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[Page 55309-55312]
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DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1506-AA62

Financial Crimes Enforcement Network; Freedom of Information Act,
Privacy Act of 1974; Implementation

AGENCY: Department of the Treasury.

ACTION: Final Rule.

SUMMARY: This document amends the Department of the Treasury's regulations on the disclosure of records under the Freedom of Information Act (FOIA) and its regulations concerning the Privacy Act of 1974 (Privacy Act), by creating new appendices to this subpart setting forth the administrative procedures by which the Financial Crimes Enforcement Network ("FinCEN") will process requests for records made under the FOIA, and setting forth the administrative procedures by which FinCEN will implement the Privacy Act.

EFFECTIVE DATE: September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905-3590.

SUPPLEMENTARY INFORMATION: Prior to October 26, 2001, the date of enactment of the Uniting and Strengthening America by Providing Appropriate

[[Page 55310]]

Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. 107-56, FinCEN was a Departmental Office of the Department of the Treasury. As a result, FinCEN's FOIA procedures were incorporated under Appendix A to 31 CFR part 1, subpart A, and its Privacy Act procedures were incorporated under Appendix A to 31 CFR part 1, subpart C. However, section 361 of the USA Patriot Act created a new Section 310 in Subchapter I of chapter 3 of Title 31, United States Code, making FinCEN a Treasury Bureau. See Treasury Order 180-01, dated September 26, 2002. The FOIA and Privacy Act procedures of bureaus of the Department of the Treasury are set out separately from the procedures of Treasury's Departmental Offices in the Appendices to subparts A and C of 31 CFR part 1. Therefore, this document amends 31 CFR part 1 in order to reflect FinCEN's new status as a Treasury Bureau.

In addition to several conforming changes, this document creates two new appendices. Appendix M, setting forth FinCEN's FOIA procedures, is added to 31 CFR part 1, subpart A. Appendix N, setting forth FinCEN's Privacy Act procedures, is added to 31 CFR part 1, subpart C. The new appendices do not substantively amend the procedures relating to the way in which FinCEN currently handles FOIA and PA obligations as a Treasury Departmental Office. However, the addresses, names and titles of deciding officials have been amended to reflect FinCEN information.

FinCEN's three Privacy Act systems of records, previously named ``DO .200--FinCEN Database," ``DO .212--Suspicious Activity Reporting System," and ``DO .213--Bank Secrecy Act Reports System," have been re-numbered in order to properly identify the systems. This document removes these systems of records from the table found at 31 CFR

1.36(c)(1), and creates a new table at new section (c)(xii) under the heading "Financial Crimes Enforcement Network." In the new table, these re-numbered systems of records now read: "FinCEN .001--FinCEN Database," "FinCEN .002--Suspicious Activity Reporting System," and "FinCEN .003--Bank Secrecy Act Reports System." The contents of these systems of records remain unchanged.

For the same reasons described above, in the table following paragraph (e) of 31 CFR 1.36, is being amended by removing "Departmental Offices" as the table heading and substituting "Financial Crimes Enforcement Network" and the system number has been changed to "FinCEN .001." Finally, this document removes the listing of FinCEN's Privacy Act systems of records from the table appearing at 31 CFR 1.36(g)(i) and creates a new table, containing the re-numbered systems of records, at new section (g)(xiii) under the heading "Financial Crimes Enforcement Network." The Privacy Act exemptions previously claimed with respect to the FinCEN systems of records continue to be claimed. The exemptions pertaining to FinCEN.001--FinCEN DataBase, FinCEN .002--Suspicious Activity Reporting System (SARS), and FinCEN .003--Bank Secrecy Act Reports were last published on November 21, 2000, beginning at 65 FR 69865.

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public. These amendments are the most efficient means for the Treasury Department to implement its internal requirements for complying with the FOIA and the Privacy Act. Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the Federal Register.

In accordance with Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and, therefore, does not require a Regulatory Impact Analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order

13132.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Department of the Treasury has determined that this final rule will not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Freedom of Information; Privacy.

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Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1--[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also is issued under 5 U.S.C. 552, as amended. Subpart C also is issued under 5 U.S.C. 552a.

Subpart A--Freedom of Information Act

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2. Section 1.1 is amended by revising paragraphs (a)(1)(i)(k) and (a)(2) and by adding paragraph (a)(1)(xiii) to read as follows:

Sec. 1.1 General.

(a) * * *

(1) * * *

(i) * * *

(k) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(i)(L), and (a)(1)(i)(S), and (a)(1)(ii) through (xiii) of this section;

* * * * *

(xiii) The Financial Crimes Enforcement Network.

(2) For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(1)(ii) through (xiii) of this section are to be considered a part of their respective bureaus. Any office which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed in paragraphs (a)(1)(i) through (xiii) of this section, shall be deemed a part of the Departmental Offices for the purpose of making requests for records under this subpart.

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3. Subpart A of 31 CFR part 1 is amended by adding Appendix M:

Appendix M--Financial Crimes Enforcement Network

1. In general. This appendix applies to the Financial Crimes Enforcement Network (FinCEN).

2. Public Reading Room. FinCEN will provide a room on an ad hoc basis when necessary. Contact Office of Regulatory Programs, FinCEN, (202) 354-6400.

