with the Attorney General, appropriate representatives of State bank supervisors, State credit union supervisors, and the Federal functional regulators, shall consider items that include—

(i) the national priorities established by the Secretary;

(ii) the purposes described in section 5311; and

(iii) the means by or form in which the Secretary shall receive such reporting, including the burdens imposed by such means or form of reporting on persons required to provide such reporting, the efficiency of the means or form, and the benefits derived by the means or form of reporting by Federal law enforcement agencies and the intelligence community in countering financial crime, including money laundering and the financing of terrorism.

(C) Reports filed under this subsection shall be guided by the compliance program of a covered financial institution with respect to the Bank Secrecy Act, including the risk assessment processes of the covered institution that should include a consideration of priorities established by the Secretary of the Treasury under section 5318.

(D) (i) In considering the means by or form in which the Secretary of the Treasury shall receive reporting pursuant to subparagraph (B)(iii), the Secretary of the Treasury, acting through the Director of the Financial Crimes Enforcement Network, and in consultation with appropriate representatives of the State bank supervisors, State credit union supervisors, and Federal functional regulators, shall—

(I) establish streamlined, including automated, processes to, as appropriate, permit the filing of noncomplex categories of reports that—

(aa) reduce burdens imposed on persons required to report; and

(bb) do not diminish the usefulness of the reporting to Federal law enforcement agencies, national security officials, and the intelligence community in combating financial crime, including the financing of terrorism;

(II) subject to clause (ii)—

(aa) permit streamlined, including automated, reporting for the categories described in subclause (I); and

(bb) establish the conditions under which the reporting described in item (aa) is permitted; and

(III) establish additional systems and processes as necessary to allow for the reporting described in subclause (II)(aa).

(ii) The Secretary of the Treasury—

(I) in carrying out clause (i), shall establish standards to ensure that streamlined reports relate to suspicious transactions relevant to potential violations of law (including regulations); and

(II) in establishing the standards under subclause (I), shall consider transactions, including structured transactions, designed to evade any regulation promulgated under this subchapter, certain fund and asset transfers with little or no apparent economic or business purpose, transactions without lawful purposes, and any other transaction that the Secretary determines to be appropriate.

(iii) Nothing in this subparagraph may be construed to preclude the Secretary of the Treasury from—

(I) requiring reporting as provided for in subparagraphs (B) and (C); or

(II) notifying Federal law enforcement with respect to any transaction that the Secretary has determined implicates a national priority established by the Secretary.

(6) (A) In this paragraph—

(i) the terms ''Bank Secrecy Act'' and ''Federal functional regulator'' have the meanings given the terms in section 6003 of the Anti-Money Laundering Act of 2020; and

(ii) the term ''typology'' means a technique to launder money or finance terrorism.

(B) Not less frequently than semiannually, the Director of the Financial Crimes Enforcement Network shall publish threat pattern and trend information to provide meaningful information about the preparation, use, and value of reports filed under this subsection by financial institutions, as well as other reports filed by financial institutions under the Bank Secrecy Act.

(C) In each publication published under subparagraph (B), the Director shall provide financial institutions and the Federal functional regulators with typologies, including data that can be adapted in algorithms if appropriate, relating to emerging money laundering and terrorist financing threat patterns and trends.

(7) Nothing in this subsection may be construed as precluding the Secretary of the Treasury from—

(A) requiring reporting as provided under subparagraphs (A) and (B) of paragraph (6); or

(B) notifying a Federal law enforcement agency with respect to any transaction that the Secretary has determined directly implicates a national priority established by the Secretary.

(8) (A) (i) Not later than 1 year after the date of enactment of this paragraph, the Secretary of the Treasury shall issue rules, in coordination with the Director of the Financial Crimes Enforcement Network, establishing the pilot program described in subparagraph (B).

(ii) In issuing the rules required under clause (i), the Secretary shall ensure that the sharing of information described in subparagraph (B)—

(I) is limited by the requirements of Federal and State law enforcement operations;

(II) takes into account potential concerns of the intelligence community; and

(III) is subject to appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information.

(B) The pilot program described in this paragraph shall—

(i) permit a financial institution with a reporting obligation under this subsection to share information related to reports under this subsection, including that such a report has been filed, with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks, notwithstanding any other provision of law except subparagraph (A) or (C);

(ii) permit the Secretary to consider, implement, and enforce provisions that would hold a foreign affiliate of a United States financial institution liable for the disclosure of information related to reports under this section;

(iii) terminate on the date that is 3 years after the date of enactment of this paragraph, except that the Secretary of the Treasury may extend the pilot program for not more than 2 years upon submitting to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes—

(I) a certification that the extension is in the national interest of the United States, with a detailed explanation of the reasons that the exten-

sion is in the national interest of the United States;

(II) after appropriate consultation by the Secretary with participants in the pilot program, an evaluation of the usefulness of the pilot program, including a detailed analysis of any illicit activity identified or prevented as a result of the program; and

(III) a detailed legislative proposal providing for a long-term extension of activities under the pilot program, measures to ensure data security, and confidentiality of personally identifiable information, including expected budgetary resources for those activities, if the Secretary of the Treasury determines that a long-term extension is appropriate.

