

Editorial Notes

REFERENCES IN TEXT

Section 413 of the Controlled Substances Act, referred to in subsec. (b)(3), (4), is classified to section 853 of Title 21, Food and Drugs.

CODIFICATION

Another section 371(c) of Pub. L. 107-56 amended the table of sections at the beginning of this chapter.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108-458, § 6203(h)(1), struck out “, subject to subsection (d) of this section” before period at end.

Subsec. (c)(1). Pub. L. 108-458, § 6203(h)(2), struck out “, subject to subsection (d) of this section,” after “may be seized and”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-458 effective as if included in Pub. L. 107-56, as of the date of enactment of such Act, and no amendment made by Pub. L. 107-56 that is inconsistent with such amendment to be deemed to have taken effect, see section 6205 of Pub. L. 108-458, set out as a note under section 1828 of Title 12, Banks and Banking.

BULK CASH SMUGGLING INTO OR OUT OF THE UNITED STATES

Pub. L. 107-56, title III, § 371(a), (b), Oct. 26, 2001, 115 Stat. 336, 337, provided that:

“(a) FINDINGS.—The Congress finds the following:

“(1) Effective enforcement of the currency reporting requirements of subchapter II of chapter 53 of title 31, United States Code, and the regulations prescribed under such subchapter, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions.

“(2) In their effort to avoid using traditional financial institutions, drug dealers and other criminals are forced to move large quantities of currency in bulk form to and through the airports, border crossings, and other ports of entry where the currency can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market.

“(3) The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

“(4) The intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of subchapter II of chapter 53 of title 31, United States Code, [sic] is the equivalent of, and creates the same harm as, the smuggling of goods.

“(5) The arrest and prosecution of bulk cash smugglers are important parts of law enforcement’s effort to stop the laundering of criminal proceeds, but the couriers who attempt to smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and thus are easily replaced. Accordingly, only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of the bulk cash is a critical part.

“(6) The current penalties for violations of the currency reporting requirements are insufficient to provide a deterrent to the laundering of criminal proceeds. In particular, in cases where the only criminal violation under current law is a reporting offense, the

law does not adequately provide for the confiscation of smuggled currency. In contrast, if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

“(b) PURPOSES.—The purposes of this section [enacting this section] are—

“(1) to make the act of smuggling bulk cash itself a criminal offense;

“(2) to authorize forfeiture of any cash or instruments of the smuggling offense; and

“(3) to emphasize the seriousness of the act of bulk cash smuggling.”

§ 5333. Safe harbor with respect to keep open directives

(a) IN GENERAL.—With respect to a customer account or customer transaction of a financial institution, if a Federal law enforcement agency, after notifying FinCEN of the intent to submit a written request to the financial institution that the financial institution keep that account or transaction open (referred to in this section as a “keep open request”), or if a State, Tribal, or local law enforcement agency with the concurrence of FinCEN submits a keep open request—

(1) the financial institution shall not be liable under this subchapter for maintaining that account or transaction consistent with the parameters and timing of the request; and

(2) no Federal or State department or agency may take any adverse supervisory action under this subchapter with respect to the financial institution solely for maintaining that account or transaction consistent with the parameters of the request.

(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed—

(1) to prevent a Federal or State department or agency from verifying the validity of a keep open request submitted under subsection (a) with the law enforcement agency submitting that request;

(2) to relieve a financial institution from complying with any reporting requirements or any other provisions of this subchapter, including the reporting of suspicious transactions under section 5318(g); or

(3) to extend the safe harbor described in subsection (a) to any actions taken by the financial institution—

(A) before the date of the keep open request to maintain a customer account; or

(B) after the termination date stated in the keep open request.

(c) LETTER TERMINATION DATE.—For the purposes of this section, any keep open request submitted under subsection (a) shall include a termination date after which that request shall no longer apply.

(d) RECORD KEEPING.—Any Federal, State, Tribal, or local law enforcement agency that submits to a financial institution a keep open request shall, not later than 2 business days after the date on which the request is submitted to the financial institution—

(1) submit to FinCEN a copy of the request; and

(2) alert FinCEN as to whether the financial institution has implemented the request.

(e) GUIDANCE.—The Secretary of the Treasury, in consultation with the Attorney General and Federal, State, Tribal, and local law enforcement agencies, shall issue guidance on the required elements of a keep open request.

(Added Pub. L. 116-283, div. F, title LXIII, § 6306(a)(1), Jan. 1, 2021, 134 Stat. 4588.)

