

§ 904.4

31 CFR Ch. IX (7-1-12 Edition)

immediately upon request by the Department of Justice.

§ 904.4 Minimum amount of referrals to the Department of Justice.

(a) Agencies shall not refer for litigation claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice shall promptly notify referring agencies if the Attorney General changes this minimum amount.

(b) Agencies shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with the agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the referring agency for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

(c) Agencies should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the Department of Justice prior to referring claims valued at less than the minimum amount.

**CHAPTER X—FINANCIAL CRIMES
ENFORCEMENT NETWORK, DEPARTMENT OF
THE TREASURY**

<i>Part</i>		<i>Page</i>
1000–1009	[Reserved]	
1010	General provisions	605
1011–1019	[Reserved]	
1020	Rule for banks	662
1021	Rules for casinos and card clubs	677
1022	Rules for money services businesses	685
1023	Rules for brokers or dealers in securities	695
1024	Rules for mutual funds	704
1025	Rules for insurance companies	712
1026	Rules for futures commission merchants and intro- ducing brokers in commodities	717
1027	Rules for dealers in precious metals, precious stones, or jewels	726
1028	Rules for operators of credit card systems	730
1029	Rules for loan or finance companies	733
1030–1059	[Reserved]	
1060	Provisions relating to the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010	737
1061–1099	[Reserved]	

PARTS 1000–1009[RESERVED]

PART 1010—GENERAL PROVISIONS

Subpart A—General Definitions

Sec.

1010.100 General definitions.

Subpart B—Programs

1010.200 General.

1010.205 Exempted anti-money laundering programs for certain financial institutions.

1010.210 Anti-money laundering programs.

1010.220 Customer identification program requirements.

Subpart C—Reports Required To Be Made

1010.300 General.

1010.301 Determination by the Secretary.

1010.305 [Reserved]

1010.306 Filing of reports.

1010.310 Reports of transactions in currency.

1010.311 Filing obligations for reports of transactions in currency.

1010.312 Identification required.

1010.313 Aggregation.

1010.314 Structured transactions.

1010.315 Exemptions for non-bank financial institutions.

1010.320 Reports of suspicious transactions.

1010.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

1010.331 Reports relating to currency in excess of \$10,000 received as bail by court clerks.

1010.340 Reports of transportation of currency or monetary instruments.

1010.350 Reports of foreign financial accounts.

1010.360 Reports of transactions with foreign financial agencies.

1010.370 Reports of certain domestic coin and currency transactions.

Subpart D—Records Required To Be Maintained

1010.400 General.

1010.401 Determination by the Secretary.

1010.405 [Reserved]

1010.410 Records to be made and retained by financial institutions.

1010.415 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.

1010.430 Nature of records and retention period.

1010.440 Person outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1010.500 General.

1010.505 Definitions.

1010.520 Information sharing between government agencies and financial institutions.

1010.530 [Reserved]

1010.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

1010.600 General.

SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

1010.605 Definitions.

1010.610 Due diligence programs for correspondent accounts for foreign financial institutions.

1010.620 Due diligence programs for private banking accounts.

1010.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

1010.640 [Reserved]

SPECIAL MEASURES UNDER SECTION 311 OF THE USA PATRIOT ACT AND LAW ENFORCEMENT ACCESS TO FOREIGN BANK RECORDS

1010.651 Special measures against Burma.

1010.652 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

1010.653 Special measures against Commercial Bank of Syria.

1010.655 Special measures against Banco Delta Asia.

1010.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

Subpart G—Administrative Rulings

1010.710 Scope.

1010.711 Submitting requests.

1010.712 Nonconforming requests.

1010.713 Oral communications.

1010.714 Withdrawing requests.

1010.715 Issuing rulings.

1010.716 Modifying or rescinding rulings.

1010.717 Disclosing information.

Subpart H—Enforcement; Penalties; and Forfeiture

1010.810 Enforcement.

1010.820 Civil penalty.

1010.830 Forfeiture of currency or monetary instruments.

1010.840 Criminal penalty.

§ 1010.100

31 CFR Ch. X (7-1-12 Edition)

1010.850 Enforcement authority with respect to transportation of currency or monetary instruments.

Subpart I—Summons

1010.911 General.
1010.912 Persons who may issue summons.
1010.913 Contents of summons.
1010.914 Service of summons.
1010.915 Examination of witnesses and records.
1010.916 Enforcement of summons.
1010.917 Payment of expenses.

Subpart J—Miscellaneous

1010.920 Access to records.
1010.930 Rewards for informants.
1010.940 Photographic or other reproductions of Government obligations.
1010.950 Availability of information.
1010.960 Disclosure.
1010.970 Exceptions, exemptions, and reports.
1010.980 Dollars as including foreign currency.

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Subpart A—General Definitions

§ 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 § 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 § 1010.340, on one or more days.

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

(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 there-to.

(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.

(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.

(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 cus-

tomarily 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.

(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.

(s) *FinCEN*. FinCEN means the Financial Crimes Enforcement Network,

§ 1010.100

31 CFR Ch. X (7-1-12 Edition)

a bureau of the Department of the Treasury.

(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 simi-

lar 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.

(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. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(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.

(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 transmitter'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.

(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 §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]

(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 § 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 §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).

(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.

(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.

(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.

(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 § 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 §§ 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 Commonwealth of the Northern Mariana Islands, and all other terri-

tories 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 §§ 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.

(ddd) *Transmittal of funds*. A series of transactions beginning with the transmitter’s transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter’s financial institution or an intermediary financial institution intended to carry out the transmitter’s transmittal order. The

term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmitter's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

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

(ggg) *Transmitter's financial institution.* The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial agency, or the transmitter if the transmitter is a financial institution or foreign financial agency. The term transmitter's financial institution includes an originator's bank, except where the originator is a transmitter's financial institution other than a bank or foreign bank.

(hhh) *United States.* The States of the United States, the District of Colum-

bia, 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]

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43596, July 21, 2011; 76 FR 45419, July 29, 2011; 77 FR 8157, Feb. 14, 2012]

Subpart B—Programs

§ 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)).

§ 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) Private banker;

(vii) Commodity pool operator;

(viii) Commodity trading advisor; or

(ix) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in § 1010.100(d)) that is not subject to regulation by a Federal functional regulator (as defined in § 1010.100(r)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in § 1010.100(t)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(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.

[75 FR 65812, Oct. 26, 2010, as amended at 77 FR 8157, Feb. 14, 2012]

§ 1010.210

§ 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.

