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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 1999N–2637]

Public Information Regulations; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the public information regulations to correct an error that was incorporated in the regulations. This action is being taken to improve the accuracy of the regulations.

DATES: This correction is effective July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 2003 (68 FR 25283), FDA published a final rule that, among other things, amended its regulations, in part 20 (21 CFR part 20). In § 20.120, the zip code for the Dockets Management Branch is incorrect. This document corrects that error.

§ 20.120 [Corrected]

■ 1. On page 25287, in the second column, § 20.120 *Records available in Food and Drug Administration Public Reading Rooms* is corrected in the third sentence of paragraph (a) by removing ''20857'' and adding in its place ''20852''.

Dated: November 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28985 Filed 11–19–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA44

Financial Crimes Enforcement Network; Amendments to the Bank Secrecy Act Regulations; Definition of Futures Commission Merchants and Introducing Brokers in Commodities as Financial Institutions; Requirement That Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rules.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments add futures commission merchants and introducing brokers in commodities to the regulatory definition of ''financial institution'' and require that they report suspicious transactions to FinCEN. Bringing these major participants in the futures industry into the Bank Secrecy Act regulatory structure is intended to further the counter-money laundering program of the Department of the Treasury.

DATES: *Effective Date:* December 22, 2003.

Applicability Date: May 18, 2004.

FOR FURTHER INFORMATION CONTACT: Alma M. Angotti, Senior Enforcement Counsel, and Judith R. Starr, Chief Counsel, FinCEN, at (703) 905–3590; David Vogt, Associate Director, and Donald Carbaugh, Chief, Depository Institutions, Office of Regulatory Programs, FinCEN, (202) 354–6400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act, Pub. L. 91–508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332 (''BSA''), authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The BSA defines the term ''financial institution'' to include, among other broad categories of institutions, any ''broker or dealer in securities or commodities.'' [2] Section 321(b) of the USA Patriot Act amended the BSA to expressly include in the definition of ''financial institution'' futures commission merchants (''FCMs'') that are registered, or required to register, with the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange Act (''CEA'').[3]

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[4] to require financial institutions to report suspicious transactions. Subsection (g)(1) provides:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (''USA Patriot Act''), Pub. L. 107–56.

[2] 31 U.S.C. 5312(a)(2)(H). The Secretary has clarified that the term ''broker or dealer in commodities'' in the BSA includes introducing brokers in commodities (''IB–Cs''). *See* 67 FR 21110, 21111 n.5 (April 29, 2002) (anti-money laundering programs for certain financial institutions); 68 FR 25148 (May 9, 2003) (joint final rule requiring customer identification programs for FCMs and IB–Cs).

[3] 7 U.S.C. 1 *et seq.* Section 321(b) also provided that the term ''financial institution'' includes any commodity pool operator (''CPO'') and any commodity trading advisor (''CTA'') registered, or required to register, under the CEA. *See* 31 U.S.C. 5312(c). FinCEN has proposed rules that require unregistered investment companies, including commodity pools, to have anti-money laundering (''AML'') programs (''AMLPs''). FinCEN also has proposed rules requiring CTAs to have AMLPs. 68 FR 23640 (May 5, 2003). A requisite element of these AMLPs is the requirement to have policies, procedures, and controls that are reasonably designed to ensure compliance with the BSA and its implementing regulations.

[4] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

section or any other authority, reports a suspicious transaction to a government agency * * * the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that any financial institution, director, officer, employee, or agent of any financial institution

that makes a voluntary disclosure of any possible violation of law or regulation * * * or makes a disclosure pursuant to this subsection or any other authority * * * shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision [thereof] * * * for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4)(A) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [5] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' [6]

B. FCMs and IB–Cs: Regulation and Money Laundering

The final suspicious activity reporting rule contained in this document applies to FCMs and IB–Cs. An FCM is defined in the CEA as an individual, association, partnership, corporation, or trust that is engaged in soliciting or accepting orders and funds for the purchase or sale of a commodity for future delivery on or subject to the rules of a contract market or derivatives transaction execution facility (''DTEF'').[7] An IB–C is similarly defined,[8] except that an IB–C may not accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts. The CEA requires FCMs and IB–Cs to register pursuant to the procedures of Section 4f(a)(1) of the CEA.[9] As of May 31, 2003, there were 185 FCMs and 1,591 IB–Cs (domestic and foreign) that had registered with the CFTC pursuant to this provision.