3. Requests for records. Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of FinCEN will be made by the Freedom of Information Act/Privacy Act Officer, FinCEN. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. Administrative appeal of initial determinations to deny records. Appellate determinations under 31 CFR 1.5(i) with

respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be mailed to: Freedom of Information Appeal, Post Office Box 39, Vienna, VA 22183.

5. Delivery of process. Service of process will be received by the Chief Counsel of FinCEN and shall be delivered to: Chief Counsel, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

Subpart C--Privacy Act

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4. Section 1.20 is amended as follows:

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a. Paragraph (a)(11) is revised.

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b. Paragraph (m) is amended by removing the words "The Office of Thrift Supervision" and adding in their place "The Financial Crimes Enforcement Network."

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c. The first sentence of the undesignated paragraph is revised.

The revisions to Sec. 1.20 read as follows:

Sec. 1.20 Purpose and scope of regulations.

* * * * *

(a) * * *

(11) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(17) and (b) through (m) of this section;

* * * * *

For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of this section are to be considered a part

of such components. * * *

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7. Section 1.36 is amended as follows:

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a. Paragraph (c)(1)(i) is amended by removing ``DO .200--FinCEN Database; DO .212--Suspicious Activity Reporting System (SARS), and DO. 213--Bank Secrecy Act Reports System" from the table.

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b. Paragraph (c)(1)(xiii) is added.

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c. Paragraph (c)(2) is revised.

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d. Paragraph (e)(1) is amended by removing ``Departmental Offices" from the table heading and adding in its place ``Financial Crimes Enforcement Network." Paragraph (e)(1) is further amended by removing the entry ``DO .200" and adding in its place ``FinCEN .001" to the table.

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e. Paragraph (g)(1)(i) is amended by removing ``DO .200-FinCEN Database; DO .212--Suspicious Activity Reporting System (SARS), and DO. 213--Bank Secrecy Act Reports System" from the table.

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f. Paragraph (g)(1)(xiii) is added.

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g. Paragraph (g)(2) is revised.

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h. Paragraph (m)(1)(xiii) is added.

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i. Paragraph (m)(2) is revised.

The amendments to Sec. 1.36 read as follows:

Sec. 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(c) * * *

(1) * * *

(xiii) Financial Crimes Enforcement Network:

| Number | Name of System |
|------------------|---------------------------------------|
| FinCEN .001..... | FinCEN DataBase. |
| FinCEN .002..... | Suspicious Activity Reporting System. |
| FinCEN .003..... | Bank Secrecy Act Reports System. |

(2) The Department hereby exempts the systems of records listed in paragraphs (c)(1)(i) through (xiii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

* * * * *

(g) * * *

(1) * * *

(xiii) Financial Crimes Enforcement Network:

| Number | Name of System |
|------------------|---------------------------------------|
| FinCEN .001..... | FinCEN Database. |
| FinCEN .002..... | Suspicious Activity Reporting System. |
| FinCEN .003..... | Bank Secrecy Act Reports System. |

(2) The Department hereby exempts the systems of records listed in paragraphs (g)(1)(i) through (xiii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5

U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

* * * * *

(m) * * *

(1) * * *

(xiii) Financial Crimes Enforcement Network:

(2) The Department hereby exempts the systems of records listed in paragraph (m)(1)(i) through (xiii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

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7a. Subpart C of 31 CFR part 1 is amended by adding Appendix N:

Appendix N--Financial Crimes Enforcement Network

1. In general. This appendix applies to the Financial Crimes Enforcement Network (FinCEN). It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(4) and (11) and published biennially by the Office of the Federal Register in "Privacy Act Issuances."

2. Requests for notification and access to records and accountings of disclosures. Initial determinations under 31 CFR

1.26, whether to grant requests for notification and access to records and accountings of disclosures for FinCEN will be made by the Freedom of Information/Privacy Act officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

3. Requests for amendments of records. Initial determinations under 31 CFR 1.27(a) through (d) whether to grant requests to amend records maintained by FinCEN will be made by the Freedom of Information/Privacy Act officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. Verification of Identity. An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by FinCEN on any such request:

(i) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(ii) Notwithstanding this paragraph (4)(i), an individual may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iii) Notwithstanding this paragraph (4)(i) and (ii), the Freedom of Information Act/Privacy Act Officer or other designated official may require additional proof of an

[[Page 55312]]

individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or

such individual.

5. Administrative appeal of initial determinations refusing amendment of records. Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be addressed to: Privacy Act Amendment Appeal, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

6. Statements of Disagreement. ``Statements of Disagreement" as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

7. Service of Process. Service of process will be received by the Chief Counsel of FinCEN and shall be delivered to the following location: Office of Chief Counsel, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

8. Biennial notice of systems of records. The biennial notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ``Privacy Act Issuances." Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and paragraph 4 of this appendix are indicated in the notice for the pertinent system.

Dated: September 8, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03-24227 Filed 9-24-03; 8:45 am]

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