(C) (i) In issuing the rules required under subparagraph (A), the Secretary of the Treasury may not permit a financial institution to share information on reports under this subsection with a foreign branch, subsidiary, or affiliate located in—

(I) the People's Republic of China;

(II) the Russian Federation; or

(III) a jurisdiction that—

(aa) is a state sponsor of terrorism;

(bb) is subject to sanctions imposed by the Federal Government; or

(cc) the Secretary has determined cannot reasonably protect the security and confidentiality of such information.

(ii) The Secretary is authorized to make exceptions, on a case-by-case basis, for a financial institution located in a jurisdiction listed in subclause (I) or (II) of clause (i), if the Secretary notifies the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that such an exception is in the national security interest of the United States.

(D) Not later than 360 days after the date on which rules are issued under subparagraph (A), and annually thereafter for 3 years, the Secretary of the Treasury, or the designee of the Secretary, shall brief the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on—

(i) the degree of any information sharing permitted under the pilot program and a description of criteria used by the Secretary to evaluate the appropriateness of the information sharing;

(ii) the effectiveness of the pilot program in identifying or preventing the violation of a United States law or regulation and mechanisms that may improve that effectiveness; and

(iii) any recommendations to amend the design of the pilot program.

(9) Information related to a report received by a financial institution from a foreign affiliate with respect to a suspicious transaction relevant to a possible violation of law or regulation shall be subject to the same confidentiality requirements provided under this subsection for a report of a suspicious transaction described in paragraph (1).

(10) No financial institution may establish or maintain any operation located outside of the United States the primary purpose of which is to ensure compliance with the Bank Secrecy Act as a result of the sharing granted under this subsection.

(11) In this subsection:

(A) The term ''affiliate'' means an entity that controls, is controlled by, or is under common control with another entity.

(B) The terms ''Bank Secrecy Act,'' ''State bank supervisor,'' and ''State credit union supervisor'' have the meanings given the terms in section 6003 of the Anti-Money Laundering Act of 2020.

3–1776.8

(h) *Anti-money laundering programs.*

(1) In order to guard against money laundering and the financing of terrorism through financial institutions, each financial institution shall establish anti-money laundering and countering the financing of terrorism 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) (A) 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.

(B) In prescribing the minimum standards under subparagraph (A), and in supervising and examining compliance with those standards, the Secretary of the Treasury, and the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809)) shall take into account the following:

(i) Financial institutions are spending private compliance funds for a public and private benefit, including protecting the United States financial system from illicit finance risks.

(ii) The extension of financial services to the underbanked and the facilitation of financial transactions, including remittances, coming from the United States and abroad in ways that simultaneously prevent criminal persons from abusing formal or informal financial services networks are key policy goals of the United States.

(iii) Effective anti-money laundering and countering the financing of terrorism programs safeguard national security and generate significant public benefits by preventing the flow of illicit funds in the financial system and by assisting law enforcement and national security agencies with the identification and prosecution of persons attempting to launder money and undertake other illicit activity through the financial system.

(iv) Anti-money laundering and countering the financing of terrorism programs described in paragraph (1) should be—

(I) reasonably designed to assure and monitor compliance with the requirements of this subchapter and regulations promulgated under this subchapter; and

(II) risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower-risk customers and activities.

(3) 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.

(4) (A) Not later than 180 days after the

date of enactment of this paragraph, the Secretary of the Treasury, in consultation with the Attorney General, Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), relevant State financial regulators, and relevant national security agencies, shall establish and make public priorities for anti-money laundering and countering the financing of terrorism policy.

(B) Not less frequently than once every 4 years, the Secretary of the Treasury, in consultation with the Attorney General, Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), relevant State financial regulators, and relevant national security agencies, shall update the priorities established under subparagraph (A).

(C) The Secretary of the Treasury shall ensure that the priorities established under subparagraph (A) are consistent with the national strategy for countering the financing of terrorism and related forms of illicit finance developed under section 261 of the Countering Russian Influence in Europe and Eurasia Act of 2017 (Public Law 115-44; 131 Stat. 934).

(D) Not later than 180 days after the date on which the Secretary of the Treasury establishes the priorities under subparagraph (A), the Secretary of the Treasury, acting through the Director of the Financial Crimes Enforcement Network and in consultation with the Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)) and relevant State financial regulators, shall, as appropriate, promulgate regulations to carry out this paragraph.

(E) The review by a financial institution of the priorities established under subparagraph (A) and the incorporation of those priorities, as appropriate, into the risk-based programs established by the financial institution to meet obligations under this subchapter, the USA PATRIOT Act (Public Law 107-56; 115 Stat. 272), and other anti-money laundering and countering the financing of terrorism laws and regulations shall be included as a measure on which a financial institution is supervised and examined for compliance with those obligations.

(5) The duty to establish, maintain and enforce an anti-money laundering and countering the financing of terrorism program as required by this subsection shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

3–1776.81

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

(1) 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) (A) 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) 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) 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) For purposes of this subsection, the following definitions shall apply:

(A) 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) 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.

3–1776.82

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

(1) 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) 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) 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) 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.

3–1776.83

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

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

(A) 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) The term ''covered financial institution'' means an institution referred to in subsection (j)(1).

(C) The term ''correspondent account'' has the same meaning as in section 5318A(e)(1)(B).