This final rule is just one of several steps taken by the Secretary of the Treasury to address comprehensively the risk of money laundering in the futures industry. In April 2002, FinCEN issued an interim final rule requiring FCMs and IB–Cs to develop and implement AMLPs to prevent them from being used to launder money or finance terrorist activities, which includes achieving and monitoring compliance with the applicable requirements of the Bank Secrecy Act and the Secretary of the Treasury's implementing regulations.[10]

This final rule follows other recent actions that expand the application of the BSA to additional financial institutions and require those financial institutions to report suspicious transactions. For example, since April 1996, rules issued by FinCEN under the authority contained in 31 U.S.C. 5318(g) have required banks, thrifts, and other banking organizations to report suspicious transactions.[11] In collaboration with FinCEN, the federal bank supervisors concurrently issued suspicious transaction reporting rules under their own authority.[12] The bank supervisory agency rules apply to banks, bank holding companies, and non-depository institution affiliates and subsidiaries of banks and bank holding companies. Money services businesses have been required to report suspicious transactions to the Department of the Treasury since the beginning of 2002.[13] In July 2002, FinCEN took a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States by requiring brokers and dealers in securities (''BDs'') to report suspicious transactions.[14] In October 2002, FinCEN issued a final rule requiring casinos to report suspicious transactions, and a proposed rule that would require certain insurance companies to report suspicious transactions. The final rule contained in this document will extend this and other BSA requirements to FCMs and IB–Cs. The reporting and recordkeeping provisions of the BSA, including suspicious transaction reporting by FCMs and IB–Cs can provide highly useful information in law enforcement and regulatory investigations and proceedings, and in the conduct of intelligence activities to protect against international terrorism.[15]

II. Notice of Proposed Rulemaking and Comments

On May 5, 2003, FinCEN published a notice of proposed rulemaking (the ''Notice'') [16] that would extend the reporting and recordkeeping obligations of the BSA, including suspicious transaction reporting, to FCMs and IB–Cs. FinCEN received two comment letters on the Notice: one comment from NFA and one comment from the Futures Industry Association, an industry trade association. Both commenters support the proposed rule, but each suggested certain changes and clarifications they believe would be appropriate. Changes and clarifications resulting from these comments are discussed below in the section-by-section analysis.

III. Section-by-Section Analysis

A. 103.11(ii)—Meaning of Terms

1. *Definitions of Futures Commission Merchant and Introducing Broker-Commodities.* Under this final rule, the definition of ''financial institution'' in 31 CFR 103.11(n) includes FCMs and IB–Cs as these terms are defined in paragraphs (zz) and (aaa), respectively. There were no comments concerning these definitions, and FinCEN is adopting them as proposed.

These terms encompass any person registered or required to be registered as an FCM or IB–C with the CFTC,[17] but exclude securities BDs that have notice registered with the CFTC as FCMs or IB–Cs for the sole purpose of effecting transactions in security futures products (''SFPs'').[18] For these persons, FinCEN

[5] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[6] 31 U.S.C. 5318(g)(4)(B).

[7] 7 U.S.C. 1a(20).

[8] 7 U.S.C. 1a(23) (defining the term ''introducing broker'').

[9] 7 U.S.C. 6f(a)(1).

[10] *See* 67 FR 21111. Compliance with this rule is deemed satisfied if FCMs and IB–Cs comply with the AML rule (Compliance Rule 2–9(c)) that was approved by the CFTC and issued by the National Futures Association (''NFA''), the only registered futures association. *Id.*

[11] *See* 31 CFR 103.18 (requiring banks, thrifts, and other banking organizations to report suspicious transactions).

[12] *See* 12 CFR 21.11 (issued by the Office of the Comptroller of the Currency); 12 CFR 208.62 (issued by the Board of Governors of the Federal Reserve System); 12 CFR 353.3 (issued by the Federal Deposit Insurance Corporation); 12 CFR 563.180 (issued by the Office of Thrift Supervision); and 12 CFR 748.1 (issued by the National Credit Union Administration).

[13] *See* 65 FR 13683 (March 14, 2000).

[14] *See* 67 FR 44048 (July 1, 2002).

[15] *See* 31 U.S.C. 5311 (stating purpose of the reporting authority under the BSA).

[16] 68 FR 23653 (May 5, 2003).

