

by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring after March 25, 2003.

[67 FR 60729, Sept. 26, 2002]

**§ 103.22 Reports of transactions in currency.**

(a) *General.* This section sets forth the rules for the reporting by financial institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b) of this section. The reporting rules relating to aggregation are stated in paragraph (c) of this section. Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d) of this section.

(b) *Filing obligations—(1) Financial institutions other than casinos.* Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in this section. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) *Casinos.* Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

- (A) Purchases of chips, tokens, and plaques;
- (B) Front money deposits;

- (C) Safekeeping deposits;
- (D) Payments on any form of credit, including markers and counter checks;
- (E) Bets of currency;

(F) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(G) Purchases of a casino's check; and

(H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Redemptions of chips, tokens, and plaques;

(B) Front money withdrawals;

(C) Safekeeping withdrawals;

(D) Advances on any form of credit, including markers and counter checks;

(E) Payments on bets, including slot jackpots;

(F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;

(G) Cashing of checks or other negotiable instruments;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Reimbursements for customers' travel and entertainment expenses by the casino.

(c) *Aggregation—(1) Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of this section's reporting requirements.

(2) *Multiple transactions—general.* In the case of financial institutions other than casinos, for purposes of this section, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day (or in the case of the Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(3) *Multiple transactions—casinos.* In the case of a casino, multiple currency

transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) *Transactions of exempt persons*—(1) *General.* No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(6)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in paragraph (d)(7) of this section.)

(2) *Exempt person.* For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any State, or of any political subdivision of any State;

(iii) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate "Nasdaq Small-Cap Issues" heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a bank, of any entity described in paragraph (d)(2)(iv) of this section (a "listed entity") that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this paragraph (d), a "non-listed business"), other than an enterprise specified in paragraph (d)(6)(viii) of this section, that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

(B) Frequently engages in transactions in currency with the bank in excess of \$10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(vii) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this paragraph (d), a "payroll customer") that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

(B) Operates a firm that regularly withdraws more than \$10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(3) *Initial designation of exempt persons*—(i) *General*. A bank must designate each exempt person with which it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this paragraph (d). Except as provided in paragraph (d)(3)(ii) of this section, designation by a bank of an exempt person shall be made by a single filing of Treasury Form TD F 90-22.53. (A bank is not required to file a Treasury Form TD F 90-22.53 with respect to the transfer of currency to or from any of the twelve Federal Reserve Banks.) The designation must be made separately by each bank that treats the person in question as an exempt person, except as provided in paragraph (d)(6)(vi) of this section. The designation requirements of this paragraph (d)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of prior §103.22(a) under the rules contained in 31 CFR 103.22(a) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998). A special transitional rule, which extends the time for initial designation for customers that have been previously treated as exempt under such prior rules, is contained in paragraph (d)(11) of this section.

(ii) *Special rules for banks*. When designating another bank as an exempt person, a bank must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers. In the event that a bank files its current list of domestic bank customers, the bank must make the filing as described in paragraph (d)(3)(i) of this section for each bank that is a new

customer and for which an exemption is sought under this paragraph (d).

(4) *Annual review*. The information supporting each designation of an exempt person, and the application to each account of an exempt person described in paragraphs (d)(2)(vi) or (d)(2)(vii) of this section of the monitoring system required to be maintained by paragraph (d)(9)(ii) of this section, must be reviewed and verified at least once each year.

(5) *Biennial filing with respect to certain exempt persons*—(i) *General*. A biennial filing, as described in paragraph (d)(5)(ii) of this section, is required for continuation of the treatment as an exempt person of a customer described in paragraph (d)(2)(vi) or (vii) of this section. No biennial filing is required for continuation of the treatment as an exempt person of a customer described in paragraphs (d)(2)(i) through (v) of this section.