(2) 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) (A) (i) Notwithstanding subsection (b), the Secretary of the Treasury or the Attorney General may issue a subpoena to any foreign bank that maintains a correspondent account in the United States and request any records relating to the correspondent account or any account at the foreign bank, including records maintained outside of the United States, that are the subject of—

(I) any investigation of a violation of a criminal law of the United States;

(II) any investigation of a violation of this subchapter;

(III) a civil forfeiture action; or

(IV) an investigation pursuant to section 5318A.

(ii) The foreign bank on which a subpoena described in clause (i) is served shall produce all requested records and authenticate all requested records with testimony in the manner described in—

(I) rule 902(12) of the Federal Rules of Evidence; or

(II) section 3505 of title 18.

(iii) A subpoena described in clause (i)—

(I) shall designate—

(aa) a return date; and

(bb) the judicial district in which the related investigation is proceeding; and

(II) may be served—

(aa) in person;

(bb) by mail or fax in the United States if the foreign bank has a representative in the United States; or

(cc) if applicable, in a foreign country under any mutual legal assistance treaty, multilateral agreement, or other request for in-

ternational legal or law enforcement assistance.

(iv) (I) At any time before the return date of a subpoena described in clause (i), the foreign bank on which the subpoena is served may petition the district court of the United States for the judicial district in which the related investigation is proceeding, as designated in the subpoena, to modify or quash—

(aa) the subpoena; or

(bb) the prohibition against disclosure described in subparagraph (C).

(II) An assertion that compliance with a subpoena described in clause (i) would conflict with a provision of foreign secrecy or confidentiality law shall not be a sole basis for quashing or modifying the subpoena.

(B) (i) Any covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying—

(I) the owners of record and the beneficial owners of the foreign bank; and

(II) the name and address of a person who—

(aa) resides in the United States; and

(bb) is authorized to accept service of legal process for records covered under this subsection.

(ii) Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, a covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(C) (i) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a foreign bank on which a subpoena is served under this paragraph shall, directly or indirectly, notify any account holder involved or any person named in the subpoena issued under subparagraph (A)(i) and served on the foreign bank about the existence or contents of the subpoena.

(ii) Upon application by the Attorney General for a violation of this subparagraph, a foreign bank on which a subpoena is served under this paragraph shall be liable to the United States Government for a civil penalty in an amount equal to—

(I) double the amount of the suspected criminal proceeds sent through the correspondent account of the foreign bank in the related investigation; or

(II) if no such proceeds can be identified, not more than $250,000.

(D) (i) If a foreign bank fails to obey a subpoena issued under subparagraph (A)(i), the Attorney General may invoke the aid of the district court of the United States for the judicial district in which the investigation or related proceeding is occurring to compel compliance with the subpoena.

(ii) A court described in clause (i) may—

(I) issue an order requiring the foreign bank to appear before the Secretary of the Treasury or the Attorney General to produce—

(aa) certified records, in accordance with—

(AA) rule 902(12) of the Federal Rules of Evidence; or

(BB) section 3505 of title 18; or

(bb) testimony regarding the production of the certified records; and

(II) punish any failure to obey an order issued under subclause (I) as contempt of court.

(iii) All process in a case under this subparagraph shall be served on the foreign bank in the same manner as described in subparagraph (A)(iii).

(E) (i) A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after the date on which the covered financial institution receives written notice from the Secre-

tary of the Treasury or the Attorney General if, after consultation with the other, the Secretary of the Treasury or the Attorney General, as applicable, determines that the foreign bank has failed—

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

(II) to prevail in proceedings before—

(aa) the appropriate district court of the United States after challenging a subpoena described in subclause (I) under subparagraph (A)(iv)(I); or

(bb) a court of appeals of the United States after appealing a decision of a district court of the United States under item (aa).

(ii) A covered financial institution shall not be liable to any person in any court or arbitration proceeding for—

(I) terminating a correspondent relationship under this subparagraph; or

(II) complying with a nondisclosure order under subparagraph (C).

(iii) (I) A covered financial institution that fails to terminate a correspondent relationship under clause (i) shall be liable for a civil penalty in an amount that is not more than $25,000 for each day that the covered financial institution fails to terminate the relationship.

(II) (aa) Upon failure to comply with a subpoena under subparagraph (A)(i), a foreign bank may be liable for a civil penalty assessed by the issuing agency in an amount that is not more than $50,000 for each day that the foreign bank fails to comply with the terms of a subpoena.

(bb) Beginning after the date that is 60 days after a foreign bank fails to comply with a subpoena under subparagraph (A)(i), the Secretary of the Treasury or the Attorney General may seek additional penalties and compel compliance with the subpoena in the appropriate district court of the United States.

(cc) A foreign bank may seek review in the appropriate district court of the United States of any penalty assessed under this clause and the issuance of a subpoena under subparagraph (A)(i).

(F) Upon application by the United States, any funds held in the correspondent account of a foreign bank that is maintained in the United States with a covered financial institution may be seized by the United States to satisfy any civil penalties that are imposed—

(i) under subparagraph (C)(ii);

(ii) by a court for contempt under subparagraph (D); or

(iii) under subparagraph (E)(iii)(II).

3–1776.84

(*l*) *Identification and verification of accountholders.*

(1) 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) 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) 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) 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) 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) 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.

3–1776.841

(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.

3–1776.842

(n) *Reporting of certain cross-border transmittals of funds.*

(1) 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) 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) 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) (A) Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the Intelligence Reform and Terrorism Prevention 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) 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) (A) 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) 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.