[17] There are two types of IB–Cs, guaranteed and non-guaranteed. A guaranteed IB–C is one that elects to operate pursuant to a written guarantee agreement with an FCM instead of independently meeting its own capital requirements. *See, e.g.*, 17 CFR 1.17(a)(2)(ii). An independent IB–C, by contrast, is one that elects to meet its own capital requirements. Both types of IB–Cs engage in the offer and sale of futures contracts and commodity options on behalf of customers and facilitate transfers or transmittals of funds for their customers. Thus, they present the same or similar money laundering risks, and Treasury sees no reason to draw a distinction between IB–Cs that are guaranteed and those that are not. Therefore, all IB–Cs will be covered by the final rule.

[18] A ''security future'' is defined in the CEA and the Securities Exchange Act of 1934 (''Exchange

Continued

believes that the BSA rules of their primary federal supervisory agency should apply, and that authority to examine for compliance with those rules should remain with the agency with which the entities are primarily registered. Thus, a BD that is notice registered with the CFTC must comply with the BSA rules applicable to BDs, and will be examined for BSA compliance by the Securities and Exchange Commission (''SEC''). A parallel change also is being made to the definition of ''broker or dealer in securities'' in the BSA regulations. Thus, an FCM or IB–C that is notice registered with the SEC must comply with the BSA rules applicable to FCMs and IB–Cs, and will be examined for BSA compliance by the CFTC and the relevant designated self-regulatory organizations (''DSROs'').

With respect to those entities that are dual registrants with both the CFTC and the SEC for purposes of futures and securities transactions other than SFPs, FinCEN intends for this rule to have the same effect as 31 CFR 103.19, which is the rule that requires suspicious transaction reporting for BDs. That is, dual registrants in compliance with the suspicious transaction reporting requirements under 31 CFR 103.19 also shall be deemed to be in compliance with this rule, and dual registrants who are in compliance with this rule shall be deemed to be in compliance with 31 CFR 103.19. This will prevent dual registrants from being subjected to different or conflicting suspicious transaction reporting requirements for the various aspects of their businesses.

2. *Definitions of Transaction, Commodity, Contract of Sale, and Option.* The definition of ''transaction'' in the regulations under the BSA, which is set forth in paragraph (ii), conforms generally to the definition Congress added to title 18 when it criminalized money laundering in 1986.[19] The term is broad and is intended to reach all of the various types of transactions that may occur at a financial institution. Amended paragraph (ii) specifically adds futures transactions, *i.e.*, transactions involving any contract of sale of a commodity for future delivery, any option on any contract of sale for future delivery, and any option on a commodity, to the list of transactions subject to BSA requirements. The definition is not restricted to transactions conducted on a designated contract market or a DTEF.[20]

Paragraphs (xx), (yy), and (bbb) set forth definitions of ''commodity,'' ''contract of sale,'' and ''option on a commodity.'' These are definitions based on Sections 1a(4), 1a(7), and 1a(26), respectively, in the CEA.[21] There were no comments concerning these definitions, and FinCEN is adopting them as proposed.

B. 103.17—Reports by FCMs and IB–Cs of Suspicious Transactions

1. *Reporting standard.* Section 103.17 requires FCMs and IB–Cs to report suspicious transactions that are conducted or attempted by, at, or through an FCM or IB–C and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable whether or not they involve currency.[22] Paragraph (a)(1) also permits, but does not require, the reporting of transactions that appear relevant to possible violations of law or regulation even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $5,000 threshold.

Paragraph (a)(2) requires reporting if the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part) is one of four classes of transactions (described more fully below) requiring reporting. The ''knows, suspects, or has reason to suspect'' standard incorporates a concept of due diligence in the reporting requirement.

The first class of transactions requiring reporting, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class of transactions, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third class of transactions, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the FCM or IB–C knows of no reasonable explanation after examining the available facts relating to the transaction and the parties. The fourth class of transactions, described in paragraph (a)(2)(iv), involves the use of the FCM or IB–C to facilitate a criminal transaction.