§ 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.

Subpart C—Reports Required To Be Made

§ 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.

§ 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.

§ 1010.305 [Reserved]

§ 1010.306 Filing of reports.

(a)(1) A report required by §1010.311 or §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 §§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 §§1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by §1010.340(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping

31 CFR Ch. X (7–1–12 Edition)

from the United States, unless otherwise specified by the Commissioner of Customs and Border Protection.

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

(3) All reports required by §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 §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 §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.

(c) Reports required to be filed by §1010.350 shall be filed with the Commissioner of Internal Revenue 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 §1010.311, §1010.313, §1010.340, §1010.350, §1020.315, §1021.311 or §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 §1010.311, §1010.313, §1010.350, §1020.315, §1021.311 or §1021.313 of this chapter may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by §1010.340 may be obtained from the U.S. Customs and Border Protection.

§ 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 §§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.

§ 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.

§ 1010.312 Identification required.

Before concluding any transaction with respect to which a report is required under § 1010.311, § 1010.313, § 1020.315, § 1021.311 or § 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.

§ 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.

§ 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 required 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 § 1010.100(xx)) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

§ 1010.315

§ 1010.315 Exemptions for non-bank financial institutions.

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

§ 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.

§ 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 §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 similar information about certain transactions to FinCEN. 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

31 CFR Ch. X (7–1–12 Edition)

are credited to the account of the automobile dealer (*i.e.*, where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

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

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

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

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

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

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

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

Example. On January 10, Year 1, M receives an initial payment in currency of \$11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of \$4,000 on February 15, Year 1, \$6,000 on March 20, Year

1, and \$12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling \$22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded \$10,000.

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

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

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

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

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

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

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

(i) A consumer durable,
(ii) A collectible, or
(iii) A travel or entertainment activity.

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

§ 1010.330

31 CFR Ch. X (7-1-12 Edition)

the instrument) to substantiate that the instrument constitutes loan proceeds.

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

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

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

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

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

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

(6) *Examples.* The following examples illustrate the definition of "currency"

set forth in paragraphs (c)(1) through (c)(5) of this section:

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

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

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

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

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to

W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds \$10,000 in face amount, exceeds \$10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of section 5331 and this section. Therefore, because W has received more than \$10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

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

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

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

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

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

(12) *Transaction*. (i) Solely for purposes of 31 U.S.C. 5331 and this section, the term *transaction* means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or

services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a pre-existing debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

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

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

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

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

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

by making five \$9,000 contributions of currency to five separate funds administered by a common trustee.

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

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

(13) *Recipient.* (i) The term *recipient* means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

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

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

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

tures contracts sales in accordance with this section.

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

(d) *Exceptions to the reporting requirements of 31 U.S.C. 5331—(1) Receipt 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

Financial Crimes Enforcement Network, Treasury

§ 1010.331

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.

(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.

EFFECTIVE DATE NOTE: At 77 FR 33637, June 7, 2012, §1010.330 was amended by revising paragraphs (a)(1)(ii) introductory text and

(c)(1), effective July 9, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 1010.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

(a) * * *
(1) * * *

(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.

* * * * *

(c) * * *

(1) *Currency.* The term *currency* means—

* * * * *

§ 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 circulate in and are customarily

§ 1010.340

31 CFR Ch. X (7-1-12 Edition)

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.

[77 FR 33637, June 7, 2012]

EFFECTIVE DATE NOTE: At 77 FR 33637, June 7, 2012, §1010.331 was added, effective July 9, 2012.

§ 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.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding \$10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated;

(9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

§ 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

§ 1010.350

31 CFR Ch. X (7-1-12 Edition)

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 determine 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 detailed 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.

§ 1010.360

31 CFR Ch. X (7–1–12 Edition)

(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.

[76 FR 10245, Feb. 24, 2011, as amended at 76 FR 37000, June 24, 2011]

§ 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.

(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 fi-

ancial 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 §§ 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.

(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.

(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.

(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 in-

dividually 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 investigation 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.

§ 1010.370 Reports of certain domestic coin and currency 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 record-keeping and/or reporting requirements are necessary to carry out the purposes of this chapter and to prevent persons from evading the reporting/record-keeping requirements of this chapter, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions 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 is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

§ 1010.400

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency 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 currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(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.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 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 §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

31 CFR Ch. X (7–1–12 Edition)

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.

Subpart D—Records Required To Be Maintained

§ 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.

§ 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.

§ 1010.405 [Reserved]

§ 1010.410 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later 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

Financial Crimes Enforcement Network, Treasury

§ 1010.410

\$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 §1010.370(a), not to exceed five years.

(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 transmitter's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmitter;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmitter with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order: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.

(2) *Transmitters other than established customers.* In the case of a transmittal order from a transmitter that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmitter's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmitter's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

¹For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(ii) If the transmittal order accepted by the transmitter's financial institution is not made in person, the transmitter's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.*, check or credit card transaction) for the transmittal of funds. If the transmitter's financial institution has knowledge that the person placing the transmittal order is not the transmitter, the transmitter's financial institution shall obtain and retain a record of the transmitter's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (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 ad-

dress, as well as the recipient's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that a transmitter's financial institution must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the transmitter's financial institution by reference to the name of the transmitter. If the transmitter is an established customer of the transmitter's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (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 information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

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

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

(i) Transmittals of funds where the transmitter and the recipient are any of the following:

- (A) A bank;
- (B) A wholly-owned domestic subsidiary of a bank chartered in the United States;
- (C) A broker or dealer in securities;
- (D) A wholly-owned domestic subsidiary of a broker or dealer in securities;
- (E) A futures commission merchant or an introducing broker in commodities;
- (F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;
- (G) The United States;
- (H) A state or local government; or
- (I) A Federal, State or local government agency or instrumentality; or
- (J) A mutual fund; and

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

(f) Any transmitter's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of \$3,000 or more, information as required in this paragraph (f):

(1) A transmitter's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

- (i) The name and, if the payment is ordered from an account, the account number of the transmitter;
- (ii) The address of the transmitter, except for a transmittal order through

Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order: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

(vi) Either the name and address or numerical identifier of the transmitter's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:³

²For 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.

³For transmittals of funds effected through the Federal Reserve's Fedwire funds

Continued

§ 1010.415

31 CFR Ch. X (7-1-12 Edition)

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(3) *Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format.* The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) *Transmitter's financial institution.* A transmitter's financial institution will be deemed to be in compliance with the provisions of paragraph (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.

