Rules and Regulations

Federal Register
Vol. 61, No. 33
Friday, February 16, 1996

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 108

[Notice 1996–6]

Document Filing

AGENCY: Federal Election Commission.

ACTION: Final Rule; Technical Amendments.

SUMMARY: On February 1, 1996, several technical amendments were published in the Federal Register conforming the Commission's regulations to a recent amendment to the Federal Election Campaign Act of 1971, as amended (''FECA''). The Commission today is publishing technical amendments to conform two additional regulations to the recently amended statute.

EFFECTIVE DATE: February 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The FECA governs, *inter alia*, the filing of campaign finance reports by candidates, and the authorized committees of candidates, to the House of Representatives (''House''). 2 U.S.C. 432(g). On December 28, 1995, Public Law No. 104–79, 109 Stat. 791 (1995) amended the FECA to require that these reports be filed with the Federal Election Commission rather than the Clerk of the House. *See* Section 3. As noted above, the Commission has published in the Federal Register a technical amendment to 11 CFR 105.1 to conform to the amended statute and conforming amendments to several provisions that refer to the regulation. 61 FR 3549.

The Commission today is publishing additional technical amendments to conform the following regulations to the amended statute: 11 CFR 100.19(a) and 108.8. As noted in the original rulemaking, these technical requirements are exempt from the notice and comment requirements of the Administrative Procedure Act. *See* U.S.C. 553 (b)(B). They are also exempt from the legislative review provisions of the FECA. *See* 2 U.S.C. 438(d). Therefore, these technical amendments are effective on February 16, 1996.

Certification of No Effect Pursuant to 5 U.S.C. 605(B) (Regulatory Flexibility Act)

I hereby certify that the attached technical amendments will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the technical amendments are necessary to conform to the FECA and that these change only the location of filing reports. Therefore, no significant economic impact is caused by the technical amendments.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8)

§ 100.19(a) [Amended]

2. Section 100.19(a) is amended by adding ''or'' before ''the Secretary'' and by removing ''; or the Clerk of the United States House of Representatives, House Records and Registration, 1036 Longworth House Office Building, Washington, DC 20515''.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

3. The authority citation for Part 108 continues to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

§ 108.8 [Amended]

4. Section 108.8 is amended by removing ''Clerk,'' and by removing the comma after ''Secretary''.

Dated: February 13, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–3571 Filed 2–15–96; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AB63

Suspicious Activity Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulation on the reporting of known or suspected criminal and suspicious activities by insured state nonmember banks. This final rule streamlines reporting requirements by providing that a state nonmember bank file a new Suspicious Activity Report (SAR) with the FDIC and the appropriate federal law enforcement agencies by sending a single copy of the SAR to the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) to report a known or suspected criminal offense or a transaction that it suspects involves money laundering or violates the Bank Secrecy Act.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Chief, Special Activities Section, (202) 898–6750, or Gregory Gore, Counsel, (202) 898–7109.

SUPPLEMENTARY INFORMATION:

Background

The FDIC, FRB, OCC, and OTS have issued for public comment substantially similar proposals to revise their regulations on the reporting of known or suspected criminal conduct and suspicious activities. The Department of the Treasury, through FinCEN, has issued for public comment a substantially similar proposal to require the reporting of suspicious transactions relating to money laundering activities.

The FDIC's proposed regulation (60 FR 47719, September 14, 1995) noted that the interagency Bank Fraud Working Group, consisting of representatives from the Agencies, law enforcement agencies, and FinCEN, has been working on the development of a single form, the SAR, for the reporting of known or suspected federal criminal law violations and suspicious activities. The FDIC's proposed regulation, as well as those proposed by the FRB, OCC, OTS, and FinCEN, would simplify and clarify the reporting requirements and reduce banks' reporting burdens by raising mandatory reporting thresholds for criminal offenses and by requiring the filing of only one report with FinCEN.

The final rule adopts the proposal with a few additional changes that generally have been made in response to the comments received. The changes will result in burden reductions even greater than those that were proposed.

Section-by-Section Analysis

The title of the regulation has been changed to conform to the name on the SAR.

Section 353.1 (Instruction No. 1 on the SAR) provides that a bank must file a SAR when it detects a known or suspected criminal violation of federal law or a suspicious activity pertinent to a money laundering offense.

