(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.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations that require savings associations and service corporations to file criminal referral and suspicious transaction reports. This final rule streamlines reporting requirements by providing that savings associations and service corporations file a new Suspicious Activity Report (SAR) with the OTS and the appropriate federal law enforcement agencies by sending SARs 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 an institution suspects involves money laundering or violates the Bank Secrecy Act (BSA).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Stearns, Deputy Chief Counsel, Enforcement Division, (202) 906–7966, or Gary Sutton, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–5761, Chief Counsel's Office; or Francis Raue, Policy Analyst, Supervision Policy, (202) 906–5750, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) issued for public comment substantially similar proposals to revise their regulations on the reporting of known or suspected criminal conduct and suspicious activities by the institutions under their supervision.[1] The Department of the Treasury, through FinCEN, issued for public comment a substantially similar proposal to require the reporting of suspicious activities.[2]

The OTS's proposed regulation 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 transactions that an institution suspects involve money laundering or violate the BSA. The new SAR reporting system will: (1) Combine the current criminal referral rules of the Agencies with the Department of the Treasury's suspicious activity reporting requirements; (2) create a uniform reporting form, the new SAR, for use by financial institutions in reporting known or suspected criminal offenses and transactions that an institution suspects involve money laundering or violate the BSA; (3) provide a system whereby an institution need only refer to the SAR and its instructions in order to complete and file the form in conformance with the Agencies' and FinCEN's reporting regulations; (4) require the filing of only one form with FinCEN; (5) eliminate the need to file supporting documentation with a SAR; (6) enable a filer, through computer software that the OTS will provide to all savings associations, to prepare a SAR on a computer and file it by mailing a computer disc or tape; (7) establish a database that will be accessible to the Federal and state financial institutions regulators and law enforcement agencies; (8) raise the thresholds for mandatory reporting in two categories and create a threshold for the reporting of transactions that an institution suspects involve money laundering or violate the BSA in order to reduce the reporting burdens on banking organizations; and (9) emphasize recent changes in the law that provide a safe harbor from civil liability to financial institutions and their employees when they report known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, and that provide criminal sanctions for the disclosure of such a report to any party involved in the reported transaction.

Comments Received

The OTS received letters from eight commenters, including four savings associations, two holding companies, one trade association and one law firm. We have also considered comments received by the other Agencies. The large majority of commenters expressed general support for the proposal. None of the commenters opposed the proposed new suspicious activity reporting rules, although, as discussed below, a number of commenters made suggestions for improving the rule and requests for clarification.

Description of the Final Rule and Responses to Comments Received

After consideration of the public comments received, the Agencies are each promulgating a substantially identical final rule regarding the filing of SARs. Under the OTS's final rule, savings associations and service corporations need only follow the SAR instructions for completing and filing the SAR to be in compliance with the OTS's and FinCEN's reporting requirements.

This final rule adopts the proposal with a few additional changes made in response to the comments received. The final rule makes several changes that reduce unnecessary regulatory burden in addition to those that were proposed. In particular, the final rule further reduces burden by: (1) Adding a $5,000 threshold for reporting transactions that an institution suspects involve money laundering or violate the BSA; (2) eliminating the requirement that an institution report a transaction that is ''suspicious for any reason'' by modifying the description of the types of suspicious activity that must be reported; (3) reducing the record retention period from ten years to five; and (4) permitting an institution to maintain the business record equivalent of a document rather than requiring that it maintain the original.

Section-by-Section Discussion

Purpose and scope (§ 563.180(d)(1))

The proposal clarified the scope of the current rule. The OTS received no comments on this paragraph, which is adopted as proposed.

Definitions (§ 563.180(d)(2))

The proposal added definitions for several terms used in the operative provisions of the rule. The OTS received one comment on this provision. The commenter argued that the use of the term ''institution-affiliated party'' instead of ''affiliated person'' creates too broad a coverage for the rule, and will result in the requirement that SARs must be filed with respect to petty crimes by officers below the level of vice president and non-officer employees. The OTS has considered this comment and believes that the broader coverage is appropriate, given the possibility that even petty crimes, if repetitive, may require enforcement action. The definition of ''known or suspected violation'' in the proposal has been incorporated into each of the reporting requirement provisions in § 563.180(d)(3) to conform the rule to that of the other Agencies. This section is otherwise adopted as proposed, with minor technical changes.