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.

(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 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.

(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 § 1020.410(a)(6) of this chapter.

§ 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 a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000-\$10,000 inclusive:

Financial Crimes Enforcement Network, Treasury

§ 1010.420

(1) If the purchaser has a deposit account with the financial institution:

(i)(A) The name of the purchaser;

(B) The date of purchase;

(C) The type(s) of instrument(s) purchased;

(D) The serial number(s) of each of the instrument(s) purchased; and

(E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit account holder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit account holder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit account holder's identity has not been verified previously, the financial institution shall verify the deposit account holder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.*, State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

(C) The date of birth of the purchaser;

(D) The date of purchase;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of the instrument(s) purchased; and

(G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.*, State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

§ 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 1010.350 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

§ 1010.430

a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 1010.430 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original or a microfilm or other 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.

(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 §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.

§ 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

31 CFR Ch. X (7-1-12 Edition)

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.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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.

§ 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 §1010.100(bbb).

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

§ 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 fi-

ancial 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) *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 attaché 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

§ 1010.520

31 CFR Ch. X (7-1-12 Edition)

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 §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.

(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 attaché 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 §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.

(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.

§ 1010.530 [Reserved]

§ 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) *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

§ 1010.600

31 CFR Ch. X (7–1–12 Edition)

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' non-public 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 in-

stitution or association fails to comply with paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(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.

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

§ 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

§ 1010.605 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 1010.610 through 1010.630 and § 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 § 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 §§ 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, deal-

ings, 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.

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

(e) *Covered financial institution* means: (1) For purposes of § 1010.610 and 1010.620:

(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.*);

§ 1010.605

31 CFR Ch. X (7-1-12 Edition)

(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;

(2) For purposes of §§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.

(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 para-

graphs (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 §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 activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

(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 §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.

(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.

(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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43596, July 21, 2011]

§ 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

§ 1010.610

31 CFR Ch. X (7-1-12 Edition)

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.

(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 § 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)).

(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 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 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.

(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 § 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 § 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.

(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.

§ 1010.620

31 CFR Ch. X (7–1–12 Edition)

(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 §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 §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 §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.

§ 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 para-

graph (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.

(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.

(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 §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 §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 §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.

§ 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.

(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).

(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.

§ 1010.640 [Reserved]

SPECIAL MEASURES UNDER SECTION 311 OF THE USA PATRIOT ACT AND LAW ENFORCEMENT ACCESS TO FOREIGN BANK RECORDS

§ 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 § 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 § 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in

§ 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.

(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.

§ 1010.652

31 CFR Ch. X (7-1-12 Edition)

(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, directive, 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.

§ 1010.652 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

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

(1) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

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

(3) *Covered financial institution* has the same meaning as provided in § 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.

(4) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(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, Myanmar Mayflower Bank or Asia Wealth Bank.

(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 Myanmar Mayflower Bank or Asia Wealth Bank, 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 Myanmar Mayflower Bank or Asia Wealth Bank.

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

§ 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 § 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.

(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.

§ 1010.655 Special measures against Banco Delta Asia.

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

(1) *Banco Delta Asia* means all branches, offices, and subsidiaries of Banco Delta Asia operating in any jurisdiction, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited.

(2) *Correspondent account* has the same meaning as provided in § 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 U.S. 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 register, 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 sec-

tion 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.

(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 established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.

(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 Banco Delta Asia. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders the correspondent account may not be used to provide Banco Delta Asia with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, 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 Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Banco Delta Asia 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 Banco Delta Asia.

(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.

§ 1010.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) *Definitions.* The definitions in § 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 § 1010.630, the covered financial institu-

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

(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 terminating 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.

Subpart G—Administrative Rulings

§ 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.

§ 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,

§ 1010.712

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.

(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.

§ 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 §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.

§ 1010.713 Oral communications.

(a) The Director of FinCEN or his designee will not issue administrative rulings in response to oral requests.

31 CFR Ch. X (7-1-12 Edition)

Oral opinions or advice 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 §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 §1010.711 before they may be considered in connection with the request.

§ 1010.714 Withdrawing requests.

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

§ 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 §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 1506-0009)

§ 1010.716 Modifying or rescinding rulings.

(a) The Director, FinCEN, or his designee may modify or rescind any ruling made pursuant to § 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 § 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.

(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.

§ 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.

Subpart H—Enforcement; Penalties; and Forfeiture

§ 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

§ 1010.820

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 §§ 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.

(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 § 1010.340;

(2) To the Commissioner of Internal Revenue except with respect to § 1010.340.

(d) Authority for the imposition of civil penalties for violations of this chapter lies with the Director of FinCEN.

(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.

(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

31 CFR Ch. X (7-1-12 Edition)

data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this chapter.

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and §§ 1010.350 and 1010.420 of this chapter has been re-delegated 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.

§ 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 §§ 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.

(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 § 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.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 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.

(d) For any failure to file a report required under § 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 § 1010.830.

(e) For any willful violation of § 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.

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this chapter (except § 1010.350, § 1010.360 or § 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.

(g) For any willful violation committed after October 27, 1986, of any requirement of § 1010.350, § 1010.360 or § 1010.420, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 1010.360 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) of the transaction, or \$25,000; and

(2) In the case of a violation of § 1010.350 or § 1010.420 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or \$25,000.

(h) For each negligent violation of any requirement of this chapter, com-

mitted after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed \$500.

§ 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 § 1010.340 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 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.

§ 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

§ 1010.850

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.

§ 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 §§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 §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.

Subpart I—Summons

§ 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

31 CFR Ch. X (7–1–12 Edition)

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.

§ 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 §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 §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 §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.

§ 1010.913 Contents of summons.

(a) *Summons for testimony*. Any summons issued under §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 §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.

(b) *Summons of books, papers, records, or data.* Any summons issued under § 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 § 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.

§ 1010.914 Service of summons.

(a) *Who may serve.* Any delegate of the Secretary authorized under § 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.

§ 1010.915 Examination of witnesses and records.

(a) *General.* Any delegate of the Secretary authorized under § 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.

(c) *Disclosure of summons, testimony, or records.* Unless the Secretary or a delegate of the Secretary listed under § 1010.912(a) of this chapter so authorizes in writing, or it is otherwise required by law, no delegate of the Secretary listed under § 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

§ 1010.916

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.

§ 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 § 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 § 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.

