

(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

(c) EXCEPTIONS.—

(1) AMOUNTS RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) CURRENCY INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—

(1) IN GENERAL.—For purposes of this section, the term “currency” includes—

(A) foreign currency; and

(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000.

(2) SCOPE OF APPLICATION.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).

(Added Pub. L. 107-56, title III, §365(a), Oct. 26, 2001, 115 Stat. 333; amended Pub. L. 112-74, div. C, title I, §120, Dec. 23, 2011, 125 Stat. 891.)

Editorial Notes

REFERENCES IN TEXT

Section 6050I(g) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2), is classified to section 6050I of Title 26, Internal Revenue Code.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-74 redesignated pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), substituted “; and” for “; and” in subpar. (A), inserted “or” at end of subpar. (B), and added par. (2).

Statutory Notes and Related Subsidiaries

REGULATIONS

Pub. L. 107-56, title III, §365(e), formerly §365(f), Oct. 26, 2001, 115 Stat. 335, renumbered §365(e) by Pub. L. 108-458, title VI, §202(n)(2), Dec. 17, 2004, 118 Stat. 3746, provided that: “Regulations which the Secretary [of the Treasury] determines are necessary to implement this section [enacting this section and amending sections 5312, 5317, 5318, 5321, 5324, 5326, and former 5328 of this title] shall be published in final form before the end of the 6-month period beginning on the date of enactment of this Act [Oct. 26, 2001].”

§ 5332. Bulk cash smuggling into or out of the United States

(a) CRIMINAL OFFENSE.—

(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or

transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

(2) CONCEALMENT ON PERSON.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

(b) PENALTY.—

(1) TERM OF IMPRISONMENT.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

(2) FORFEITURE.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property.

(3) PROCEDURE.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) PERSONAL MONEY JUDGMENT.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

(c) CIVIL FORFEITURE.—

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

(2) PROCEDURE.—The seizure and forfeiture shall be governed by the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(3) TREATMENT OF CERTAIN PROPERTY AS INVOLVED IN THE OFFENSE.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.

(Added Pub. L. 107-56, title III, §371(c), Oct. 26, 2001, 115 Stat. 337; amended Pub. L. 108-458, title VI, §203(h), Dec. 17, 2004, 118 Stat. 3747.)

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.