(o) *Testing.*

(1) The Secretary of the Treasury, in consultation with the head of each agency to which the Secretary has delegated duties or powers under subsection (a), shall issue a rule to specify with respect to technology and related technology internal processes designed to facilitate compliance with the requirements under this subchapter, the standards by which financial institutions are to test the technology and related technology internal processes.

(2) The standards described in paragraph (1) may include—

(A) an emphasis on using innovative approaches such as machine learning or other enhanced data analytics processes;

(B) risk-based testing, oversight, and other risk management approaches of the regime, prior to and after implementation, to facilitate calibration of relevant systems and prudently evaluate and monitor the effectiveness of their implementation;

(C) specific criteria for when and how risk-based testing against existing processes should be considered to test and validate the effectiveness of relevant systems and situations and standards for when other risk management processes, including those developed by or through third party risk and compliance management systems, and oversight may be more appropriate;

(D) specific standards for a risk governance framework for financial institutions to provide oversight and to prudently evaluate and monitor systems and testing processes both pre- and post-implementation;

(E) requirements for appropriate data privacy and information security; and

(F) a requirement that the system configurations, including any applicable algorithms and any validation of those configurations used by the regime be disclosed to the Financial Crimes Enforcement Network and the appropriate Federal functional regulator upon request.

(3) (A) If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this subsection or any other author-

ity, discloses the algorithms of the financial institution to a government agency, the algorithms and any materials associated with the creation or adaption of such algorithms shall be considered confidential and not subject to public disclosure.

(B) Section 552(a)(3) of title 5 (commonly known as the ''Freedom of Information Act'') shall not apply to any request for algorithms described in subparagraph (A) and any materials associated with the creation or adaptation of the algorithms.

(4) In this subsection, the term ''Federal functional regulator'' means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Federal Deposit Insurance Corporation;

(D) the National Credit Union Administration;

(E) the Securities and Exchange Commission; and

(F) the Commodity Futures Trading Commission.

(p) *Sharing of compliance resources.*

(1) In order to more efficiently comply with the requirements of this subchapter, 2 or more financial institutions may enter into collaborative arrangements, as described in the statement entitled ''Interagency Statement on Sharing Bank Secrecy Act Resources,'' published on October 3, 2018, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network, the National Credit Union Administration, and the Office of the Comptroller of the Currency.*

(2) The Secretary of the Treasury and the appropriate supervising agencies shall carry out an outreach program to provide financial institutions with information, including best practices, with respect to the collaborative arrangements described in paragraph (1).

(q) *Interagency coordination and consultation.*

(1) The Secretary of the Treasury shall, as appropriate, invite an appropriate State bank supervisor and an appropriate State credit union supervisor to participate in the interagency consultation and coordination with the Federal depository institution regulators regarding the development or modification of any rule or regulation carrying out this subchapter.

(2) Nothing in this subsection may be construed to—

(A) affect, modify, or limit the discretion of the Secretary of the Treasury with respect to the methods or forms of interagency consultation and coordination; or

(B) require the Secretary of the Treasury or a Federal depository institution regulator to coordinate or consult with an appropriate State bank supervisor or to invite such supervisor to participate in interagency consultation and coordination with respect to a matter, including a rule or regulation, specifically affecting only Federal depository institutions or Federal credit unions.

(3) In this subsection:

(A) The term ''appropriate State bank supervisor'' means the Chairman or members of the State Liaison Committee of the Financial Institutions Examination Council.

(B) The term ''appropriate State credit union supervisor'' means the Chairman or members of the State Liaison Committee of the Financial Institutions Examination Council.

(C) The term ''Federal credit union'' has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(D) The term ''Federal depository institution'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(E) The term ''Federal depository institution regulator'' means a member of the Financial Institutions Examination Council to which is delegated any authority of the Secretary under subsection (a)(1).

[31 USC 5318. Previously 31 USC 1054 and 1055 (Bank Secrecy Act sections 205 and 206 (84 Stat. 1120)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 999). As

* *See* the interagency statement at 3–1874.

amended by acts of Oct. 27, 1986 (100 Stat. 3207-23, 3207-24); Nov. 18, 1988 (102 Stat. 4357); Oct. 28, 1992 (106 Stat. 4055, 4058); Oct. 26, 2001 (115 Stat. 304, 306, 312, 317, 320, 321, 322, 326, 328, 335); Dec. 4, 2003 (117 Stat. 2012); Dec. 17, 2004 (118 Stat. 3746, 3747, 3748); Mar. 9, 2006 (120 Stat. 245); Dec. 23, 2011 (125 Stat. 891); Aug. 8, 2014 (128 Stat. 1829); and Jan. 1, 2021 (134 Stat. 4550, 4553, 4571, 4573, 4576, 4579, 4584, 4590). Act of October 18, 1992, called for subsections (g) and (h) to be added at the end of section 5314, but they were added at the end of section 5318 as the probable intent of Congress (House Report No. 102-1017, 102 Cong., 2 Sess., p. 404).]

3–1776.85

SECTION 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) 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) 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) 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) 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) 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.

3–1776.86

(b) *Special measures.* The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, fi-

nancial 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) (A) 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 transaction, or type of account to be of primary money laundering concern.

(B) 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) 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) 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) 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) 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.

3–1776.87

(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 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) 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) In the case of a particular jurisdiction—

(i) evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles, 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) 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, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles;

(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.