§ 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 ex-

31 CFR Ch. X (7-1-12 Edition)

pense incurred in connection with the production of books, papers, records, or other data under this chapter.

Subpart J—Miscellaneous

§ 1010.920 Access to records.

Except as provided in §§ 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.

§ 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.

§ 1010.940 Photographic or other reproductions of Government obligations.

Nothing herein contained shall require or authorize the microfilming or other 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.

§ 1010.950 Availability of information.

(a) The Secretary may within his discretion disclose information reported under this chapter for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.

(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.

§ 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.

§ 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.

(c)(1) The Secretary may, as an alternative to the reporting and recordkeeping requirements for casinos in §§ 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

§ 1010.980

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.

§ 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—RULE FOR BANKS

Subpart A—Definitions

Sec.

1020.100 Definitions.

Subpart B—Programs

1020.200 General.

1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

1020.220 Customer identification programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

31 CFR Ch. X (7-1-12 Edition)

Subpart C—Reports Required To Be Made by Banks

- 1020.300 General.
- 1020.310 Reports of transactions in currency.
- 1020.311 Filing obligations.
- 1020.312 Identification required.
- 1020.313 Aggregation.
- 1020.314 Structured transactions.
- 1020.315 Transactions of exempt persons.
- 1020.320 Reports by banks of suspicious transactions.

Subpart D—Records Required To Be Maintained by Banks

- 1020.400 General.
- 1020.410 Records to be made and retained by banks.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

- 1020.500 General.
- 1020.520 Special information sharing procedures to deter money laundering and terrorist activity for banks.
- 1020.530 [Reserved]
- 1020.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Banks

- 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, sec. 314, Pub. L. 107-56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted

Subpart A—Definitions

§ 1020.100 Definitions.

Refer to §1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in §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 § 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) *Bank*. For the purposes of § 1020.220, means:

(1) A bank, as that term is defined in § 1010.100(d), that is subject to regulation by a Federal functional regulator; and

(2) A credit union, private bank, and trust company, as set forth in § 1010.100(d) of this chapter, that does not have a Federal functional regulator.

(c) *Customer*. For the purposes of § 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 § 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.

(d) *Financial institution* means:

(1) For the purposes of § 1020.210, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) For the purposes of § 1020.220, financial institution is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 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.

§ 1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self-regulatory organization 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 complies with the requirements of §§ 1010.610 and 1010.620 and the regulation of its Federal functional regulator governing such programs.

§ 1020.220 Customer identification programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) *Customer Identification Program: minimum requirements*—(1) *In general*. A bank 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. If a bank is 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.

§ 1020.220

31 CFR Ch. X (7-1-12 Edition)

1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(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.

NOTE TO PARAGRAPH(a)(2)(i)(A)(4)(ii): 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.

(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.

(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 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 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) *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

§ 1020.300

31 CFR Ch. X (7–1–12 Edition)

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.

(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.

(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.

Subpart C—Reports Required To Be Made By Banks

§ 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.

§ 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.

§ 1020.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for banks.

§ 1020.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by banks.

§ 1020.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for banks.

§ 1020.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for banks.

§ 1020.315 Transactions of exempt persons.

(a) *General.* No bank is required to file a report otherwise required by § 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 frequently 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.

(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.

(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 sec-

tion to each existing account of an exempt person described in paragraphs (b)(6) or (b)(7) of this section.

(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) *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.

(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 institu-

tions 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 §1010.430.

(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 §1010.311 with respect to a transaction in currency by an exempt

§ 1020.320

31 CFR Ch. X (7-1-12 Edition)

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.

(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 §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 §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 ex-

empt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under §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 §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)

[75 FR 65812, Oct. 26, 2010, as amended at 77 FR 33640, June 7, 2012]

§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.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) *When to file.* A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In

situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN 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.

(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

§ 1020.400

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 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 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 du-

31 CFR Ch. X (7-1-12 Edition)

ties" 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).

(g) *Compliance.* Banks shall be examined by FinCEN or its delegates 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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10517, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained By Banks

§ 1020.400 General.

Banks are subject to the record-keeping 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.

§ 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 microfilm or other 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 microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order:¹

(1) The name and address of the beneficiary;

(2) The account number of the beneficiary; and

(3) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) *Originators other than established customers.* In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (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) *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

¹For 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.

person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.*, driver's license), as well as a record of the person's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that an originator's bank must retain under paragraphs (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.

(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).

(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

Financial Crimes Enforcement Network, Treasury

§ 1020.410

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 attachés 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

§ 1020.410

31 CFR Ch. X (7-1-12 Edition)

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 microfilm or other 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.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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.

§ 1020.520 Special information sharing procedures to deter money laundering and terrorist activity for banks.

- (a) Refer to §1010.520 of this chapter.
- (b) [Reserved]

§ 1020.530 [Reserved]

§ 1020.540 Voluntary information sharing among financial institutions.

- (a) Refer to §1010.540 of this chapter.
- (b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

§ 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.

§ 1020.610 Due diligence programs for correspondent accounts for foreign financial institutions.

- (a) Refer to §1010.610 of this chapter.
- (b) [Reserved]

§ 1020.620 Due diligence programs for private banking accounts.

- (a) Refer to §1010.620 of this chapter.
- (b) [Reserved]

§ 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 §1010.630 of this chapter.
- (b) [Reserved]

§ 1020.640 [Reserved]

§ 1020.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

- (a) Refer to §1010.670 of this chapter.
- (b) [Reserved]

PART 1021—RULES FOR CASINOS AND CARD CLUBS

Subpart A—Definitions

Sec.

1021.100 Definitions.

Subpart B—Programs

1021.200 General.

1021.210 Anti-money laundering program requirements for casinos.

Subpart C—Reports Required To Be Made By Casinos and Card Clubs

1021.300 General.

1021.310 Reports of transactions in currency.

1021.311 Filing obligations.

1021.312 Identification required.

1021.313 Aggregation.

1021.314 Structured transactions.

1021.315 Exemptions.

1021.320 Reports by casinos of suspicious transactions.

1021.330 Exceptions to the reporting requirements of 31 U.S.C. 5331.

Subpart D—Records Required To Be Maintained By Casinos and Card Clubs

1021.400 General.

1021.410 Additional records to be made and retained by casinos.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity for Casinos and Card Clubs

1021.500 General.

§ 1021.100

- 1021.520 Special information sharing procedures to deter money laundering and terrorist activity for casinos and card clubs.
- 1021.530 [Reserved]
- 1021.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Casinos and Card Clubs

- 1021.600 General.
- 1021.610 Due diligence programs for correspondent accounts for foreign financial institutions.
- 1021.620 Due diligence programs for private banking accounts.
- 1021.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
- 1021.640 [Reserved]
- 1021.670 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, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1021.100 Definitions.