Section 353.2 provides pertinent definitions.

Sections 353.3(a) (1), (2), and (3) (Instructions 1. a., b., and c. on the SAR) instruct a bank to file a SAR with FinCEN in order to comply with the requirement to notify federal law enforcement agencies and the Department of the Treasury if the bank detects any known or suspected federal criminal violation, or pattern of violations, committed or attempted against the bank, or involving one or more transactions conducted through the bank, and the bank believes it was an actual or potential victim of a crime, or was used to facilitate a crime. If the bank has a substantial basis for identifying one of its insiders or other institution-affiliated parties in connection with the known or suspected crime, reporting is required, regardless of the dollar amount involved. If the bank can identify a non-insider suspect, the applicable transaction threshold is $5,000. In cases in which no suspect can be identified, the applicable transaction threshold increases to $25,000. These sections were not changed from the proposed regulation published for public comment in September 1995.

Section 353.3(a)(4) (Instruction 1. d. on the SAR) instructs a bank to file a SAR for transactions involving $5,000 or more in funds or other assets when the bank knows, suspects or has reason to suspect that the transaction: (i) Involves money laundering, or (ii) is designed to evade any regulations promulgated under the Bank Secrecy Act, or (iii) has no business or apparent lawful purpose or is not the sort of transaction in which the particular customer normally engages, and, after examining the available facts, the bank knows of no reasonable explanation for the transaction. Section 353.3(a)(4) has been modified in the final rule to reflect comments received on the proposal. Most notably, the circumstances under which a transaction should be reported under this section were clarified, and a reporting threshold of $5,000 was added.

Section 353.3(a)(4) recognizes the emerging international consensus that the efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted by the reporting of suspicious transactions by financial institutions. The requirements of this section comply with the recommendations adopted by multi-country organizations in which the United States is an active participant, including the Financial Action Task Force of the G–7 nations and the Organization of American States and are consistent with the European Community's directive on preventing money laundering through financial institutions.

Section 353.3(b) (Instruction 2 on the SAR) provides that SARs must be filed within 30 calendar days of the initial detection of the criminal or suspicious activity. An additional 30 days is permitted in order to enable a bank to identify a suspect, but in no event may a SAR be filed later than 60 days after the initial detection of the reportable conduct. The FDIC and law enforcement must be notified in the case of a violation requiring immediate action, such as an on-going violation. These reporting requirements were not changed from the September 1995 proposal.

Section 353.3(c) encourages a bank to file a SAR with state and local law enforcement agencies. This section is unchanged from the September 1995 proposal.

Section 353.3(d) (Instruction 3 on the SAR) provides that a bank need not file a SAR for an attempted or committed burglary or robbery reported to the appropriate law enforcement agencies. In addition, a SAR need not be filed for missing or counterfeit securities that are the subject of a report pursuant to Rule 17f–1 under the Securities Exchange Act of 1934. The section of the final rule was modified to require reporting of larcenies to be consistent with the interagency SAR instructions.

Section 353.3(e) requires a bank to retain a copy of the SAR and the original or business record equivalent of supporting documentation for a period of five years. The section also requires that a bank identify and maintain supporting documentation in its files and that the bank make available such documentation to law enforcement agencies upon their request. The FDIC made three changes to this section from the version published for public comment in September 1995. First, the record retention period was shortened from ten years to five. Second, provision was made for the retention of business record equivalents of original documents, such as microfiche and computer imaged record systems, in recognition of modern record retention technology. The third change involves the clarification of a bank's obligation to provide supporting documentation upon request to law enforcement officials. Supporting documentation is deemed filed with a SAR in accordance with this section of the FDIC's final rule; as such, law enforcement authorities need not make their access requests through subpoena or other legal processes.

Section 353.3(f) requires the management of a bank to report the filing of all SARs to the board of directors of the bank, or a designated committee thereof. No change was made from the September 1995 proposal.

Section 353.3(g) provides that SARs are confidential. Requests for SARS or the information contained therein should be declined. The final rule also adds a requirement that a request for a SAR or the information contained therein should be reported to the FDIC. With the exception of the added requirement that requests for SARs be reported to the FDIC, no changes were made to this section from the September 1995 proposal.