3–1776.88

(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) The following definitions shall apply with respect to a bank:

(A) 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) 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) 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) 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) 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) 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.

3–1776.89

(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 (18 U.S.C. App.), 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.

[31 USC 5318A. As added by act of Oct. 26, 2001 (115 Stat. 298) and amended by acts of Dec. 13, 2003 (117 Stat. 2630); Dec. 17, 2004 (118 Stat. 3747); and Sept. 30, 2006 (120 Stat 1350).]

3–1777

SECTION 5319—Availability of Reports

The Secretary of the Treasury shall make information in a report filed under this subchapter available to an agency, including any State financial institutions supervisory agency, United States intelligence agency or self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, upon request of the head of the agency or organization. The report shall be available for a purpose that is consistent with this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from search and disclosure under section 552 of title 5, and may not be disclosed under any State, local, tribal, or territorial ''freedom of information,'' ''open government,'' or similar law.

[31 USC 5319. Previously 31 USC 1052(j) and 1061 (Bank Secrecy Act sections 203(j) and 212 (84 Stat. 1120, 1121)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 999). As amended by acts of Oct. 28, 1992 (106 Stat. 4055); Oct. 26, 2001 (115 Stat. 326); Dec. 23, 2011 (125 Stat. 891); and Jan. 1, 2021 (134 Stat. 4561).]

3–1778

SECTION 5320—Injunctions

When the Secretary of the Treasury believes a person has violated, is violating, or will violate this subchapter or a regulation prescribed or order issued under this subchapter, the Secretary may bring a civil action in the appropriate district court of the United States or appropriate United States court of a territory or possession of the United States to enjoin the violation or to enforce compliance with the subchapter, regulation, or order. An injunction or temporary restraining order shall be issued without bond.

[31 USC 5320. Previously 31 USC 1057 (Bank Secrecy Act § 208 (84 Stat. 1120)) and 31 USC 1143(b) (Pub. L. 93-110 (87 Stat. 353)). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 999).]

3–1779

SECTION 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, 5315, and 5336 of this title or a regulation prescribed under sections 5314, 5315, and 5336), 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.

3–1780

(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.

3–1780.1

(4) (A) The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) 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) The amount of any civil money penalty imposed by the Secretary under subparagaph (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.

3–1780.2

(5) (A) The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

(B) (i) Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $10,000.

(ii) No penalty shall be imposed under subparagraph (A) with respect to any violation if—

(I) such violation was due to reasonable cause, and

(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

(C) In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

(I) $100,000, or

(II) 50 percent of the amount determined under subparagraph (D), and

(ii) subparagraph (B)(ii) shall not apply.

(D) The amount determined under this subparagraph is—

(i) in the case of a violation involving a transaction, the amount of the transaction, or

(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.

3–1780.3

(6) (A) 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 (except section 5336) or any regulation prescribed under this subchapter (except section 5336).

(B) If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter (except section 5336) or any regulation prescribed under this subchapter (except section 5336), 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) 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 nonfinancial trade or business or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.

3–1781

(b) (1) 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) 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.

3–1781.1

(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.

3–1781.2

(e) *Delegation of assessment authority to banking agencies.*

(1) 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) 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) (A) The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) 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).

(f) *Additional damages for repeat violators.*

(1) In addition to any other fines permitted under this section and section 5322, with respect to a person who has previously violated a provision of (or rule issued under) this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or section 123 of Public Law 91-508 (12 U.S.C. 1953), the Secretary of the Treasury, if practicable, may impose an additional civil penalty against such person for each additional such violation in an amount that is not more than the greater of—

(A) if practicable to calculate, 3 times the profit gained or loss avoided by such person as a result of the violation; or

(B) 2 times the maximum penalty with respect to the violation.

(2) For purposes of determining whether a person has committed a previous violation under paragraph (1), the determination shall only include violations occurring after the date of enactment of the Anti-Money Laundering Act of 2020.

(g) *Certain violators barred from serving on boards of United States financial institutions.*

(1) In this subsection, the term ''egregious violation'' means, with respect to an individual—

(A) a criminal violation—

(i) for which the individual is convicted; and

(ii) for which the maximum term of imprisonment is more than 1 year; and

(B) a civil violation in which—

(i) the individual willfully committed the violation; and

(ii) the violation facilitated money laundering or the financing of terrorism.

(2) An individual found to have committed an egregious violation of the Bank Secrecy Act, as defined in section 6003 of the Anti-Money Laundering Act of 2020, or any rules issued under the Bank Secrecy Act, shall be barred from serving on the board of directors of a United States financial institution during the 10-year period that begins on the date on which the conviction or judgment, as applicable, with respect to the egregious violation is entered.

[31 USC 5321. Previously 31 USC 1054(b) (Bank Secrecy Act Â§ 205(b)) and 31 USC 1056(a) and (b), 1103, 1143(a) and (b), and 1104. Restated and recodified by act of Sept. 13, 1982 (96 Stat. 999). Amended by acts of Oct. 12, 1984 (98 Stat. 2135); Oct. 27, 1986 (100 Stat. 3207-24, 3207-25, 3207-26); Nov. 18, 1988 (102 Stat. 4357); Oct. 28, 1992 (106 Stat. 4057, 4065, 4066, 4071); Sept. 23, 1994 (108 Stat. 2247, 2253, 2254); Sept. 30, 1996 (110 Stat. 3009-415); Oct. 26, 2001 (115 Stat. 322, 332, 335); Oct. 22, 2004 (118 Stat. 1586); and Jan. 1, 2021 (134 Stat. 4594, 4595, 4623).]