Refer to §1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in §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

31 CFR Ch. X (7–1–12 Edition)

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.

Subpart B—Programs

§ 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.

§ 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 terrorist 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 § 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.

(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 § 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 § 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 § 1021.313 in which case this exemption would not apply); and

Subpart C—Reports Required To Be Made By Casinos and Card Clubs

§ 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.

§ 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.

§ 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;

§ 1021.312

(4) Jackpots from slot machines or video lottery terminals.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43597, July 21, 2011]

§ 1021.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transaction in currency filed by casinos and card clubs.

§ 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.

§ 1021.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for casinos.

§ 1021.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for casinos.

§ 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

31 CFR Ch. X (7–1–12 Edition)

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 by Casinos (“SARC”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) *When to file.* A SARC shall be filed no later than 30 calendar days after the

date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SARC if required by this section.

(c) *Exceptions.* A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN 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

§ 1021.330

31 CFR Ch. X (7–1–12 Edition)

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 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 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 delegates 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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10517, Feb. 25, 2011]

§ 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 §1010.306, §1021.311, or §1021.313 and is subject to the recordkeeping requirements of §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 §1010.970(c).* Pursuant to §1010.970, the Secretary may exempt from the reporting and recordkeeping requirements under §1010.306, §1021.311, §1021.313 or §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 non-gaming 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 §§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 §§ 1010.306, 1021.311, and 1021.313.

Subpart D—Records Required To Be Maintained By Casinos and Card Clubs

§ 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.

§ 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 § 1010.312 of this chapter, and the specific identifying information shall be recorded in the manner described in § 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 microfilm or other 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;

§ 1021.410

31 CFR Ch. X (7-1-12 Edition)

(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 § 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 § 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 § 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.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity for Casinos and Card Clubs

§ 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.

§ 1021.520 Special information sharing procedures to deter money laundering and terrorist activity for casinos and card clubs.

- (a) Refer to §1010.520 of this chapter.
- (b) [Reserved]

§ 1021.530 [Reserved]

§ 1021.540 Voluntary information sharing among financial institutions.

- (a) Refer to §1010.540 of this Chapter.
- (b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Casinos and Card Clubs

§ 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.

§ 1021.610 Due diligence programs for correspondent accounts for foreign financial institutions.

- (a) Refer to §1010.610 of this chapter.
- (b) [Reserved]

§ 1021.620 Due diligence programs for private banking accounts.

- (a) Refer to §1010.620 of this chapter.
- (b) [Reserved]

§ 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 §1010.630 of this chapter.
- (b) [Reserved]

§ 1021.640 [Reserved]

§ 1021.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

- (a) Refer to §1010.670 of this chapter.
- (b) [Reserved]

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

Subpart A—Definitions

Sec.
1022.100 Definitions.

Subpart B—Programs

1022.200 General.
1022.210 Anti-money laundering programs for money services businesses.

Subpart C—Reports Required To Be Made By Money Services Businesses

1022.300 General.
1022.310 Reports of transactions in currency.
1022.311 Filing obligations.
1022.312 Identification required.
1022.313 Aggregation.
1022.314 Structured transactions.
1022.315 Exemptions.
1022.320 Reports by money services businesses of suspicious transactions.
1022.380 Registration of money services businesses.

Subpart D—Records Required To Be Maintained By Money Services Businesses

1022.400 General.
1022.410 Additional records to be made and retained by dealers in foreign exchange.

§ 1022.100

1022.420 Additional records to be maintained by providers and sellers of prepaid access.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1022.500 General.

1022.520 Special information sharing procedures to deter money laundering and terrorist activity for money services businesses.

1022.530 [Reserved]

1022.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Money Services Businesses

1022.600 General.

1022.610–1022.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1022.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein.

Subpart B—Programs

§ 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.

§ 1022.210 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by § 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.

31 CFR Ch. X (7–1–12 Edition)

(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 § 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). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(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 anti-money 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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43597, July 21, 2011; 76 FR 45419, July 29, 2011]

Subpart C—Reports Required To Be Made By Money Services Businesses

§ 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.

§ 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.

§ 1022.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for money services businesses.

§ 1022.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports of transactions in currency filed by money services businesses.

§ 1022.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for money services businesses.

§ 1022.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for money services businesses.

§ 1022.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for money services businesses.

§ 1022.320 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business described in § 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.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB ("SAR-MSB"), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR-MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR-MSB.

(3) *When to file.* A money services business subject to this section is required to file each SAR-MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR-MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify

by telephone an appropriate law enforcement authority in addition to filing a SAR-MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-MSB if required by this section.

(c) *Retention of records.* A money services business shall maintain a copy of any SAR-MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR-MSB. A money services business shall make all supporting documentation available to FinCEN 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.

(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 infor-

mation, 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

§ 1022.380

31 CFR Ch. X (7-1-12 Edition)

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 delegates 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.

[75 FR 65812, Oct. 26, 2010, as amended at 75 FR 10518, Feb. 25, 2011; 76 FR 45420, July 29, 2011]

§ 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 § 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 § 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 § 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.

(b) *Registration procedures—(1) In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Enterprise Computing Center in Detroit of the Internal Revenue Service (or such other location as the form may specify). The information required by 31

U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 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. Fi-

nally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents—(1) In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and

any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 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 § 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 sub-agents 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).

(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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43597, July 21, 2011; 76 FR 45420, July 29, 2011]

Subpart D—Records Required To Be Maintained By Money Services Businesses

§ 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.

§ 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.

(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 main-

taining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the dealer in foreign exchange.

(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.

(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

§ 1022.420

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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 43597, July 21, 2011]

31 CFR Ch. X (7–1–12 Edition)

§ 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 § 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 § 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.

[76 FR 45420, July 29, 2011]

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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.

§ 1022.520 Special information sharing procedures to deter money laundering and terrorist activity for money services businesses.

- (a) Refer to § 1010.520 of this chapter.
- (b) [Reserved]

§ 1022.530 [Reserved]

§ 1022.540 Voluntary information sharing among financial institutions.