Section 353.3(h) sets forth the safe harbor provisions of 31 U.S.C. 5318(g). This new section, which was added to the final rule as the result of many comments concerning this important statutory protection for banking organizations, states that the safe harbor provisions of the law are triggered by a report of known or suspected criminal violations or suspicious activities to law enforcement authorities, regardless of whether the report is made by the filing of a SAR in accordance with the FDIC's

regulation or by different means for other reasons.

Comments Received

The FDIC received letters from 14 public commenters. Comments were received from 4 community banks, 5 multinational or large regional banks, 2 trade and industry research groups, 2 regulatory bodies, and one consulting firm.

The large majority of commenters expressed general support for the FDIC's proposal. None of the commenters opposed the proposed new suspicious activity reporting rules. A number of suggestions and requests for clarification were received. They are as follows.

Criminal Versus Suspicious Activities

Almost one half of the commenters expressed confusion over the difference between the known or suspected criminal conduct that would be subject to the dollar reporting thresholds (provided such conduct does not involve an institution-affiliated party of the reporting entity) and the suspicious activities that would be reported regardless of dollar amount. Section 353.3(a)(4) has been revised to add a $5,000 reporting threshold and to clarify that the suspicious activity must relate to money laundering or Bank Secrecy Act violations. A threshold for the reporting of suspicious activities was added to reduce further the reporting burdens on banks.

Reporting of Crimes Under State Law

Two commenters requested clarification of whether activities constituting crimes under state law, but not under federal law, should be reported on the SAR. The FDIC continues to encourage banks to refer criminal and suspicious activities under both federal and state law by filing a Suspicious Activity Report. Under the new reporting system designed by the FDIC, the other Agencies, and FinCEN, state chartered, nonmember banks should be able to fulfill their state reporting obligations by filing a SAR with FinCEN.

Safe Harbor Protections; Potential Liability Under Federal and State Laws

Some commenters expressed the concern that banks and their institution-affiliated parties could be liable under federal and state laws, such as the Right to Financial Privacy Act, for filing SARs with respect to conduct that is later found not to have been criminal. Another concern was that the filing of SARs with state and local law enforcement agencies would subject filers to claims under state law. Both of these concerns are addressed by the scope of the safe harbor protection provided in 31 U.S.C. 5318(g).

The FDIC is of the opinion the safe harbor statute is broadly defined to include the reporting of known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, with state and local law enforcement authorities, as well as with the Agencies and FinCEN.

A few commenters requested that the FDIC make explicit the safe harbor protections of 31 U.S.C. 5318(g) (2) and (3) on the SAR. The safe harbor provisions are included in new § 353.3(h) of this regulation and on the form.

Record Retention

Half the commenters expressed the view that the proposed 10-year period for the retention of records in § 353.3(b) was excessive, especially in light of a five year record retention requirement contained in the Bank Secrecy Act. In recognition of the potential burden of document retention on financial institutions, the FDIC has limited the record retention period to five years.

Dollar Thresholds

A few comments encouraged the FDIC to raise the dollar thresholds for known or suspected criminal conduct by non-insiders, or to establish a dollar threshold for insiders. The FDIC has considered these comments, but at this time, it believes the thresholds meet and properly balance the dual concerns of prosecuting criminal activity involving banks and minimizing the burden on banks. With respect to the suggestion the FDIC adopt a dollar threshold for insider violations, it is noted that insider abuse has long been a key concern and focus of enforcement efforts at the FDIC. With the development of a new sophisticated and automated database, the FDIC and law enforcement agencies will have the benefit of a comprehensive and easily accessible catalogue of known or suspected insider wrongdoing. The FDIC does not wish to limit the information it receives regarding insider wrongdoing. Some petty crimes, for example, repetitive thefts of small amounts of cash by an employee who frequently transfers between banking organizations, may warrant enforcement action or criminal prosecution.

One commenter suggested an indexed threshold, based on the regional differences in the various dollar thresholds below which the federal, state, and local prosecutors generally decline prosecution. While the FDIC recognizes there may be regional variations in the dollar amount of financial crimes generally prosecuted, the FDIC's concern is to place the relevant information in the hands of the investigating and prosecuting authorities. The prosecuting authorities then may consider whether to pursue a particular matter. In the FDIC's view, the dollar thresholds adopted in this final rule best balance the interests of law enforcement and banks. The FDIC also believes indexed thresholds could create more confusion than benefit to banks.