§ 5334. Training regarding anti-money laundering and countering the financing of terrorism

(a) TRAINING REQUIREMENT.—Each Federal examiner reviewing compliance with the Bank Secrecy Act, as defined in section 6003 of the Anti-Money Laundering Act of 2020, shall attend appropriate annual training, as determined by the Secretary of the Treasury, relating to anti-money laundering activities and countering the financing of terrorism, including with respect to—

- (1) potential risk profiles and warning signs that an examiner may encounter during examinations;
- (2) financial crime patterns and trends;
- (3) the high-level context for why anti-money laundering and countering the financing of terrorism programs are necessary for law enforcement agencies and other national security agencies and what risks those programs seek to mitigate; and
- (4) de-risking and the effect of de-risking on the provision of financial services.

(b) TRAINING MATERIALS AND STANDARDS.—The Secretary of the Treasury shall, in consultation with the Financial Institutions Examination Council, the Financial Crimes Enforcement Network, and Federal, State, Tribal, and local law enforcement agencies, establish appropriate training materials and standards for use in the training required under subsection (a).

(Added Pub. L. 116-283, div. F, title LXIII, § 6307(a), Jan. 1, 2021, 134 Stat. 4590.)

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REFERENCES IN TEXT

Section 6003 of the Anti-Money Laundering Act of 2020, referred to in subsec. (a), is section 6003 of div. F of Pub. L. 116-283, which is set out as a note under section 5311 of this title. Such section 6003 defines terms, including the Bank Secrecy Act, as used in div. F of Pub. L. 116-283.

§ 5335. Prohibition on concealment of the source of assets in monetary transactions

(a) DEFINITION OF MONETARY TRANSACTION.—In this section, the term the term “monetary transaction”—

- (1) means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of title 18) by, through, or to a financial institution (as defined in section 1956(c)(6) of title 18);
- (2) includes any transaction that would be a financial transaction under section 1956(c)(4)(B) of title 18; and
- (3) does not include any transaction necessary to preserve the right to representation of a person as guaranteed by the Sixth Amendment to the Constitution of the United States.

(b) PROHIBITION.—No person shall knowingly conceal, falsify, or misrepresent, or attempt to conceal, falsify, or misrepresent, from or to a financial institution, a material fact concerning the ownership or control of assets involved in a monetary transaction if—

- (1) the person or entity who owns or controls the assets is a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, as set forth in this title or the regulations promulgated under this title; and
- (2) the aggregate value of the assets involved in 1 or more monetary transactions is not less than \$1,000,000.

(c) SOURCE OF FUNDS.—No person shall knowingly conceal, falsify, or misrepresent, or attempt to conceal, falsify, or misrepresent, from or to a financial institution, a material fact concerning the source of funds in a monetary transaction that—

- (1) involves an entity found to be a primary money laundering concern under section 5318A or the regulations promulgated under this title; and
- (2) violates the prohibitions or conditions prescribed under section 5318A(b)(5) or the regulations promulgated under this title.

(d) PENALTIES.—A person convicted of an offense under subsection (b) or (c), or a conspiracy to commit an offense under subsection (b) or (c), shall be imprisoned for not more than 10 years, fined not more than \$1,000,000, or both.

(e) FORFEITURE.—

(1) CRIMINAL FORFEITURE.—

(A) IN GENERAL.—The court, in imposing a sentence under subsection (d), shall order that the defendant forfeit to the United States any property involved in the offense and any property traceable thereto.

(B) PROCEDURE.—The seizure, restraint, and forfeiture of property under this paragraph shall be governed by section 413 of the Controlled Substances Act (21 U.S.C. 853).

(2) CIVIL FORFEITURE.—

(A) IN GENERAL.—Any property involved in a violation of subsection (b) or (c), or a conspiracy to commit a violation of subsection (b) or (c), and any property traceable thereto may be seized and forfeited to the United States.

(B) PROCEDURE.—Seizures and forfeitures under this paragraph shall be governed by the provisions of chapter 46 of title 18 relating to civil forfeitures, except that such duties, under the customs laws described in section 981(d) of title 18, given to the Secretary of the Treasury shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General.

(Added Pub. L. 116-283, div. F, title LXIII, § 6313(a), Jan. 1, 2021, 134 Stat. 4596.)

§ 5336. Beneficial ownership information reporting requirements

(a) DEFINITIONS.—In this section:

- (1) ACCEPTABLE IDENTIFICATION DOCUMENT.—The term “acceptable identification document” means, with respect to an individual—