A determination as to whether a report is required must be based on all the facts and circumstances relating to the transaction and customer in question. Different fact patterns may lead to different determinations. In some cases, the facts of the transaction may indicate the need to report. For example, frequent and large-scale usage of wire transfers, including wire transfers to or from locations outside of the United States, from an account with only nominal futures activity may be indicative of suspicious activity. In other instances, the transaction or activity itself may be sufficiently suspicious to warrant reporting. Thus, if a customer engages in wash transactions or other fictitious or non-bona fide transactions that violate the CEA, a suspicious activity report must be filed.[23] Similarly, the fact that a customer unreasonably refuses to provide information necessary for the FCM or IB–C to make required reports, retain records as required, identify or verify the identity of a customer, or otherwise comply with the BSA; provides information that the FCM or IB–C determines to be false; or seeks to change or cancel a transaction after such person is informed of currency transaction reporting or information

Act'') as a contract of sale for future delivery of a single security or narrow-based security index (7 U.S.C. 1a(31) and 15 U.S.C. 78c(a)(55)), and an SFP is defined as a security future or any put, call, straddle, option, or privilege on any security future (7 U.S.C. 1a(32) and 15 U.S.C. 78c(a)(56)). The Commodity Futures Modernization Act of 2000 (''CFMA''), Pub. L. 103–556, 114 Stat. 2763 (December 21, 2000), amended the Exchange Act definitions of ''security'' and ''equity security'' to include security futures (15 U.S.C. 78c(a)(1) and 15 U.S.C. 78c(a)(11), respectively). As a result of these amendments, an SFP is both a security and a futures contract (or option thereon) and is thus subject to the jurisdiction of both the CFTC and the SEC.

[19] *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (October 27, 1986), codified at 18 U.S.C. 1956.

[20] Thus, for example, the term ''transaction'' includes any transaction by an FCM or IB–C in a foreign currency futures contract, any option on any foreign currency futures contract, or any option on a foreign currency that occurs on an off-exchange basis. *See* Section 2(c)(1) and (2) of the CEA, 7 U.S.C. 2(c)(1)–(2).

[21] 7 U.S.C. 1a(4), 1a(7), and 1a(26), respectively.

[22] Many currency transactions are not indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (*see* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions (for example, funds transfers) can indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

[23] As discussed below, however, paragraph (c)(1)(ii) provides an exception from the suspicious transaction reporting requirements for violations of the CEA by the FCM, IB–C, or any of its officers, directors, employees, or associated persons that are reported to the CFTC, a registered futures association, or any ''registered entity,'' as that term is defined in Section 1a(29) of the CEA, 7 U.S.C. 1a(29). As discussed in more detail below, dual registrants can report these violations either to these entities, or to the SEC or a securities self-regulatory organization (''SRO''), as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26), whichever is appropriate.

verification or recordkeeping requirements relevant to the transaction, would all indicate that a suspicious activity report should be filed. The FCM or IB–C may not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.

In other situations, a more involved analysis and judgment may be needed to determine whether a transaction is suspicious within the meaning of the rule. Transactions that raise the need for such judgments may include, for example: (i) Transmission or receipt of funds transfers without normal identifying information or in a manner that indicates an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or of the beneficiary to whom the funds are sent; (ii) a repeated pattern of unusual activity by the customer, such as where the customer repeatedly makes unexplainable, frequent deposits or withdrawals ; or (iii) repeated use of an account as a temporary resting place for funds from multiple sources without a clear business purpose. The judgments involved also will extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction or activity that removes it from the suspicious category.

An FCM may carry, and an IB–C may introduce, intermediated accounts including omnibus accounts and accounts for collective investment vehicles such as commodity pools. In such circumstances, the FCM and IB–C may have little or no contact with or information about the ultimate beneficial owners of such accounts. FinCEN has proposed AMLP rules for CTAs and commodity pools, and monitoring for suspicious transactions is an integral part of such programs. Any AMLP obligations of intermediaries such as CTAs, however, would not reduce the obligation on an FCM or IB–C imposed by this rule to monitor transactions based on the facts and circumstances with which it is presented, in order to determine if a transaction is suspicious. In addition, omnibus accounts maintained for certain foreign financial institutions ultimately may fall within the definition of ''correspondent account'' under section 312 of the USA Patriot Act.[24]

2. *Reporting Threshold.* There were no comments concerning the $5,000 reporting threshold and FinCEN is adopting it as proposed. FinCEN reminds FCMs and IB–Cs, however, that the suspicious transaction reporting rules are not intended to operate (and indeed cannot properly operate) in a mechanical fashion. Rather, the suspicious transaction reporting requirements are intended to function in such a way as to have financial institutions evaluate customer activity and relationships for money laundering risks.[25]

3. *Transactions Involving Both an FCM and an IB–C.* Proposed paragraph (a)(3) provided that the obligation to identify and report properly a suspicious transaction rests with each FCM and IB–C involved in the transaction. It also provided, though, that when a transaction involves both an FCM and an IB–C, only one report needs to be filed with FinCEN as long as that report contains all the relevant facts concerning the transaction. This provision was intended to avoid duplicative and redundant reporting.