Commenters also suggested the creation of a dollar threshold for the reporting of suspicious activities relating to money laundering offenses. A $5,000 threshold has been established for reporting of such suspicious activities.

Questions were raised regarding the permissibility of filing SARs in situations in which the dollar thresholds for known or suspected criminal conduct or suspicious activity are not met and the applicability of the safe harbor provisions of 31 U.S.C. 5318(g) to such non-mandatory filings. It is the opinion of the FDIC that the safe harbor provisions of 31 U.S.C. 5318(g) cover all reports of suspected or known criminal violations and suspicious activities to law enforcement authorities, regardless of whether such reports are filed pursuant to the mandatory requirements of the FDIC's regulations or are voluntary.

Notification of On-Going Violations and of State and Local Law Enforcement Authorities.

Proposed § 353.3(b)(2) required a bank to notify the law enforcement authorities immediately in the event of an on-going violation. Section 353.3(c) encourages the filing of a copy of the SAR with state and local law enforcement agencies, in appropriate cases. This requirement and guidance were found by some commenters to be unclear as to when immediate notification or the filing of the SAR with state and local authorities would be required. The FDIC wishes to clarify that immediate notification is limited to situations involving on-going violations, for example, when a check kite or money laundering has been detected and may be continuing. It is impossible for the FDIC to contemplate all of the possible circumstances in which it might be appropriate for a bank to advise state and local law enforcement authorities. Banks should use their best judgment regarding when to alert the

authorities regarding on-going criminal offenses or suspicious activities.

Supporting Documentation

The proposed requirements that an institution maintain ''related'' documentation and make ''supporting'' documentation available to the law enforcement agencies upon request were criticized as inconsistent and vague. As no substantive difference is intended, the FDIC has referred to ''supporting'' documentation in the final rule in reference both to the maintenance and production requirements. The FDIC believes the use of the word ''supporting'' is more precise and limits the scope of the information which must be retained to that which would be useful in proving that the crime has been committed and by whom it has been committed. As to the criticism that the meaning of ''related'' or ''supporting'' documentation is vague, it is anticipated banks will use their judgment in determining the information to be retained. It is impossible for the FDIC to catalogue the precise types of information covered by this requirement, as it necessarily depends upon the facts of a particular case.

Scope of Confidentiality Requirement

Two commenters correctly noted the proposed regulation is unclear as to whether the confidentiality requirement applies only to the information contained on the SAR itself, or whether the requirement extends to the ''supporting'' documentation. The FDIC takes the position that only the existence of a SAR and its supporting documentation are subject to the confidentiality requirements of 31 U.S.C. 5318(g). The supporting documentation itself is not subject to the confidentiality provisions of 31 U.S.C. 5318(g). The safe harbor provisions of 31 U.S.C. 5318(g), however, apply to the SAR and supporting documentation, as set forth in Part 353.3(h).

Provisions of Supporting Documentation to Law Enforcement Authorities Upon Request

Many commenters noted the guidance provided in the FDIC's proposed regulation regarding the provision of supporting documentation to law enforcement agencies upon their request after the filing of an SAR was unclear or contrary to law. Some questioned whether law enforcement agencies would still need to subpoena relevant documents from a bank. The FDIC's regulation requires banks filing SARs to identify, maintain and treat the documentation supporting the report as if it were actually filed with the SAR. This means that subsequent requests from law enforcement authorities for the supporting documentation relating to a particular SAR do not require the service of a subpoena or other legal processes normally associated with providing information to law enforcement agencies.

Civil Litigation

The FDIC was encouraged to adopt regulations that would make SARs undiscoverable in civil litigation, in order to avoid situations in which a bank could be ordered by a court to produce a SAR in civil litigation and could be confronted with the prospect of having to choose between being found in contempt or violating the FDIC's rules. In the opinion of the FDIC, 31 U.S.C. 5318(g) precludes the disclosure of SARs. The final rule requires a bank that receives a subpoena or other request for a SAR to notify the FDIC so that the FDIC may, if appropriate, intervene in litigation or seek the assistance of the U.S. Department of Justice.