- (a) Refer to § 1010.540 of this chapter.
- (b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Money Services Businesses

§ 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.

§§ 1022.610–1022.670 [Reserved]

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

Subpart A—Definitions

Sec.

1023.100 Definitions.

Subpart B—Programs

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

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

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

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

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, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 25, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1023.100 Definitions.

Refer to §1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in §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 §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.

§ 1023.200

31 CFR Ch. X (7–1–12 Edition)

(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 § 1023.220, the United States Securities and Exchange Commission.

(d) *Customer*. For purposes of § 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 § 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).

Subpart B—Programs

§ 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.

§ 1023.210 Anti-money laundering program requirements for brokers or dealers in securities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§ 1010.610 of

this chapter and 1010.620 and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(b)(1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 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.

NOTE TO PARAGRAPH (a)(2)(i)(A)(4)(ii): 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.

(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.

(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 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) *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 discov-

ered 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.

(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.

(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.

Subpart C—Reports Required To Be Made By Brokers or Dealers in Securities**§ 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.

§ 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.

§ 1023.311 Filing obligations.

Refer to §1010.311 of this chapter for reports of transactions in currency filing obligations for brokers or dealers in securities.

§ 1023.312 Identification required.

Refer to §1010.312 of this chapter for identification requirements for reports of transactions in currency filed by brokers or dealers in securities.

§ 1023.313 Aggregation.

Refer to §1010.313 of this chapter for reports of transactions in currency aggregation requirements for brokers or dealers in securities.

§ 1023.314 Structured transactions.

Refer to §1010.314 of this chapter for rules regarding structured transactions for brokers or dealers in securities.

§ 1023.315

31 CFR Ch. X (7-1-12 Edition)

§ 1023.315 Exemptions.

Refer to § 1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for brokers or dealers in securities.

§ 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).

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by the Securities and Futures Industry (“SAR-SF”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR-SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-SF.

(3) *When to file.* A SAR-SF 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-SF under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR-SF 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-SF. 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-SF 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.

(c) *Exceptions.* (1) A broker-dealer is not required to file a SAR-SF 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-SF 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-SF. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall

be deemed to have been filed with the SAR-SF. 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.

(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

§ 1023.400

31 CFR Ch. X (7–1–12 Edition)

(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 delegates 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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10519, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained by Brokers or Dealers in Securities

§ 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.

§ 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 non-resident 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.

(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 Decem-

ber 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.

(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.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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

§ 1023.520

which apply to brokers or dealers in securities.

§ 1023.520 Special information sharing procedures to deter money laundering and terrorist activity for brokers or dealers in securities.

- (a) Refer to §1010.520 of this chapter.
- (b) [Reserved]

§ 1023.530 [Reserved]

§ 1023.540 Voluntary information sharing among financial institutions.

- (a) Refer to §1010.540 of this chapter.
- (b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Brokers or Dealers in Securities

§ 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.

§ 1023.610 Due diligence programs for correspondent accounts for foreign financial institutions.

- (a) Refer to §1010.610 of this chapter.
- (b) [Reserved]

§ 1023.620 Due diligence programs for private banking accounts.

- (a) Refer to §1010.620 of this chapter.
- (b) [Reserved]

§ 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 §1010.630 of this chapter.
- (b) [Reserved]

§ 1023.640 [Reserved]

§ 1023.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

- (a) Refer to §1010.670 of this chapter.

31 CFR Ch. X (7–1–12 Edition)

- (b) [Reserved]

PART 1024—RULES FOR MUTUAL FUNDS

Subpart A—Definitions

Sec.

- 1024.100 Definitions.

Subpart B—Programs

- 1024.200 General.
- 1024.210 Anti-money laundering programs for mutual funds.
- 1024.220 Customer identification programs for mutual funds.

Subpart C—Reports Required To Be Made By Mutual Funds

- 1024.300 General.
- 1024.310 Reports of transactions in currency.
- 1024.311 Filing obligations.
- 1024.312 Identification required.
- 1024.313 Aggregation.
- 1024.314 Structured transactions.
- 1024.315 Exemptions
- 1024.320 Reports by mutual funds of suspicious transactions.

Subpart D—Records Required To Be Maintained By Mutual Funds

- 1024.400 General.
- 1024.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

- 1024.500 General.
- 1024.520 Special information sharing procedures to deter money laundering and terrorist activity for mutual funds.
- 1024.530 [Reserved]
- 1024.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Mutual Funds

- 1024.600 General.
- 1024.610 Due diligence programs for correspondent accounts for foreign financial institutions.
- 1024.620 Due diligence programs for private banking accounts.
- 1024.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
- 1024.640–1024.670 [Reserved]

Financial Crimes Enforcement Network, Treasury

§ 1024.210

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1024.100 Definitions.

Refer to §1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in §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 §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 §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 §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 as 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 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.

§ 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 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 the 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; and

(4) Provide ongoing training for appropriate persons.

§ 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, partner-

ship, 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.

NOTE TO PARAGRAPH (a)(2)(1)(A)(4)(ii): 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.

(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, 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.

(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 para-

graphs (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) *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.

(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 fi-

nancial 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.

(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.

Subpart C—Reports Required To Be Made By Mutual Funds

§ 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.

§ 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.

§ 1024.311 Filing obligations.

Refer to §1010.311 of this chapter for reports of transactions in currency filing obligations for mutual funds.

§ 1024.312 Identification required.

Refer to §1010.312 of this chapter for identification requirements for reports of transactions in currency filed by mutual funds.

§ 1024.313 Aggregation.

Refer to §1010.313 of this chapter for reports of transactions in currency aggregation requirements for mutual funds.

§ 1024.314 Structured transactions.

Refer to §1010.314 of this chapter for rules regarding structured transactions for mutual funds.

§ 1024.315 Exemptions.

Refer to §1010.315 of this chapter for exemptions from the obligation to file reports of transactions in currency for mutual funds.

§ 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 Investment 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 com-

plying 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.

(b) *Filing and notification procedures*—
 (1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (“SAR-SF”), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* Form SAR-SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR-SF.

(3) *When to file.* A Form SAR-SF 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-SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR-SF 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-SF.

(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-SF 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-SF 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-SF that it files (or is filed on its behalf), for a period of five years from the date of filing the

Form SAR-SF. 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-SF. 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.

(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 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 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 delegates 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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10519, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained By Mutual Funds

§ 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.

§ 1024.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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.

§ 1024.520 Special information sharing procedures to deter money laundering and terrorist activity for mutual funds.