SARs required (§ 563.180(d)(3))

The proposal clarified and revised the provision in the current rule that requires an institution to file reports, raised the dollar thresholds that trigger filing requirements, modified the scope of events that an institution must report,

[1] 60 FR 36366 (July 17, 1995) (OTS), 60 FR 34476 (July 3, 1995) (OCC), 60 FR 34481 (July 3, 1995) (FRB) and 60 FR 47719 (September 14, 1995)(FDIC).

[2] 60 FR 46556 (September 7, 1995).

and eliminated the requirement for multiple filings with several Federal agencies.

Most of the comments received by the Agencies addressed this provision. Many of the commenters encouraged the Agencies to change proposed § 563.180(d)(3)(iv)(C), which required institutions to report all financial transactions that are suspicious ''for any reason.'' The commenters stated that this language was too broad and made meaningless the $5,000 reporting threshold of § 563.180(d)(3)(ii) (requiring institutions to report suspected crimes committed by an identifiable suspect) and the $25,000 reporting threshold of § 563.180(d)(3)(iii) (requiring institutions to report suspected crimes for which no suspect is identified). They asserted that requiring institutions to report all financial transactions that are suspicious for any reason required them to report transactions that would otherwise fall under the appropriate threshold and therefore be exempt from the reporting requirement. Several commenters also encouraged the Agencies to adopt a threshold for reporting transactions that are suspicious.

The OTS and the other Agencies agree with the concerns expressed by these commenters. Section 563.180(d)(3)(iv) has been substantially revised to add a $5,000 reporting threshold for transactions that are suspicious and to clarify that this provision of the rule requires an institution to report only transactions that it suspects involve money laundering or violations of the BSA. Under the final rule, a savings association or service corporation must file a SAR for any transaction of $5,000 or more if it knows, suspects, or has reason to suspect that the transaction: (A) involves money laundering; (B) is designed to evade any regulations promulgated under the BSA; or (C) 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 institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction. For purposes of § 563.180(d)(3)(iv), the term ''transaction'' means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, or 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. The text of this section recognizes that efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted when institutions report transactions that they suspect may involve money laundering or violate the BSA. 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.

A few commenters encouraged the Agencies to raise the dollar thresholds for known or suspected criminal conduct by non-insiders, and several commenters urged the Agencies to establish a dollar threshold for insiders. The OTS has considered these comments, but has concluded that the thresholds, as proposed, properly balance the dual concerns of prosecuting criminal activity involving savings associations and service corporations and minimizing the burden on such institutions. With respect to the suggestion that the OTS adopt a dollar threshold for insider violations, the OTS notes that insider abuse has long been a key concern and focus of enforcement efforts. With the development of a new sophisticated and automated database, the OTS and law enforcement agencies will have the benefit of a comprehensive and easily accessible catalogue of known or suspected insider wrongdoing. When insiders are involved, even small-scale offenses—for example, repetitive thefts of small amounts of cash by an employee who frequently moves between banking organizations—may undermine the integrity of such organizations and warrant enforcement action or criminal prosecution. Therefore, the OTS does not wish to limit the information it receives regarding insider wrongdoing.

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. Any regional variations in the dollar amount of financial crimes generally prosecuted involve issues pertaining to the exercise of prosecutorial discretion that are not within the OTS's province to resolve. The OTS's objective is to ensure that institutions place the relevant information in the hands of the investigating and prosecuting authorities. In the OTS's view, the dollar thresholds proposed and adopted in this final rule best balance the interests of law enforcement authorities and financial institutions. The OTS also believes that indexed thresholds could generate additional regulatory burden for institutions by creating a standard that is unclear and confusing.

One commenter noted that the OTS and OCC proposals keyed the reporting thresholds to the amount of loss or potential loss to the institution (which is the standard used in the OTS's current rule), while the FRB keyed its reporting thresholds to events that ''involve or aggregate'' more than the appropriate threshold. The commenter urged all Agencies to use the proposed OTS and OCC standard. Upon further consideration, the OTS believes that the standard used in the FRB's proposal provides greater predictability in determining when to file a SAR because the amount of loss or potential loss may differ from the actual sum involved in the event and may be difficult to calculate in many instances. The OTS believes that, were the Agencies to rely on the amount of loss or potential loss, an institution might consider the potential for recovery of funds to estimate loss. Instead, to avoid potential uncertainty, the final rule conforms to the FRB's proposal and requires an institution to file SARs whenever it detects a known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against it or involving a transaction conducted through it that involves or aggregates more than the appropriate threshold.