Maintenance of Originals

Proposed § 353.3(e) required the maintenance of supporting documentation in its original form. A number of commenters noted electronic storage of documents is becoming the rule rather than the exception, and requiring the storage of paper originals would impose undue burdens on financial institutions. Moreover, some records are retained only in a computer database. The proposed regulation reflected the concerns of the law enforcement agencies that the best evidence be preserved. However, upon further consideration, the FDIC wishes to clarify that the electronic storage of original documentation related to the filing of a SAR is permissible. In addition, the FDIC recognizes a bank will not always have custody of the originals of documents, and some documents will not exist at the bank in paper form. In those cases, preservation of the best available evidentiary documents, for example, computer disks or photocopies, should be acceptable. This has been reflected in the final rule by changing the reference to original documents to original documents or ''business record equivalent''.

Investigation and Proof Burdens

Two commenters expressed the concern a bank would need to establish probable cause before reporting crimes for which an essential element of the proof of the crime was the intent of the actor. The FDIC does not intend that banks assume the burden of proving illegal conduct; rather, banks are required to report known or suspected crimes or suspicious activities in accordance with this final rule.

Supplementary or Corrective Information; Reporting of Multiple Crimes or Suspects

Material information that supplements or corrects an SAR should be filed with FinCEN by means of a subsequent SAR. The first page of the SAR provides boxes for the reporter to indicate whether the report is an initial, a corrected, or a supplemental report.

Two commenters requested guidance on the reporting of multiple crimes or related crimes committed by more than one individual. The instructions to the SAR contemplate that additional suspects may be reported by means of a supplemental page. Likewise, multiple crimes committed by a suspect may be reported by means of multiple check-offs on the SAR, or if needed, by a written addendum to the SAR. In the event related crimes have been committed by more than one person, a description of the related crimes may be made by addendum to the SAR. The FDIC encourages filers to make a complete report of all known or suspected criminal or suspicious activity. The SAR may be supplemented in order to facilitate a complete disclosure.

Calculation of Time Frame for Reporting

A few commenters requested the FDIC clarify the application of the deadline for filing SARs. The FDIC's proposed regulation used the broadest possible language to set the time frames for the reporting of known or suspected criminal offenses and suspicious activities in order to best guide reporting institutions. Absolute deadlines for the filing of SARs are important to the investigatory and prosecutorial efforts of law enforcement authorities. It is expected banks will meet the filing deadlines once conduct triggering the reporting requirements is identified. Further clarification of the time frames is not needed in the FDIC's view.

Board of Directors Notification Requirements

The commenters expressed general support for the modification of the reporting requirement which permits reporting of SARs to a committee of the board of directors. As a matter of clarification, notification of a committee of the bank's board relieves the bank of the obligation to disclose the SARs filed to the entire board. It would be

expected, however, that the designated committee, for example, the audit committee, would report to the full board of directors at regular meetings with respect to routine matters in the same manner and to the same extent as other committees report at regular board meetings. With respect to serious crimes or insider malfeasance, the appointed committee likely should consider it appropriate to make more immediate disclosure to the full board of directors. Some larger banking organizations expressed the view that prompt disclosure of SARs to the board of directors or a committee would impose a serious burden since larger organizations typically file a larger number of criminal referral forms (now, SARs). While the FDIC acknowledges that larger institutions may have more SARs to report to the board of directors or a committee, this does not alter the directors' fiduciary obligation to monitor the condition of the institution and to take action to prevent losses. The final regulation does not dictate the content of the board of directors or committee notification, and, in some cases, such as when relatively minor non-insider crimes are to be reported, it may be completely appropriate to provide only a summary listing of SARs filed. The FDIC expects the management of banks to provide a more detailed notification of SARs involving insiders or a potential material loss to the institution to the board of directors or committees.

Information Sharing

It was suggested the final regulations should somehow facilitate the sharing of information among banking organizations in order to better detect new fraudulent schemes. It is anticipated that the Treasury Department, through FinCEN, and the Agencies, will keep reporting entities apprised of recent developments and trends in banking-related crimes through periodic pronouncements, meetings, and seminars.

Single Filing Requirement; Acknowledgment of Filings

The FDIC wishes to clarify that the filing of the SAR with FinCEN is the only filing of the SAR that is required. Federal and state law enforcement and bank supervisory agencies will have access to the database created and maintained by FinCEN on behalf of the Agencies and the Department of Treasury; thus, a single filing with FinCEN is all that is required under the new reporting system.

