**22.8 Failure to Report Exporting or Importing Monetary**

**Instruments** **(31 U.S.C. §§ 5316(a)(1), 5324(c))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with failure to report [exporting] [importing] monetary instruments in violation of Sections 5316(a)(1) and 5324(c) of Title 31 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [transported] [was about to transport] more than $10,000 in [*specify monetary instrument*] [[from a place in the United States to or through a place outside the United States] [to a place in the United States from or through a place outside the United States]];

Second, the defendant knew that a report of the amount [transported] [about to be transported] was required to be filed with the Secretary of Treasury; and

Third, the defendant intentionally evaded the reporting requirement.

**Comment**

This instruction covers a violation of 31 U.S.C. § 5316(a)(1), regarding the reporting requirement for exporting or importing monetary instruments. The reporting requirement for receipt of such instruments after their importation into the United States is codified in 31 U.S.C. § 5316(a)(2).

*See United States v. Del Toro-Barboza*, 673 F.3d 1136, 1144 (9th Cir. 2012) (setting forth the elements of the offense).

Knowing concealment is not an element of failure to report under 31 U.S.C. § 5316(a) but is an element of bulk cash smuggling under 31 U.S.C. § 5332(a). Therefore, where the defendant’s conduct constitutes a violation of both statutory provisions, the offenses do not merge, and cumulative punishment may be imposed.  *United States v. Tatoyan*, 474 F.3d 1174, 1181-82 (9th Cir. 2007). As to violations of § 5332(a), *see* Instruction 22.9 (Bulk Cash Smuggling).

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