Both commenters observed that FCMs and IB–Cs frequently handle complex transactions that involve one or more FCMs, and not just an FCM and an IB–C. They noted that the language in the proposed rule only addressed the situation in which both an FCM and an IB–C are involved in a transaction and did not clearly apply to a situation where two FCMs are involved in the same transaction on behalf of the same customer. Accordingly, FinCEN has clarified the language to extend to the latter situation as well, as long as the suspicious activity report (''SAR'') that is filed (FCMs and IB–Cs will use the Form SAR–SF) [26] contains all of the necessary information. Thus, for example, in a ''give-up'' arrangement involving a clearing and an executing FCM, one FCM's SAR–SF could satisfy the obligation of both FCMs to report suspicious transactions. As a corollary, FinCEN also wishes to clarify that, as in the case of an FCM and IB–C involved in a transaction, two FCMs involved in a transaction (such as a clearing and an executing FCM) may consult with each other and share information, including the SAR–SF itself, to enable them to file a single report.[27]

4. *Filing Procedures.* Paragraph (b) sets forth the filing procedures to be followed by an FCM or IB–C making reports of suspicious transactions. Within 30 days after an FCM or IB–C becomes aware of a suspicious transaction, it must report the transaction by completing a SAR–SF and filing it in a central location determined by FinCEN. The rule also makes special provision for situations that require immediate attention, such as ongoing terrorist financing or money laundering schemes. In that event, the FCM or IB–C must notify immediately, by telephone, an appropriate law enforcement authority in addition to filing a SAR–SF. The rule also permits, but does not require, FCMs and IB–Cs to notify the CFTC in addition to contacting law enforcement and filing a SAR–SF.[28] There were no comments that addressed these procedures.

5. *Exceptions.* Paragraph (c) sets forth two exceptions to the reporting requirement. A report does not have to be filed to report a robbery or burglary that is reported to law enforcement. A report also does not have to be filed concerning possible violations of the CEA, the rules promulgated by the CFTC, or the rules of any registered futures association or registered entity by an employee or other associated person of an FCM or IB–C, provided that such violations are reported to the CFTC, a registered futures association, or a registered entity. This exception does not encompass reports of BSA violations made to the CFTC or a registered futures association.[29]

One commenter suggested that the rule make clear that an entity dually registered with the CFTC and the SEC is permitted to rely on the reporting exception if it appropriately reports violations to the CFTC, a registered futures association or a registered entity, or to the SEC or applicable securities

[24] FCMs and IB–Cs have been temporarily exempted from the correspondent account due diligence requirements of Section 312, although they are subject to its private banking due diligence requirements. *See* 67 FR 48348 (July 23, 2002) (interim final rule).

[25] Thus, for example, sizable futures transactions conducted for a well established commodity pool operated in accordance with Part 4 of the CFTC's regulations may require less scrutiny than a futures transaction conducted for an individual customer through a financial institution located in a jurisdiction that has been identified as a non-cooperative country or territory by the Financial Action Task Force.

[26] A draft of the SAR–SF was published for comment in the **Federal Register** on August 5, 2002; 67 FR 50751 (August 5, 2002); the form became final on December 26, 2002 and is available on FinCEN's Web site at *www.fincen.gov.* FinCEN intends to conform the instructions to the SAR–SF to specifically address FCM responsibilities under this rule.

[27] Information sharing procedures among BSA-defined financial institutions generally are set forth in 31 CFR 103.110. FinCEN will be issuing guidance on how financial institutions can file joint SARs in the appropriate circumstances.

[28] In addition, the rule reminds FCMs and IB–Cs of FinCEN's Financial Institutions Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. FCMs and IB–Cs reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–SF to the extent required by the proposed rule.

[29] Specifically, this exception does not apply to a BSA violation that is reported to the CFTC pursuant to CFTC Rule 42.2, 17 CFR 42.2, which was adopted after the issuance of the proposed rule.

