



# Department of the Treasury Financial Crimes Enforcement Network

## **List of Non-substantive Technical Corrections and Other Changes Made in 31 CFR Chapter X**

In the Chapter X NPRM, FinCEN proposed to make non-substantive technical corrections to the Bank Secrecy Act (BSA) implementing regulations. These corrections included updating titles and offices to represent organizational changes within the Treasury Department and FinCEN, changing mailing addresses, and updating names of federal government agencies.

The following provides a list of the non-substantive technical corrections and other changes being made as part of the transfer of FinCEN's regulations from 31 CFR Part 103 to 31 CFR Chapter X on March 1, 2011. This guide is provided for informational purposes only and does not replace or supersede FinCEN's regulations.

### **List of non-substantive technical corrections**

1. FinCEN has updated references to its Web site to <http://www.fincen.gov>.
2. The FinCEN mailing address has been changed to: P.O. Box 39, Vienna, Virginia, 22183.
3. When used to refer to 31 CFR Part 103, the word "part" or the phrase "Part 103" has been changed to "chapter" within 31 CFR Chapter X.
4. The "Office of Enforcement" has been changed to "FinCEN."
5. "Assistant Secretary (Enforcement)" and "Director, Office of Financial Enforcement" have been updated to "Director, FinCEN."
6. "The Office of the Assistant Secretary (Enforcement)" has been changed to "Director of FinCEN or his designee."
7. "Customs" has been changed to "Customs and Border Protection."
8. FinCEN has replaced "Commission" with "Commodity Futures Trading Commission" when the term is used to refer to the Commodity Futures Trading Commission. The term "Commission" is now only used to refer to the Securities and Exchange Commission.
9. The definition of FinCEN has been updated to reflect that FinCEN is now a bureau rather than an office within the Treasury Department (i.e., 31 CFR § 1010.100(s) versus the prior version 31 CFR § 103.11(qq)).
10. The name of the SAR form that brokers or dealers in securities and futures commission merchants and introducing brokers in commodities use to report suspicious transactions has been updated to reflect the correct name of the form.

11. The references to Treasury Form TD F 90–22.53 have been changed to FinCEN Form 110.
12. Cross references to 31 CFR § 103.21 contained in 31 CFR § 103.22(d)(9) were not updated when the bank SAR rules were moved from 31 CFR § 103.21 to 31 CFR § 103.18. In 31 CFR Chapter X, the references have been fixed so that they refer to the bank SAR rules (31 CFR § 1020.320) rather than to the casino SAR rules (31 CFR § 1021.320).
13. Under 31 CFR Part 103, Sections 103.27(a)(1) and 103.55(c)(1) incorrectly indicated that the transactions in currency reporting requirements were contained in 31 CFR § 103.22(a). Prior to 1998, the reporting obligations were contained in 31 CFR § 103.22(a), but per the *Amendments to the Bank Secrecy Act Regulations—Exemptions from the Requirement to Report Transactions in Currency—Phase II*, 63 FR 50147 (1998), the filing obligations were moved to 31 CFR § 103.22(b)(1) for financial institutions other than casinos and 31 CFR § 103.22(b)(2) for casinos. The cross references to 31 CFR § 103.22(a) in 31 CFR § 103.27(a)(1) (see 31 CFR § 1010.306(a)(1)) and 31 CFR § 103.55(c)(1) (see 31 CFR § 1010.970(c)(1)) have been corrected to include those Chapter X sections that contain transactions in currency transaction reporting obligations.
14. All references to “subpart” in 31 CFR § 103.38(a)–(d) were changed to “chapter” in 31 CFR § 1010.430(a)–(d).
15. The reference to “subpart” in the former 31 CFR § 103.39 was changed to “chapter” in 31 CFR § 1010.440.
16. The word “Act” in 31 CFR § 103.62 was changed to the “Bank Secrecy Act” in 31 CFR § 1010.930.
17. The cross reference contained in 31 CFR § 103.140(a)(4)(ii) to “paragraph (a)(3)(i) of this section” is incorrect because there is no (a)(3)(i) in that section. Because this should have been a reference to 31 CFR § 103.140(a)(4)(i), in 31 CFR Chapter X, the cross-reference properly refers to 31 CFR § 1027.100(d)(1).
18. 31 CFR § 103.170(c) (see 31 CFR § 1010.205(c)) has been corrected by revising the beginning of the first sentence to read as follows: “The exemptions described in paragraph (b) of this section \* \* \*”. In 31 CFR Part 103, there is a reference to the exemptions contained in “paragraphs (a)(2) and (b)” of § 103.170. Paragraph (a)(2) was removed and reserved through Corrections published in the Federal Register (see 67 FR 68935 (Nov. 14, 2002)). Paragraph (b) is the only paragraph within this section that contains exemptions (see 67 FR at 67549 (Nov. 6, 2002)).
19. Paragraph (a)(2) of 31 CFR 103.27, which provides that “A report required by § 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report,” is superfluous and has been deleted. Paragraph (g) of 31 CFR 103.22 was previously removed in 63 FR 50147.

