

FinCEN Notice 97-1 - Clarification of Time for Designation of Exempt Persons for Purposes of 31 CFR 103.22(h)

February 1997

On April 24, 1996, the Financial Crimes Enforcement Network ("FinCEN") of the Department of the Treasury published an Interim Rule, 31 CFR 103.22(h) (the "Interim Rule"), to implement the terms of 31 U.S.C. 5313(d) (and related provisions of 31 U.S.C. 5313(f) and (g)), which were added to the Bank Secrecy Act (the "BSA") by section 402(a) of the Money Laundering Suppression Act of 1994. See 61 FR 18204 (April 24, 1996). The Interim Rule exempts from the requirement, under the BSA regulations, to report transactions in currency in excess of \$10,000, transactions occurring after April 30, 1996, between depository institutions and certain classes of exempt persons defined in the Interim Rule.

The Interim Rule imposes one condition on an institution's exemption of currency transactions of a customer who satisfies the definition of exempt person. That condition is that a single form be filed identifying the exempt person and the institution that recognizes it as such. The identification is to be made by an institution by filing for each exempt person a single Internal Revenue Service Form 4789 (the form now used by banks and others to report a transaction in currency) that is marked (in the Form's line 36) to indicate its purpose and that provides identifying information about the exempt person and the institution involved. See 31 CFR 103.22(h)(3).

A question has arisen about the meaning of the Interim Rule's requirement, in 31 CFR 103.22(h)(3)(i), that an institution must make the exempt person designation:

"on or before the later of August 15, 1996, and the date 30 days following the first transaction in currency between such bank and such exempt person that occurs after April 30, 1996."

The question is whether the quoted language permits an institution to designate as exempt under the Interim Rule for the first time after August 15, 1996, a person who was a customer of the exempting institution before May 1, 1996.

A final rule based on the Interim Rule is in the last stages of preparation. The final rule will clarify the meaning of the language of 31 CFR 103.22(h)(3)(i), retroactively to May 1, 1996, by stating explicitly that the necessary designation, even for existing customers, may be made after August 15, 1996, so long as it is made no later than 30 days after the first transaction in currency that is sought to be exempted from the reporting requirements under the terms of 31 CFR 103.22(h). Thus, an institution may decide, after August 15, 1996, that it wishes to adopt the new exemption system for particular customers, even if it did not do so, for existing customers, before that date, so long as the necessary exemption identifications are filed within 30 days of the time the institution's reliance on the new exemption systems is to take effect for the customers in question.