Commenters also requested that the final rule permit the filing of SARs via telecopier. Such filings are not compatible with the system developed by the Agencies and FinCEN. Banks can file the SAR via magnetic media using the computer software to be made available to all banks by the FDIC and each of the other Agencies with respect to the institutions they supervise. Larger banking organizations that currently file currency transaction reports via magnetic tape with FinCEN may also file SARs by magnetic tape.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule primarily reorganizes the process for making criminal referrals and has no material impact on banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule revises a collection of information that is currently approved by the Office of Management and Budget (OMB) under control number 3064–0077. The revisions raise the reporting thresholds and permit reporting institutions to use a simplified, shorter form; to file one form only; and to eliminate the submission of supporting documentation with a report. These revisions have been reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The estimated average burden associated with the collection of information contained in a SAR is approximately .6 hours per respondent. The burden per respondent will vary depending on the nature of the suspicious activity being reported.

Estimated Number of Respondents: 6,500.

Estimated Total Annual Burden Hours: 3,900

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Regulatory Analysis), Room F–400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0077), Washington, DC 20503.

List of Subjects in 12 CFR Part 353

Banks, Banking, Crime, Currency, Insider abuse, Money laundering, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR part 353 of the Code of Federal Regulations is revised to read as follows:

PART 353—SUSPICIOUS ACTIVITY REPORTS

Sec.
353.1 Purpose and scope.
353.2 Definitions.
353.3 Reports and records.

Authority: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318.

§ 353.1 Purpose and scope.

The purpose of this part is to ensure that an insured state nonmember bank files a Suspicious Activity Report when it detects a known or suspected criminal violation of federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This part applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

§ 353.2 Definitions.

For the purposes of this part:

(a) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(b) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

§ 353.3 Reports and records.

(a) *Suspicious activity reports required.* A bank shall file a suspicious activity report with the appropriate federal law enforcement agencies and the Department of the Treasury, in accordance with the form's instructions, by sending a completed suspicious activity report to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of the bank's directors, officers, employees, agents, or other institution-affiliated parties as having committed or aided in the commission of the criminal violation, regardless of the amount involved in the violation;

(2) *Transactions aggregating $5,000 or more where a suspect can be identified.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, and involving or aggregating $5,000 or more in funds or other assets, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an ''alias'', then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as driver's license or social security numbers, addresses and telephone numbers, must be reported;

(3) *Transactions aggregating $25,000 or more regardless of potential suspects.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, involving or aggregating $25,000 or more in funds or other assets, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though the bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (a)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort of transaction in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Time for reporting.* (1) A bank shall file the suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a bank may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

(2) In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the bank shall immediately notify, by telephone, an appropriate law enforcement authority and the appropriate FDIC regional office (Division of Supervision) in addition to filing a timely report.

(c) *Reports to state and local authorities.* A bank is encouraged to file a copy of the suspicious activity report with state and local law enforcement agencies where appropriate.

(d) *Exemptions.* (1) A bank need not file a suspicious activity report for a robbery or burglary committed or attempted, that is reported to appropriate law enforcement authorities.

(2) A bank need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(e) *Retention of records.* A bank shall maintain a copy of any suspicious activity report filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the suspicious activity report. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the suspicious activity report. A bank must make all supporting documentation available to appropriate law enforcement authorities upon request.

(f) *Notification to board of directors.* The management of a bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section. The term ''board of directors'' includes the managing official of an insured state-licensed branch of a foreign bank for purposes of this part.

(g) *Confidentiality of suspicious activity reports.* Suspicious activity reports are confidential. Any bank subpoenaed or otherwise requested to disclose a suspicious activity report or the information contained in a suspicious activity report shall decline to produce the suspicious activity report or to provide any information that would disclose that a suspicious activity report has been prepared or filed citing this part, applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both, and notify the appropriate FDIC regional office (Division of Supervision).

(h) *Safe Harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, cover all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this part or are filed on a voluntary basis.

By Order of the Board of Directors.

Dated at Washington, D.C., this 6th day of February 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–3519 Filed 2–15–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 96–6]

RIN 1550–AA62

Operations—Suspicious Activity Reports and Other Reports and Statements

AGENCY: Office of Thrift Supervision, Treasury.