(ii) *Non-listed businesses and payroll customers*. The designation of a non-listed business or a payroll customer as an exempt person must be renewed biennially, beginning on March 15 of the second calendar year following the year in which the first designation of such customer as an exempt person is made, and every other March 15 thereafter, on Treasury Form TD F 90-22.53. Biennial renewals must include a statement certifying that the bank's system of monitoring the transactions in currency of an exempt person for suspicious activity, required to be maintained by paragraph (d)(9)(ii) of this section, has been applied as necessary, but at least annually, to the account of the exempt person to whom the biennial renewal applies. Biennial renewals also must include information about any change in control of the exempt person involved of which the bank knows (or should know on the basis of its records).

(6) *Operating rules*—(i) *General rule*. Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (d)(2) of this section), to document the basis for its conclusions, and document its compliance, with the

terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (d)(9)(ii) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (d)(9)(ii) of this section.

(ii) *Governmental departments and agencies.* A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) *Stock exchange listings.* In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission "Edgar" System, or on any information contained on an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) *Listed company subsidiaries.* In determining whether a person is de-

scribed in paragraph (d)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(v) *Aggregated accounts.* In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(vi) *Affiliated banks.* The designation required by paragraph (d)(3) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(vii) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable.

(viii) *Ineligible businesses.* A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this paragraph (d): serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft;

gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues is derived from one or more of the ineligible business activities listed in this paragraph (d)(6)(viii).

(ix) *Exemptible accounts of a non-listed business or payroll customer.* The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this paragraph (d), is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this paragraph (d), is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(x) *Documentation.* The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of §103.38.

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

(8) *Limitation on liability.* (i) No bank shall be subject to penalty under this part for failure to file a report required by paragraph (b) of this section with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (d) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the

transaction or the customer engaging in the transaction; or

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

(ii) Subject to the specific terms of this paragraph (d), and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this paragraph (d) to the extent it continues to treat that customer as an exempt person until the date of that customer's next periodic review, which, as required by paragraph (d)(4) of this section, shall occur no less than once each year.

(iii) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(9) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.* (i) Nothing in this paragraph (d) relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by §103.21 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in §103.21(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transaction trends or patterns, may trigger the obligations of a bank under §103.21.

(ii) Consistent with its annual review obligations under paragraph (d)(4) of this section, a bank shall establish and

§ 103.23

31 CFR Ch. I (7-1-06 Edition)

maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (d)(9)(i) of this section and §103.21 with respect to all exempt persons.

(10) *Revocation.* The status of any person as an exempt person under this paragraph (d) may be revoked by FinCEN by written notice, which may be provided by publication in the FEDERAL REGISTER in appropriate situations, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(8)(ii) of this section:

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

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(11) *Transitional rule.* (i) No accounts may be newly granted an exemption or placed on an exempt list on or after October 21, 1998, under the rules contained in 31 CFR 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998).

(ii) If a bank properly treated an account (a “previously exempted account”) as exempt on October 20, 1998 under the rules contained in 31 CFR 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998), it may continue to treat such account as exempt under such prior rules with respect to transactions in currency occurring on or before June 30, 2000, provided that it does so consistently until the earlier of

June 30, 2000, and the date on which the bank makes the designation or the determination described in paragraph (d)(11)(iii) of this section. A bank that continues to treat a previously exempted account as exempt under the prior rules, and for the period, specified in the preceding sentence, shall remain subject to such prior rules, and to the penalties for failing to comply therewith, with respect to transactions in currency occurring during such period.

(iii) A bank must, on or before July 1, 2000, either designate the holder of a previously exempted account as an exempt person under paragraph (d)(2) of this section or determine that it may not or will not treat such holder as an exempt person under paragraph (d)(2) of this section (so that it will be required to make reports under paragraph (a) of this section with respect to transactions in currency by such person occurring on or after the date of determination, but no later than July 1, 2000). A bank that initially does not designate the holder of a previously exempted account as an exempt person for periods beginning after June 30, 2000, may later make such a designation, to the extent otherwise permitted to do so by this paragraph (d), for periods after the effective date of such designation.

(Approved by the Office of Management and Budget under control number 1506-0009)

[63 FR 50156, Sept. 21, 1998, as amended at 65 FR 46360, July 28, 2000]

§ 103.23 Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to