One commenter expressed the concern that a banking organization 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. This is not the case, however. Nothing in the rule requires that savings associations assume the burden of proving illegal conduct; rather, institutions are required only to report actual or suspected crimes or suspicious activities for possible action by the appropriate authorities.

One commenter requested clarification of whether the proposal required an institution to file multiple SARs for a crime committed by several individuals, multiple crimes by the same individual, or related crimes committed by more than one individual. Financial institutions should complete one SAR to describe a suspected or known criminal offense committed by several individuals. The instructions to the SAR permit institutions to report additional suspects by means of a supplemental page. An institution

should file a separate SAR whenever an individual commits a suspected or known crime. If the same individual commits multiple or related crimes within the same reporting period, the institution may consider reporting the crimes on one SAR if doing so will present clearly what has occurred.

Savings associations and service corporations are encouraged to file the SAR via magnetic media using the computer software to be provided to them by the OTS. Savings associations and service corporations that currently file currency transaction reports via magnetic tape with FinCEN may also file SARs by magnetic tape. FinCEN has advised the Agencies that it will be unable to accept filings via telecopier.

Service corporations (§ 563.180(d)(4))

The proposal retained the current provision permitting a report required of a service corporation to be filed by the service corporation or by a savings association which wholly or partially owns it. No comments addressed this provision and it is unchanged in the final rule.

Time for reporting (§ 563.180(d)(5))

Proposed § 563.180(d)(5) substantially modified the current requirements with respect to the timing of the reporting of known or suspected criminal offenses and transactions that an institution suspects involve money laundering or violate the BSA. It required an institution to file a SAR within 30 calendar days after detecting the act triggering the reporting requirement, provided that if no suspect is identified at such time, the institution may delay filing for an additional 30 days after identification of a suspect, but filing may not be delayed for more than 60 days after initial detection.

Several commenters requested that the Agencies clarify the application of the filing deadline for SARs when no suspect is identified at the initial detection of the suspicious activity, the amount of the transaction is less than the applicable $25,000 mandatory reporting threshold, and the institution later identifies a suspect. For example, some commenters wondered if they would be in violation of the rule if a suspect were identified after 60 days had passed.

These comments reflect a misunderstanding of how the filing requirements operate. The time period for reporting commences only at the point in time when an institution identifies a potential violation that fits within the thresholds. Therefore, if an institution uncovers a transaction involving less than $25,000 (but more than $5,000), but does not identify a potential suspect until after the passage of 60 days, the 30-day period for filing a SAR would begin to run only when the suspect is identified. To make this point clear, the final rule inserts the word ''reportable'' and states that in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction, *i.e.*, a transaction that must be reported because the amount involved is greater than the appropriate reporting threshold. OTS has also reorganized this paragraph, to conform with the other Agencies' rules.

Section 563.180(d)(5) also requires an institution to notify law enforcement authorities immediately in the event of an on-going violation. The OTS wishes to clarify that immediate notification is limited to situations involving ongoing violations, for example, when a check kite or money laundering has been detected and may be continuing. It is not feasible, however, for the OTS to contemplate all of the possible circumstances in which it might be appropriate for a savings association or service corporation to immediately advise state and local law enforcement authorities. Savings associations and service corporations should use their best judgment regarding when to alert these authorities regarding on-going criminal offenses or suspicious activities that involve money laundering or violate the BSA.

Reports to state and local authorities (§ 563.180(d)(6))

The proposal encouraged savings associations and service corporations to file SARs with state and local law enforcement agencies when appropriate. Some commenters expressed the concerns that banking organizations and their institution-affiliated parties could be liable under Federal and state laws, such as the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*)(RFPA), for filing SARs with respect to conduct that is later found not to have been criminal, and 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) and, as discussed below, stated in new § 563.180(d)(13).