SRO, whichever is most appropriate under the circumstances. In the proposing release, FinCEN made clear its intent that the rule will have the same effect as 31 CFR 103.19, which is the rule that requires suspicious transaction reporting for BDs. FinCEN stated that dual registrants who are in compliance with the suspicious transaction reporting requirements for BDs under 31 CFR 103.19 will also be deemed to be in compliance with this rule, and further, that dual registrants that are in compliance with this rule will also be deemed to be in compliance with 31 CFR 103.19.[30]

FinCEN is guided by the legislative history of Title II of the USA Patriot Act,[31] which specifically urged Treasury to take steps to provide for a reporting process for entities registered as both a BD and an FCM that requires only a single report, and to act to prevent inconsistent regulations for dual registrants. Accordingly, FinCEN agrees with this comment and clarifies that an FCM dually registered as a BD can rely on the exception from SAR filing by reporting the violation to either an appropriate securities or futures regulator or SRO. Similarly, a BD that is dually registered as an FCM can rely on the exception by reporting the violation to the CFTC or a registered futures association or registered entity in the same way that an FCM is permitted to do so.

Both commenters also noted that the proposed rule did not specifically address what documentation is sufficient to demonstrate reliance upon an exception. In contrast, the SAR rule for BDs provides that a Form RE–3, U–4, or U–5 is sufficient documentation to demonstrate reliance. One commenter suggested that FinCEN specifically state that a Form 8–T, U–5, RE–3, or any other form properly filed with a futures or securities regulator is sufficient documentation. FinCEN agrees with this comment, and the final rule reflects this change.[32]

Finally, in response to one comment, FinCEN clarifies that FCMs and IB–Cs have the same ability as BDs to rely on the reporting exception whether their reporting procedures are ''formal or informal.''[33]

6. *Retention of Records.* Paragraph (d) requires FCMs and IB–Cs to maintain a copy of any SAR–SF that is filed with FinCEN and all original related supporting documentation for a period of five years from the date of filing. Nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Records in Global and National Commerce Act,[34] and thus an FCM or IB–C may make and maintain records either as originals or in electronic format as permitted under existing CFTC rules.[35] Accordingly, the FCM or IB–C must make the supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement or regulatory agency, and, consistent with paragraph (g), to any registered futures association, registered entity, or SRO. There were no comments addressing this record retention provision, and FinCEN is adopting it as proposed.

7. *Non-Disclosure.* Paragraph (e) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the rule or is filed voluntarily).[36] Thus, the paragraph specifically prohibits persons filing a SAR–SF from making any disclosure either about the report or the supporting documentation unless the disclosure is made to FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or, consistent with paragraph (g), a registered futures association, registered entity, or SRO. There were no comments concerning this provision, and FinCEN is adopting it as proposed.

8. *Safe Harbor from Civil Liability.* Paragraph (f) incorporates the BSA's statutory protection from civil liability for making or filing a report of a suspicious transaction or for failing to disclose the fact that a report has been made or filed. The specific reference to arbitration reflects the clarification provided in the USA Patriot Act that the safe harbor for suspicious transaction reporting would apply in arbitration proceedings. Because some disputes in the futures industry are resolved under a reparations procedure provided for by the CEA,[37] paragraph (f) clarifies that the safe harbor also applies in reparations proceedings. FinCEN intends to work with the CFTC, the DSROs, and industry representatives to ensure that appropriate educational materials are delivered to compliance and litigation personnel.

It must be noted that, while the rule reiterates and clarifies the broad statutory protection from liability for making reports of suspicious transactions and for failing to disclose the fact of such reporting, the regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection. The prohibition on disclosure (other than as required under the rule) applies regardless of any protection from liability. This means, for instance, that during an arbitration or reparations proceeding, an FCM or IB–C would not be permitted to provide a copy of a SAR–SF, or disclose the fact that one had been filed, to any participant in the proceeding, including as applicable, the arbitrator, judgment officer, or administrative law judge.

Both commenters requested that the safe harbor protection from civil liability under this rule, and under FinCEN's rule implementing Section 314(b) of the USA Patriot Act,[38] be extended to protect disclosures to foreign financial institutions to the extent that an FCM or IB–C needs to obtain information from that foreign entity.[39] However, foreign entities are not ''financial institutions'' and thus are not eligible for these protections that the BSA extends to financial institutions. Moreover, FinCEN and the relevant examining authority in the United States have the ability to require U.S.-regulated financial institutions to protect adequately sensitive information involved in reporting a suspicious transaction. That said, it may be appropriate in certain circumstances for an FCM or IB–C to question carefully the foreign financial institution about the customer or the transaction to understand more fully whether the FCM should report the transaction as

[30] 68 FR at 23656.

[31] HR Rep. 107–250 at 65.

[32] The final rule also clarifies that any report filed with a securities or futures regulator in reliance upon an exception to suspicious activity reporting and other related documentation shall be made available, upon request, to the CFTC, SEC, and any registered futures association, registered entity, or securities self-regulatory organization that is examining an FCM, IB–C, or BD for compliance with SAR requirements.