- (a) Refer to § 1010.520 of this chapter.
- (b) [Reserved]

§ 1024.530 [Reserved]

§ 1024.540 Voluntary information sharing among financial institutions.

- (a) Refer to § 1010.540 of this chapter.
- (b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Mutual Funds

§ 1024.600 General.

Mutual funds are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in

§ 1024.610

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.

§ 1024.610 Due diligence programs for correspondent accounts for foreign financial institutions.

- (a) Refer to §1010.610 of this chapter.
- (b) [Reserved]

§ 1024.620 Due diligence programs for private banking accounts.

- (a) Refer to §1010.620 of this chapter.
- (b) [Reserved]

§ 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 §1010.630 of this chapter.
- (b) [Reserved]

§§ 1024.640–1024.670 [Reserved]

PART 1025—RULES FOR INSURANCE COMPANIES

Subpart A—Definitions

Sec.

1025.100 Definitions.

Subpart B—Programs

1025.200 General.

1025.210 Anti-money laundering programs for insurance companies.

Subpart C—Reports Required To Be Made By Insurance Companies

1025.300 General.

1025.310–1025.315 [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

1025.400 General.

1025.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1025.500 General.

31 CFR Ch. X (7–1–12 Edition)

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

1025.600–1025.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1025.100 Definitions.

Refer to §1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in §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.

Subpart B—Programs

§ 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.

§ 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

§ 1025.300

31 CFR Ch. X (7–1–12 Edition)

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 §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.

Subpart C—Reports Required To Be Made By Insurance Companies

§ 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.

§§ 1025.310–1025.315 [Reserved]

§ 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 §1024.320(a)(1) of this chapter shall file reports of suspicious transactions pursuant to §1024.320 of this chapter.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR-IC), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR-IC shall be filed with the Financial Crimes Enforcement Network as indicated in the instructions to the SAR-IC.

(3) *When to file.* A SAR-IC 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-IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR-IC 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-IC. 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 fil-

ing timely a SAR-IC if required by this section.

(c) *Exception.* An insurance company is not required to file a SAR-IC 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-IC 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-IC. Supporting documentation shall be identified as such and maintained by the insurance company and shall be deemed to have been filed with the SAR-IC. 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

§ 1025.320

31 CFR Ch. X (7-1-12 Edition)

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 delegates 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 § 1023.320 of this chapter.

(i) *Applicability date.* This section applies to transactions occurring after May 2, 2006.

[75 FR 65812, Oct. 26, 2010, as amended at 75 FR 10520, Feb. 25, 2011]

§ 1025.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

Refer to §1010.330 of this chapter for rules regarding the filing of reports relating to currency in excess of \$10,000 received by insurance companies.

Subpart D—Records Required To Be Maintained By Insurance Companies

§ 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.

§ 1025.410 Recordkeeping.

Refer to §1010.410.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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.

§ 1025.520 Special information sharing procedures to deter money laundering and terrorist activity for insurance companies.

- (a) Refer to §1010.520 of this chapter.
(b) [Reserved]

§ 1025.530 [Reserved]

§ 1025.540 Voluntary information sharing among financial institutions.

- (a) Refer to §1010.540 of this chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Insurance Companies

§§ 1025.600–1025.670 [Reserved]

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

Subpart A—Definitions

Sec.

1026.100 Definitions.

Subpart B—Programs

1026.200 General.

1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

1026.220 Customer identification program requirements for futures commission merchants and introducing brokers.

Subpart C—Reports Required To Be Made By Futures Commission Merchants and Introducing Brokers in Commodities

1026.300 General.

1026.310 Reports of transactions in currency.

1026.311 Filing obligations.

1026.312 Identification required.

1026.313 Aggregation.

1026.314 Structured transactions.

1026.315 Exemptions.

1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

Subpart D—Records Required To Be Maintained By Futures Commission Merchants and Introducing Brokers in Commodities

1026.400 General.

1026.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1026.500 General.

1026.520 Special information sharing procedures to deter money laundering and terrorist activity for futures commission merchants and introducing brokers in commodities.

1026.530 [Reserved]

§ 1026.100

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

1026.600 General.

1026.610 Due diligence programs for correspondent accounts for foreign financial institutions.

1026.620 Due diligence programs for private banking accounts.

1026.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

1026.640 [Reserved]

1026.670 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, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions

§ 1026.100 Definitions.

Refer to § 1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in § 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 § 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)).

31 CFR Ch. X (7–1–12 Edition)

(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 § 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 § 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)).

Subpart B—Programs

§ 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.

§ 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§ 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; and

(b)(1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 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.

NOTE TO PARAGRAPH (a)(2)(i)(A)(4)(ii): 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.

(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.

(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 safe-

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 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) *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.

(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

§ 1026.300

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.

(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

31 CFR Ch. X (7-1-12 Edition)

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.

Subpart C—Reports Required To Be Made by Futures Commission Merchants and Introducing Brokers in Commodities

§ 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.

§ 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

§ 1026.311 Filing obligations.

Refer to § 1010.311 of this chapter for reports of transactions in currency filing obligations for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.312 Identification required.

Refer to § 1010.312 of this chapter for identification requirements for reports

of transactions in currency filed by futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.313 Aggregation.

Refer to § 1010.313 of this chapter for reports of transactions in currency aggregation requirements for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.314 Structured transactions.

Refer to § 1010.314 of this chapter for rules regarding structured transactions for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.315 Exemptions.

Refer to § 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.

§ 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.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries (“SAR-SF”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR-SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-SF.

(3) *When to file.* A SAR-SF 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–SF 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–SF 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–SF. 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–SF 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.

(c) *Exceptions*—(1) An FCM or IB–C is not required to file a SAR–SF 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).

(d) *Retention of records*. An FCM or IB–C shall maintain a copy of any SAR–SF 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–SF. 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–SF. 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 report 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 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-regu-

latory 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 non-public information or a request for use in a private legal proceeding.

(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 delegates 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.

[75 FR 65812, Oct. 26, 2010, as amended at 76 FR 10521, Feb. 25, 2011]

Subpart D—Records Required To Be Maintained By Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.400 General.

Futures commission merchants and introducing brokers in commodities

§ 1026.410

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.

§ 1026.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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.

§ 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 § 1010.520 of this chapter.
- (b) [Reserved]

§ 1026.530 [Reserved]

§ 1026.540 Voluntary information sharing among financial institutions.