Exception (§ 563.180(d)(7))

Proposed § 563.180(d)(8), which set forth one exception to the SAR filing requirement, did not substantively change its predecessor provision. The OTS received no comments on this section and adopts it as proposed. The final rule, however, reverses the order of proposed paragraphs (d)(7) and (d)(8) and changes the caption of proposed paragraph (d)(8) from ''exemption'' to ''exception'', to conform with the other Agencies' rules.

Retention of records (§ 563.180(d)(8))

The proposal required an institution to retain a copy of the SAR and the original of any underlying documentation relating to the SAR for ten years. Many commenters expressed the view that the 10-year period for the retention of records was excessive, especially in light of the BSA's five-year record retention requirement, and recommended that the Agencies reduce the period to five years. The 10-year period in the proposed regulation would have continued the OTS's existing record retention requirement for criminal referral forms. However, in recognition of the potential burden of document retention on financial institutions, the OTS has reduced the record retention period to five years.

Many commenters asserted that the provision that required institutions to disclose supporting documentation to law enforcement agencies upon their request was either unclear or posed potential RFPA liability. Some therefore questioned whether law enforcement agencies would still need to subpoena relevant documents from a savings association or service corporation. The final regulation requires organizations 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 process normally associated with the provision of information to law enforcement agencies. This treatment of supporting documentation is not a substantive change from the current rule's requirement that supporting documentation be filed with each referral, since it only changes the timing of when an agency will have access to the supporting documentation, not the fact that the information is assembled and made available for law enforcement purposes. The Agencies therefore believe that the final rule's treatment does not give rise to RFPA liability.

Proposed § 563.180(d)(7) required the maintenance of supporting documentation in its original form. A number of comments noted that electronic storage of documents has become the rule rather than the exception, and that 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, this can include the electronic storage of original documentation related to the filing of a SAR. The OTS recognizes that a savings association or service corporation will not always have custody of the originals of documents and that some documents will not exist at the organization in paper form. In those cases, preservation of the best available evidentiary documents, for example, computer discs or photocopies, will be acceptable. This has been reflected in the final rule by allowing institutions to retain business record equivalents of supporting documentation.

Several commenters criticized as inconsistent and vague the proposed requirements that an institution maintain ''related'' documentation and make ''supporting'' documentation available to the law enforcement agencies upon request. One commenter questioned whether the OTS intended a substantive difference in meaning between these terms. As a substantive difference is not intended, the OTS has referred to ''supporting'' documentation in the final rule in stating both the maintenance and production requirements. The OTS believes that the use of the word ''supporting'' is more precise and limits the scope of the information which must be segregated and retained to information that would be relevant in proving the crime and identifying the individuals involved. The OTS expects that savings associations and service corporations will use their best judgment in determining the scope of the information to be retained. It is not feasible for the OTS to catalogue the precise types of information covered by this requirement, because the scope necessarily depends upon the facts of a particular case.

Notification to the board of directors (§ 563.180(d)(9))

The proposal reduced the burden on boards of directors to review criminal referrals by allowing the management of an institution to notify either the board of directors or a committee of directors or executive officers designated by the board to receive notice of the filing of a SAR. The proposal prohibited a savings association or service corporation from giving notice of a SAR filing to any director or officer who is a suspect with regard to such filing. The proposal also required management to notify all directors, except the suspect, when an executive officer or director is a suspect.

Most commenters supported this provision of the proposal. One commenter, however, questioned whether the provision that required prompt notification of the board of directors required notice prior to the next board meeting. This commenter said that a requirement to provide notice between board meetings would be more burdensome than the current rule, which requires notification not later than the next board meeting.

The OTS did not intend this change to be more burdensome than the current rule and does not construe the requirement for prompt notification to mean that notice must necessarily be provided before the next board meeting. The final rule is intended to be flexible. For example, the OTS expects that, with respect to serious crimes, the appointed committee may consider it appropriate to make more immediate disclosure to the full board. The final rule does not dictate the content of the board 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.

Compliance (§ 563.180(d)(10))

The proposal included a new provision stating that the failure to file a SAR in accordance with the regulation and instructions may result in supervisory actions, including enforcement actions. The OTS received no comments on this section and adopts it as proposed.

Obtaining SARs (§ 563.180(d)(11))

The proposal added § 563.180(d)(11), which provides savings associations and service corporations with information on how to obtain SARs. The OTS received no comments on this section and adopts it as proposed.