3–1782

SECTION 5322—Criminal Penalties

(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315, 5324, or 5336 of this title or a regulation prescribed under section 5315, 5324, or 5336), 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, 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, 5324, or 5336 of this title or a regulation prescribed under section 5315, 5324, or 5336), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 90-508, 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.

(e) A person convicted of violating a provision of (or rule issued under) the Bank Secrecy Act, as defined in section 6003 of the Anti-Money Laundering Act of 2020, shall—

(1) in addition to any other fine under this section, be fined in an amount that is equal to the profit gained by such person by reason of such violation, as determined by the court; and

(2) if the person is an individual who was a partner, director, officer, or employee of a financial institution at the time the violation occurred, repay to such financial institution any bonus paid to the individual during the calendar year in which the violation occurred or the calendar year after which the violation occurred.

[31 USC 5322. Previously 31 USC 1058 (Bank Secrecy Act Â§ 205(b)), 1059 and 1054(b). Restated and recodified by act of Sept. 13, 1982 (96 Stat. 1000). Amended by acts of Oct. 12, 1984 (98 Stat. 2135); Oct. 27, 1986 (100 Stat. 3207-22, 3207-24, 3207-26); Sept. 23, 1994 (108 Stat. 2253); Oct. 26, 2001 (115 Stat. 323, 332); and Jan. 1, 2021 (134 Stat. 4596, 4623).]

3–1783

SECTION 5323—Whistleblower Incentives and Protections

(a) In this section:

(1) The term ''covered judicial or administrative action'' means any judicial or administrative action brought by the Secretary of the Treasury (referred to in this section as the ''Secretary'') or the Attorney General under this subchapter or subchapter III that results in monetary sanctions exceeding $1,000,000.

(2) The term ''monetary sanctions,'' when used with respect to any judicial or administrative action—

(A) means any monies, including penalties, disgorgement, and interest, ordered to be paid; and

(B) does not include—

(i) forfeiture;

(ii) restitution; or

(iii) any victim compensation payment.

(3) The term ''original information'' means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Secretary or the Attorney General from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(4) The term ''related action,'' when used with respect to any judicial or administrative action brought by the Secretary or the Attorney General under this subchapter or subchapter III, means any judicial or administrative action brought by an entity described in any of subclauses (I) through (III) of subsection (g)(4)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (b) that led to the successful enforcement of the action by the Secretary or the Attorney General.

(5) (A) The term ''whistleblower'' means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of this subchapter or subchapter III to the employer of the individual or individuals, including as part of the job duties of the individual or individuals, or to the Secretary or the Attorney General.

(B) Solely for the purposes of subsection (g)(1), the term ''whistleblower'' includes any individual who takes, or 2 or more individuals acting jointly who take, an action described in subsection (g)(1)(A).

(b) (1) In any covered judicial or administrative action, or related action, the Secretary, under regulations prescribed by the Secretary, in consultation with the Attorney General and subject to subsection (c) and to amounts made available in advance by appropriation Acts, shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the employer of the individual, the Secretary, or the Attorney General, as applicable, that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) For the purposes of paying any award under this section, the Secretary may, subject to amounts made available in advance by appropriation Acts, use monetary sanction amounts recovered based on the original information with respect to which the award is being paid.

(c) (1) (A) The determination of the amount of an award made under subsection (b) shall be in the discretion of the Secretary.

(B) In determining the amount of an award made under subsection (b), the Secretary shall take into consideration—

(i) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(ii) the degree of assistance provided by the whistleblower and any legal

representative of the whistleblower in a covered judicial or administrative action;

(iii) the programmatic interest of the Department of the Treasury in deterring violations of this subchapter and subchapter III by making awards to whistleblowers who provide information that lead to the successful enforcement of either such subchapter; and

(iv) such additional relevant factors as the Secretary, in consultation with the Attorney General, may establish by rule or regulation.

(2) No award under subsection (b) may be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Secretary or the Attorney General, as applicable, a member, officer, or employee—

(i) of—

(I) an appropriate regulatory or banking agency;

(II) the Department of the Treasury or the Department of Justice; or

(III) a law enforcement agency; and

(ii) acting in the normal course of the job duties of the whistleblower;

(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

(C) to any whistleblower who fails to submit information to the Secretary or the Attorney General, as applicable, in such form as the Secretary, in consultation with the Attorney General, may, by rule, require.

(d) (1) Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) (A) Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

(B) Before the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Secretary may require, directly or through counsel for the whistleblower.

(e) No contract with the Department of the Treasury is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Secretary by rule or regulation.

(f) (1) Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Secretary.

(2) (A) Any determination described in paragraph (1), except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Secretary.

(B) The court to which a determination by the Secretary is appealed under subparagraph (A) shall review the determination in accordance with section 706 of title 5.