[33] 67 FR at 44,051 (noting that BDs may rely on the reporting exception whether their reporting follows existing formal or informal industry procedures).

[34] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act).

[35] *See, e.g.*, 17 CFR 1.4 and 1.31.

[36] *See* 31 U.S.C. 5318(g)(2).

[37] *See* Section 14 of the CEA, 7 U.S.C. 18 and 7 CFR Part 12.

[38] 31 CFR 103.110(b)(5).

[39] These provisions are different and serve different purposes. The safe harbor in the SAR rule provides total immunity for filing the SAR. Those financial institutions permitted to file a joint SAR must be able to share information, including the SAR itself, in order to prepare and file the SAR. Under Section 314(b) of the USA Patriot Act, however, information sharing relates to the underlying transactional and customer information; nothing in the rule implementing Section 314(b) authorizes the sharing of actual SARs. 31 CFR 103.10. If other financial institutions, *e.g.*, CTAs, become subject to final rules requiring them to have an AMLP, FCMs and IB–Cs can qualify for the safe harbor under Section 314(b) when they share underlying transactional and customer information with those financial institutions.

suspicious. The FCM could not however, disclose the fact that it is contemplating the filing of a SAR. FinCEN recognizes that, particularly with respect to international transactions, the balance between obtaining sufficient information and protecting the confidentiality of suspicious activity reporting is a difficult one for FCMs and IB–Cs to achieve, but it is one that is faced by all financial institutions subject to a SAR requirement, and one which they are generally successful in achieving.

9. *Examination.* Paragraph (g) notes that compliance with the obligation to report suspicious transactions will be examined for by Treasury through FinCEN or its delegee, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations. This paragraph also clarifies that an FCM or IB–C must provide access to any SAR–SF that it has filed, along with any supporting documentation, to the CFTC and any registered futures association, any registered entity that has authority to examine the institution, or to the SEC or an SRO in the case of dual registrants.

10. *Effective Date.* Paragraph (h) provides that the new suspicious transaction reporting requirements will be effective 180 days after the date on which the final regulations to which this notice of rulemaking relates are published in the **Federal Register**.

C. 103.33—Records To Be Made and Retained by Financial Institutions

The addition of FCMs and IB–Cs to the ''financial institution'' definition make such persons subject to the recordkeeping and reporting requirements set forth in section 103.33. This paragraph requires specific records concerning transfers and transmittals of funds in the amount of $3,000 or more. The amendments to paragraphs (e)(6)(i) and (f)(6)(i) of Section 103.33 set forth exceptions for any transfers or transmittals of funds involving either an FCM or an IB–C. The inclusion of FCMs and IB–Cs within the exceptions is intended to provide parallel treatment for records required to be made and kept by banks, BDs, FCMs, and IB–Cs. There were no comments concerning this provision, and FinCEN is adopting it as proposed.

D. 103.56—Examination

Under the current BSA delegation framework, the Internal Revenue Service is responsible for examining all financial institutions (except for BDs) that are not examined by the federal bank supervisory agencies. This rule will expand the scope of the BSA rules applicable to FCMs and IB–Cs by including them in the regulatory definition of ''financial institution,'' and shift the responsibility for examining FCMs and IB–Cs under the BSA from the Internal Revenue Service to the CFTC. Thus, 31 CFR 103.56, which sets forth delegations of BSA authority, is amended to provide the CFTC with examination authority with respect to FCMs and IB–Cs for compliance with the BSA regulations.

IV. Regulatory Flexbility Act

FinCEN certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. As noted above, the inclusion of FCMs and IB–Cs within the ''financial institution'' definition in the BSA regulations will make these entities subject to all of the same requirements that apply to similarly situated financial institutions, such as banks and broker-dealers in securities. Nevertheless, FinCEN does not believe that these requirements modify the existing obligations of FCMs and IB–Cs, since the transactional information required to be made and retained under the rules will be information that already is required to be made and retained in the ordinary course of an FCM's or IB–C's business.