## Other Changes

### Administrative rulings

Since publication of the Chapter X NPRM, FinCEN has further improved public access to its rulemaking and non-rulemaking documents. On November 17, 2009, FinCEN issued a Final Rule amending the procedures for publicly issuing an administrative ruling relating to the BSA.<sup>1</sup> Since the effective date of that Final Rule (December 17, 2009), FinCEN posts administrative rulings with precedential value on its website, rather than publishing them in the Federal Register.<sup>2</sup> FinCEN believes that posting administrative rulings with precedential value on FinCEN's website will make those rulings easier to find. All administrative rulings with precedential value will be available by mail to any person who makes a written request that specifically identifies the administrative ruling that is sought.

### Disposition of Final Rules published since Chapter X NPRM

Subsequent to the publication of the Chapter X NPRM, FinCEN published several final rules, *e.g.*, the Administrative Ruling Final Rule. All final rules that were published in the timeframe between the Chapter X NPRM and this Final Rule have been incorporated into FinCEN's regulations in the Chapter X format.

### Mutual Fund definition

On April 14, 2010, FinCEN issued a final rule to include mutual funds within the general definition of "financial institution" in the BSA regulations.<sup>3</sup> In that rule, FinCEN finalized two definitions of the term "mutual fund," one for the general definition section and the other for the anti-money laundering program rules for mutual funds.<sup>4</sup> Although the two definitions contain minor textual differences, they were not intended to and do not have substantive distinctions. Similarly, there are textual differences between those two definitions and the definition of mutual fund used for the regulations implementing the Customer Identification Program requirements for mutual funds. Again, the textual differences were not intended to and do not signify substantive distinctions. Therefore, in order to be consistent and eliminate the textual anomalies within the various definitions for mutual fund that are currently within Part 103, the text of the definition of mutual fund from the Part 103 Customer Identification Programs for Mutual Funds (formerly 31 CFR 103.131(a)(5)) will now be used as the definition of mutual fund in Chapter X for all purposes (31 CFR 1010.100(gg)), except as provided in the regulatory text for the special measures provisions of Subpart F of the General Provisions Part (31 CFR 1010.651-670).

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<sup>1</sup> See 74 FR 59096 (November 17, 2009) (Final Rule for amending the Bank Secrecy Act Regulations Administrative Ruling System) (hereinafter, the "Administrative Ruling Final Rule").

<sup>2</sup> See [http://www.fincen.gov/statutes\\_regs/rulings/](http://www.fincen.gov/statutes_regs/rulings/).

<sup>3</sup> See 75 FR 19241 (April 14, 2010) (Final Rule defining Mutual Funds as Financial Institutions).