(g) (1) No employer may, directly or indirectly, discharge, demote, suspend, threaten, blacklist, harass, or in any other manner discriminate against a whistleblower in the terms and conditions of employment or post-employment because of any lawful act done by the whistleblower—

(A) in providing information in accordance with this section to—

(i) the Secretary or the Attorney General;

(ii) a Federal regulatory or law enforcement agency;

(iii) any Member of Congress or any committee of Congress; or

(iv) a person with supervisory authority over the whistleblower, or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct; or

(B) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Department of the

Treasury or the Department of Justice based upon or related to the information described in subparagraph (A); or

(C) in providing information regarding any conduct that the whistleblower reasonably believes constitutes a violation of any law, rule, or regulation subject to the jurisdiction of the Department of the Treasury, or a violation of section 1956, 1957, or 1960 of title 18 (or any rule or regulation under any such provision), to—

(i) a person with supervisory authority over the whistleblower at the employer of the whistleblower; or

(ii) another individual working for the employer described in clause (i) who the whistleblower reasonably believes has the authority to—

(I) investigate, discover, or terminate the misconduct; or

(II) take any other action to address the misconduct.

(2) Any individual who alleges discharge or other discrimination, or is otherwise aggrieved by an employer, in violation of paragraph (1), may seek relief by—

(A) filing a complaint with the Secretary of Labor in accordance with the requirements of this subsection; or

(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of a complaint under subparagraph (A), and there is no showing that such a delay is due to the bad faith of the claimant, bringing an action against the employer at law or in equity in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(3) (A) (i) Except as provided in clause (ii) and subparagraph (C), the requirements under section 42121(b) of title 49, including the legal burdens of proof described in such section 42121(b), shall apply with respect to a complaint filed under paragraph (2)(A) by an individual against an employer.

(ii) With respect to a complaint filed under paragraph (2)(A), notification required to be made under section 42121(b)(1) of title 49 shall be made to each person named in the complaint, including the employer.

(B) (i) A party to an action brought under paragraph (2)(B) shall be entitled to trial by jury.

(ii) (I) An action may not be brought under paragraph (2)(B)—

(aa) more than 6 years after the date on which the violation of paragraph (1) occurs; or

(bb) more than 3 years after the date on which when facts material to the right of action are known, or reasonably should have been known, by the employee alleging a violation of paragraph (1).

(II) Notwithstanding subclause (I), an action under paragraph (2)(B) may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(C) Relief for an individual prevailing with respect to a complaint filed under subparagraph (A) of paragraph (2) or an action brought under subparagraph (B) of that paragraph shall include—

(i) reinstatement with the same seniority status that the individual would have had, but for the conduct that is the subject of the complaint or action, as applicable;

(ii) 2 times the amount of back pay otherwise owed to the individual, with interest;

(iii) the payment of compensatory damages, which shall include compensation for litigation costs, expert witness fees, and reasonable attorneys' fees; and

(iv) any other appropriate remedy with respect to the conduct that is the subject of the complaint or action, as applicable.

(4) (A) Except as provided in subparagraphs (C) and (D), the Secretary or the Attorney General, as applicable, and any officer or employee of the Department of the Treasury or the Department of Justice, shall not disclose any information, including information provided by a whistleblower to either such official,

which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the appropriate such official or any entity described in subparagraph (D).

(B) For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(C) Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(D) (i) Without the loss of its status as confidential in the hands of the Secretary or the Attorney General, as applicable, all information referred to in subparagraph (A) may, in the discretion of the appropriate such official, when determined by that official to be necessary to accomplish the purposes of this subchapter, be made available to—

(I) any appropriate Federal authority;

(II) a State attorney general in connection with any criminal investigation;

(III) any appropriate State regulatory authority; and

(IV) a foreign law enforcement authority.

(ii) (I) Each of the entities described in subclauses (I) through (III) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

(II) Each entity described in clause (i)(IV) shall maintain such information in accordance with such assurances of confidentiality as determined by the Secretary or Attorney General, as applicable.

(5) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law or under any collective bargaining agreement.

(6) This subsection shall not apply with respect to any employer that is subject to section 33 of the Federal Deposit Insurance Act (12 U.S.C. 1831j) or section 213 or 214 of the Federal Credit Union Act (12 U.S.C. 1790b, 1790c).

(h) A whistleblower shall not be entitled to an award under this section if the whistleblower—

(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

(i) The Secretary, in consultation with the Attorney General, shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.

(j) (1) The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(2) No predispute arbitration agreement shall be valid or enforceable, to the extent the agreement requires arbitration of a dispute arising under this section.

[31 USC 5323. As added by act of Oct. 12, 1984 (98 Stat. 2135) and amended by act of Jan. 1, 2021 (134 Stat. 4597).]

3–1785

SECTION 5324—Structuring Transactions to Evade Reporting Requirements Prohibited

(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 require-

ments 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 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, 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.

3–1785.01

(b) *Domestic coin and currency transactions involving nonfinancial trades or businesses.* No person shall, for the purpose of evading the report requirements of section 5333 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 5333 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 5333 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.

3–1785.1

(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.

3–1785.2

(d) *Criminal Penalty.*

(1) 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) 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.

[31 USC 5324. As added by act of Oct. 27, 1986 (100 Stat. 3207-22) and amended by acts of Oct. 28, 1992 (106 Stat. 4059, 4064); Sept. 23, 1994 (108 Stat. 2253, 2254); and Oct. 26, 2001 (115 Stat. 323, 334, 335).]

3–1786

SECTION 5325—Identification Required to Purchase Certain Monetary Instruments

(a) 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.

3–1786.1

(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) 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.

[31 USC 5325. As added by act of Nov. 18, 1988 (102 Stat. 4355).]