- (a) Refer to § 1010.540 of this chapter.
- (b) [Reserved]

31 CFR Ch. X (7–1–12 Edition)

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.600 General.

Futures commission merchants and introducing 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.

§ 1026.610 Due diligence programs for correspondent accounts for foreign financial institutions.

- (a) Refer to § 1010.610 of this chapter.
- (b) [Reserved]

§ 1026.620 Due diligence programs for private banking accounts.

- (a) Refer to § 1010.620 of this chapter.
- (b) [Reserved]

§ 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 § 1010.630 of this chapter.
- (b) [Reserved]

§ 1026.640 [Reserved]

§ 1026.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

- (a) Refer to § 1010.670 of this chapter.
- (b) [Reserved]

PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

Subpart A—Definitions

Sec.
1027.100 Definitions.

Subpart B—Programs

- 1027.200 General.
 1027.210 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

Subpart C—Reports Required To Be Made By Dealers in Precious Metals, Precious Stones, or Jewels

- 1027.300 General.
 1027.310–1027.320 [Reserved]
 1027.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

Subpart D—Records Required To Be Maintained By Dealers in Precious Metals, Precious Stones, or Jewels

- 1027.400 General.
 1027.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity

- 1027.500 General.
 1027.520 Special information sharing procedures to deter money laundering and terrorist activity for dealers in precious metals, precious stones, or jewels.
 1027.530 [Reserved]
 1027.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

- 1027.600–1027.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions**§ 1027.100 Definitions.**

Refer to §1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in §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 §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.

Subpart B—Programs

§ 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.

§ 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 de-

signed 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 § 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 inter-governmental 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.

Subpart C—Reports Required To Be Made by Dealers in Precious Metals, Precious Stones, or Jewels

§ 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.

§§ 1027.310–1027.320 [Reserved]

§ 1027.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

Refer to § 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.

§ 1027.400

Subpart D—Records Required To Be Maintained By Dealers in Precious Metals, Precious Stones, or Jewels

§ 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.

§ 1027.410 Recordkeeping.

Refer to § 1010.410 of this chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 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 Ssubpart 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.

§ 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 § 1010.520 of this chapter.
- (b) [Reserved]

§ 1027.530 [Reserved]

§ 1027.540 Voluntary information sharing among financial institutions.

- (a) Refer to § 1010.540 of this chapter.
- (b) [Reserved]

31 CFR Ch. X (7–1–12 Edition)

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

§§ 1027.600–1027.670 [Reserved]

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

Subpart A—Definitions

Sec.

1028.100 Definitions.

Subpart B—Programs

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

1028.300 General.

1028.310–1028.320 [Reserved]

1028.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

Subpart D—Records Required To Be Maintained by Operators of Credit Card Systems

1028.400 General.

1028.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1028.500 General.

1028.520 Special information sharing procedures to deter money laundering and terrorist activity for operators of credit card systems.

1028.530 [Reserved]

1028.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Operators of Credit Card Systems

1028.600–1028.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

SOURCE: 75 FR 65812, Oct. 26, 2010, unless otherwise noted.

Subpart A—Definitions**§ 1028.100 Definitions.**

Refer to §1010.100 of this chapter for general definitions not noted herein. To the extent there is a differing definition in §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 per-

son (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.

Subpart B—Programs**§ 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.

§ 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

§ 1028.300

31 CFR Ch. X (7–1–12 Edition)

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 §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 non-cooperative 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.

Subpart C—Reports Required To Be Made by Operators of Credit Card Systems

§ 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.

§§ 1028.310–1028.320 [Reserved]

§ 1028.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

Refer to §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.

Subpart D—Records Required To Be Maintained By Operators of Credit Card Systems**§ 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.

§ 1028.410 Recordkeeping.

Refer to § 1010.410 of this Chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity**§ 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.

§ 1028.520 Special information sharing procedures to deter money laundering and terrorist activity for operators of credit card systems.

- (a) Refer to § 1010.520.
(b) [Reserved]

§ 1028.530 [Reserved]**§ 1028.540 Voluntary information sharing among financial institutions.**

- (a) Refer to § 1010.540 of this chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Operators of Credit Card Systems**§§ 1028.600–1028.670 [Reserved]****PART 1029—RULES FOR LOAN OR FINANCE COMPANIES****Subpart A—Definitions**

Sec.

1029.100 Definitions.

Subpart B—Programs

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

1029.300 General.

1029.310–1029.315 [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

1029.400 General.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

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

1029.600–1029.670 [Reserved]

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

SOURCE: 77 FR 8157, Feb. 14, 2012, unless otherwise noted.

Subpart A—Definitions

§ 1029.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein.

Subpart B—Programs

§ 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.

§ 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 company must develop and implement an anti-money laundering program that complies with the requirements of this section by August 13, 2012.

Subpart C—Reports Required To Be Made by Loan or Finance Companies

§ 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.

§§ 1029.310—1029.315 [Reserved]

§ 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 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 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.

§ 1029.330 Reports relating to currency in excess of \$10,000 received in a trade or business.

Refer to §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.

Subpart D—Records Required To Be Maintained By Loan or Finance Companies

§ 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.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1029.500 General.

Loan or finance 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. 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.

§ 1029.520 Special information sharing procedures to deter money laundering and terrorist activity for loan or finance companies.

- (a) Refer to §1010.520 of this chapter.
- (b) [Reserved]

§ 1029.530 [Reserved]

§ 1029.540 Voluntary information sharing among financial institutions.

- (a) Refer to §1010.540 of this chapter.
- (b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Loan or Finance Companies

§§ 1029.600—1029.670 [Reserved]

PARTS 1030–1059 [RESERVED]

PART 1060—PROVISIONS RELATING TO THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010

Sec.

1060.100–1060.200 [Reserved]

1060.300 Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA.

§§ 1060.100–1060.200

31 CFR Ch. X (7–1–12 Edition)

1060.400–1060.700 [Reserved]
1060.800 Penalties

AUTHORITY: Pub. L. 111–195, 124 Stat. 1312.

SOURCE: 76 FR 62623, Oct. 11, 2011, unless otherwise noted.

§§ 1060.100–1060.200 [Reserved]

§ 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).

NOTE TO PARAGRAPH (a)(2): 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.

(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;

(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

§§ 1060.400–1060.700

31 CFR Ch. X (7–1–12 Edition)

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.

§§ 1060.400–1060.700 [Reserved]

§ 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]