<sup>4</sup> See *Id.*

## Disposition of 31 CFR Part 103 Appendices

As part of the transfer of 31 CFR Part 103 to 31 CFR Chapter X, FinCEN has determined that the appendices currently found in 31 CFR Part 103 will not need to be included in 31 CFR Chapter X. Instead, the material contained in those appendices that is still required by the regulations will be made available on FinCEN's website as of March 1, 2011, at [http://www.fincen.gov/statutes\\_regs/chapter x/](http://www.fincen.gov/statutes_regs/chapter_x/).

The following provides the disposition of each appendix:

- *Appendix A to 31 CFR Part 103*: Pursuant to the Administrative Ruling Final Rule, administrative rulings with precedential value were posted on the FinCEN public website.<sup>5</sup>
- *Appendix B to 31 CFR Part 103*: The requirement for a financial institution to provide FinCEN with the certification currently found in Appendix B to 31 CFR Part 103 (Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110) prior to sharing information under 31 CFR 103.110 (new 31 CFR 1010.540) was replaced in September 2002 with a requirement to provide notice to FinCEN prior to such information sharing.<sup>6</sup> Although the certification requirement was replaced with a notice requirement, the Certification contained at Appendix B to 31 CFR Part 103 was not removed from the CFR. FinCEN's removal of the Certification in the Chapter X Final Rule is a technical correction, rather than a substantive change. The Certification contained at Appendix B to 31 CFR Part 103 will not be transferred to Chapter X and the Certification will not be made available on FinCEN's public website. As indicated above, financial institutions providing notice to FinCEN prior to sharing information under new 31 CFR 1010.540 shall continue to do so using the notice that is currently provided on FinCEN's public website.<sup>7</sup>
- *Appendix C to 31 CFR Part 103*: The interpretative guidance contained within Appendix C to 31 CFR Part 103 are posted on FinCEN's public website and will not be published in the CFR.<sup>8</sup>
- *Appendix A to Subpart H of 31 CFR Part 103*: Appendix A to Subpart H of 31 CFR Part 103 contains the Notice for Purposes of Subsection 314(b) of the USA Patriot Act and 31 CFR 103.110. This Notice is currently available on the FinCEN public website and will not be published in the Code of Federal Regulations as part of Chapter X. Financial

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<sup>5</sup> See 74 FR 59096 (November 17, 2009) (Final Rule for amending the Bank Secrecy Act Regulations Administrative Ruling System) (hereinafter, the "Administrative Ruling Final Rule").

<sup>6</sup> See 67 FR 60579, 60580 (September 26, 2002) (Final Rule for Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity).

<sup>7</sup> See [http://www.fincen.gov/statutes\\_regs/patriot/section314b.html](http://www.fincen.gov/statutes_regs/patriot/section314b.html).

<sup>8</sup> See [http://www.fincen.gov/statutes\\_regs/guidance/2000\\_2004.html](http://www.fincen.gov/statutes_regs/guidance/2000_2004.html).

institutions that are required to provide notice to FinCEN for purposes of the new 31 CFR 1010.540 can access the notice via the FinCEN website. This notice will be made available by mail to any financial institution that specifically requests a paper copy of the notice.

- *Appendix A and Appendix B to Subpart I of 31 CFR Part 103:* FinCEN is also removing Appendix A to Subpart I of 31 CFR Part 103 and Appendix B to Subpart I of 31 CFR Part 103.<sup>9</sup> The forms contained in these Appendices will be provided to the public via FinCEN's website in a manner that will be more easily accessible and usable than being printed in the CFR.

If your organization requires additional assistance or guidance regarding the transfer of FinCEN's regulations to 31 CFR Chapter X, please contact FinCEN's Regulatory Helpline at (800) 949-2732 ext. 6.

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<sup>9</sup> Appendix A to Subpart I of 31 CFR Part 103 (proposed as Appendix B to Chapter X) is the Certification Regarding Correspondent Accounts. Appendix B to Subpart I of 31 CFR Part 103 (proposed as Appendix C to Chapter X) is the Recertification Regarding Correspondent Accounts for Foreign Banks. These Appendices will not appear in Chapter X.