3–1787

SECTION 5326—Records of Certain Domestic Transactions

(a) 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 or to 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 funds (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.

3–1787.1

(b) *Authority to order depository institutions to obtain reports from customers.*

(1) 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 (other than a depository institution) or nonfinancial trade or business 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 funds 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) For purposes of this subsection, the term ''reportable transaction'' means any transaction involving funds (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.

3–1787.2

(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).

[31 USC 5326. As added by act of Nov. 18, 1988 (102 Stat. 4355 and amended by acts of Oct. 28, 1992 (106 Stat. 4058, 4072); Oct. 26, 2001 (115 Stat. 323, 335); and Aug. 2, 2017 (131 Stat. 938).]

3–1788

SECTION 5327

[Section 5327 was repealed by act of Sept. 30, 1996 (110 Stat. 3009-415).]

3–1788.2

SECTION 5328

[Section 5328 was repealed by act of Jan. 1, 2021 (134 Stat. 4603).]

3–1788.25

SECTION 5329—Staff Commentaries

The Secretary shall—

(1) publish all written rulings interpreting this subchapter; and

(2) annually issue a staff commentary on the regulations issued under this subchapter.

[31 USC 5329. As added by act of Sept. 23, 1994 (108 Stat. 2221).]

3–1788.3

SECTION 5330—Registration of Money Transmitting Businesses

(a) *Registration with Secretary of the Treasury required.*

(1) 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) 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) This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

(4) 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.

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(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.

3–1788.32

(c) *Agents of money transmitting businesses.*

(1) 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) 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.

3–1788.34

(d) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) 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 currency, funds, or value that substitutes for currency, 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;

(B) is required to file reports under section 5313; and

(C) is not a depository institution (as defined in section 5313(g)).

(2) The term ''money transmitting service'' includes accepting currency, funds, or value that substitutes for currency and transmitting the currency, funds, or value that substitutes for currency by any means, including 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.

3–1788.35

(e) *Civil penalty for failure to comply with registration requirements.*

(1) 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) Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

(3) 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.

[31 USC 5330. As added by act of Sept. 23, 1994 (108 Stat. 2250) and amended by acts of Oct. 26, 2001 (115 Stat. 328) and Jan. 1, 2021 (134 Stat. 4553).]

3–1788.36

SECTION 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) (A) who is engaged in a trade or business, and

(B) 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 or

(2) who is required to file a report under section 6050I(g) of the Internal Revenue Code of 1986.

(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) Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) 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) 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) 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).

[31 USC 5331. As added by act of Oct. 26, 2001 (115 Stat. 333) and amended by act of Dec. 23, 2011 (125 Stat. 891).]

3–1788.37

SECTION 5332—Bulk Cash Smuggling into or out of the United States

(a) *Criminal offense.*

(1) 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) 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) 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) 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) The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) 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) 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) 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) 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 USC 5332. As added by act of Oct. 26, 2001 (15 Stat. 337) and amended by act Dec. 17, 2004 (118 Stat. 3747).]

3–1789

FEDERAL DEPOSIT INSURANCE ACT

(a) *Congressional findings and declaration of purpose.*

(1) Congress finds that—

(A) adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism; and

(B) microfilm or other reproductions and other records made by insured depository institutions of checks, as well as records kept by such institutions, of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in proceedings described in subparagraph (A).

(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, recognizing that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

3–1789.1

(b) *Recordkeeping regulations.*

(1) Where the Secretary of the Treasury (referred to in this section as the ''Secretary'') determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(2) Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') determine that the maintenance of records, by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

3–1789.11

(3) (A) The Secretary and the Board shall jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks

or other similar instruments maintain such records of payment orders which—

(i) involve international transactions; and

(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments,

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(B) In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

(C) Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary or the Board upon request.

3–1789.12

(c) *Identity of persons having accounts and persons authorized to act with respect to such accounts; exemptions.* Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), each insured depository institution shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the insured depository institution and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

3–1789.2

(d) *Reproduction of checks, drafts, and other instruments; record of transactions; identity of party.* Each insured depository institution shall make, to the extent that the regulations of the Secretary so require—

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the insured depository institution has already made a record of the party's identity pursuant to subsection (c) of this section.

(e) *Identity of persons making reportable currency and foreign transactions.* Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under subchapter II of chapter 53 of Title 31, the insured depository institution shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

3–1789.3

(f) *Additions to or substitutes for required records.* Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), in addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) *Retention period.* Any type of record or evidence required under this section shall be retained for such period as the Secretary may

prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) *Report to Congress by Secretary of the Treasury.* The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

3–1789.4

(i) *Application of provisions to foreign banks.* The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.

(j) *Civil penalties.*

(1) Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates or any person who willfully causes such a violation, any regulation prescribed under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than $10,000.

(2) A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

(3) Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31.

[12 USC 1829b. As added by act of Oct. 26, 1970 (84 Stat. 1114) and amended by acts of Sept. 17, 1978 (92 Stat. 620); Nov. 18, 1988 (102 Stat. 4356); Aug. 9, 1989 (103 Stat. 187); Oct. 28, 1992 (106 Stat. 4058, 4059, 4066); Sept. 23, 1994 (108 Stat. 2290); Oct. 26, 2001 (115 Stat. 326); and Dec. 17, 2004 (118 Stat. 3747).]