Concerning the filing of SARs by FCMs and IB–Cs, FinCEN does not believe that the economic impact of the rule will be significant. Due to mandatory provisions of the USA Patriot Act [40] and obligations imposed by the NFA,[41] FCMs and IB–Cs already are obligated to establish AMLPs that include policies, procedures, and internal controls that are reasonably designed to assure compliance with the BSA and the implementing regulations. A set of systems and procedures designed to detect and require reporting of suspicious activity complements these existing program requirements. As the NFA's interpretive notice to Compliance Rule 2–9(c) makes clear, an FCM or IB–C may tailor its program based on the type of its business, the size and complexity of its operations, the breadth and scope of its customer base, the number of its employees, and its resources.

V. Executive Order 12866

The Department of the Treasury has determined that this final regulation is not a ''significant regulatory action'' for purposes of Executive Order 12866.

[40] 31 U.S.C. 5318(h).

[41] NFA Compliance Rule 2–9(c).

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (''Unfunded Mandates Act''), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance these rules provide the most cost-effective and least burdensome alternative to achieve the objectives of the rules.

VII. Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget (''OMB'') in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1506–0019. The estimated average burden associated with the collection of information in this final rule is 4 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. FinCEN received no comments on its recordkeeping burden estimate.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Brokers, Commodity futures, Currency, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Amendments to the Regulations

■ For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

■ 2. Section 103.11 is amended by revising paragraph (f), adding paragraphs (n)(8) and (n)(9), revising paragraph (ii)(1), and adding paragraphs (xx), (yy), (zz), (aaa), and (bbb) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(f) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

* * * * *

(n) * * *

(8) A futures commission merchant;

(9) An introducing broker in commodities.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes 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, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

(xx) *Commodity.* Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(4).

(yy) *Contract of sale.* Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(zz) *Futures commission merchant.* Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(aaa) *Introducing broker-commodities.* Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(bbb) *Option on a commodity.* Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

■ 3. Section 103.17 is added to read as follows:

§ 103.17 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General*—(1) Every futures commission merchant (''FCM'') and introducing broker in commodities (''IB–C'') within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB–C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB–C from the responsibility of complying with any other reporting requirements imposed by the Commodity Futures Trading Commission (''CFTC'') or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (''CEA''), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB–C, it involves or aggregates funds or other assets of at least $5,000, and the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (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 or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB–C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB–C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB–C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB–Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-Securities and Futures Industry (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB–C of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB–C may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB–C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. FCMs and IB–Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The FCM or IB–C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions*—(1) An FCM or IB–C is not required to file a SAR–SF to report—

(i) A robbery or burglary committed or attempted of the FCM or IB–C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB–C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB–C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8–R, 8–T, U–5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient record for the purposes of this paragraph (c)(2).

(d) *Retention of records.* An FCM or IB–C shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the FCM or IB–C, and shall be deemed to have been filed with the SAR–SF. An FCM or IB–C shall make all supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement agency or regulatory agency, and, for purposes of paragraph (g) of this section, to any registered futures association, registered entity, or self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)), upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR–SF or the information contained in a SAR–SF, except where such disclosure is requested by FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, a registered futures association, registered entity, or SRO shall decline to produce the SAR–SF or to provide any information that would disclose that a SAR–SF has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* An FCM or IB–C, and any director, officer, employee, or agent of such FCM or IB–C, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration or reparations proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the BSA. Reports filed under this section or § 103.19 (including any supporting documentation), and documentation demonstrating reliance on an exception under paragraph (c) of this section or § 103.19, shall be made available, upon request, to the CFTC, Securities and Exchange Commission, and any registered futures association, registered entity, or SRO, examining an FCM, IB–C, or broker or dealer in securities for compliance with the requirements of this section or § 103.19. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the BSA or of this part.

(h) *Effective date.* This section applies to transactions occurring after May 18, 2004.

■ 4. Section 103.33 is amended by redesignating paragraphs (e)(6)(i)(E), (F), and (G) as paragraphs (e)(6)(i)(G), (H), and (I), respectively; adding new paragraphs (e)(6)(i)(E) and (F); redesignating paragraphs (f)(6)(i)(E), (F), and (G) as paragraphs (f)(6)(i)(G), (H), and (I), respectively, and adding new paragraphs (f)(6)(i)(E) and (F) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

* * * * *

(f) * * *

(6) * * *

(i) * * *

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

* * * * *

■ 5. Section 103.56 is amended by revising paragraph (b)(8) and adding a new paragraph (b)(9) to read as follows:

§ 103.56 Enforcement.

* * * * *

(b) * * *

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.

* * * * *

Dated: November 13, 2003.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 03–28991 Filed 11–19–03; 8:45 am]

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DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL52

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance under the Educational Assistance Test Program shall be adjusted annually by the Secretary of