Confidentiality of SARs (§ 563.180(d)(12))

The proposal contained a new provision preserving the confidential nature of SARs and the information contained in SARs. One commenter correctly noted that the proposed regulation is unclear as to whether the confidential treatment applies only to the information contained on the SAR itself, or also extends to the ''supporting'' documentation. The OTS takes the position that only the SAR and the information on the SAR are confidential under 31 U.S.C. 5318(g). However, as stated below in the discussion of new § 563.180(d)(13), the safe harbor provisions of 31 U.S.C. 5318(g) for disclosure of information to law enforcement agencies apply to both SARs and the supporting documentation.

The OTS was encouraged to adopt regulations that would make SARs undiscoverable in civil litigation, in order to avoid situations in which a savings association or service corporation 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 OTS's rules. In the opinion of the OTS, 31 U.S.C. 5318(g) precludes the disclosure of SARs in discovery.[3] However, the final rule requires an institution that receives a subpoena or other request for a SAR to notify the OTS so that the OTS can take appropriate action. This notification requirement is consistent with 12 CFR 510.5.

Safe harbor (§ 563.180(d)(13))

Several commenters expressed concern that disclosure of SARs and supporting documentation to law enforcement agencies could give rise to potential RFPA liability. In particular, the commenters questioned the permissibility of filing SARs with state agencies or in situations in which the amount of a transaction falls below the appropriate minimum threshold for the known or suspected criminal conduct, or when a transaction involving money laundering or the BSA does not meet the requisite standards or thresholds. Commenters questioned the applicability of the safe harbor provisions of 31 U.S.C. 5318(g) to mandatory and voluntary filings alike.[4]

The Agencies are of the opinion that the broad safe harbor protections of 31 U.S.C. 5318(g)(3) include the reporting of known or suspected criminal offenses or suspicious activities with state and local law enforcement authorities, as well as with the Agencies and FinCEN, regardless of whether such reports are filed pursuant to the mandatory requirements of the OTS's regulations or are voluntary. The OTS takes the same position with regard to the disclosure of

[3] Section 5318(g)(2) prohibits financial institutions and directors, officers, employees, or agents of financial institutions from notifying any person involved in a suspicious transaction that the transaction has been reported.

[4] Section 5318(g)(3) states that a financial institution will not be held liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any state for making a disclosure of any possible violation of law or regulation.

supporting documentation. The final rule adds new § 563.180(d)(13), which states this position.

Comments on information sharing

Comments to other Agencies suggested that 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.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS 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 reporting crimes and suspicious activities and has no material impact on savings associations and service corporations, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OTS has determined that this document is not a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this final rule were submitted to the Office of Management and Budget for review at the proposed rule stage in accordance with the Paperwork Reduction Act of 1995 (PRA) and were approved. Comments on the collection of information should be sent to the Office of Management and Budget (OMB), Paperwork Reduction Project (1550–0003), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting and recordkeeping requirements in this final rule are found in 12 CFR 563.180(d). The collection of information is necessary for the proper performance of the OTS's functions and the information has practical utility. The information is needed to inform appropriate law enforcement agencies of known or suspected criminal or suspicious activities that take place at or were perpetrated against financial institutions.

The Unfunded Mandates Reform Act of 1995

The OTS has determined that this final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the Unfunded Mandates Reform Act does not apply.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Authority and Issuance

For the reasons set out in the preamble, part 563 of chapter V of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

2. Section 563.180 is amended by revising the section heading and paragraph (d) to read as follows:

§ 563.180 Suspicious Activity Reports and other reports and statements.

* * * * *

(d) *Suspicious Activity Reports*—(1) *Purpose and scope.* This paragraph (d) ensures that savings associations and service corporations file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act.

(2) *Definitions.* For the purposes of this paragraph (d):

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

(ii) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(9)).

(iii) *SAR* means a Suspicious Activity Report on the form prescribed by the OTS.

(3) *SARs required.* A savings association or service corporation shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions, by sending a completed SAR to FinCEN in the following circumstances:

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

(ii) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation and involving or aggregating $5,000 or more in funds or other assets, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation or series of criminal violations, or that it was used to facilitate a criminal transaction, and it 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 drivers' license or social security numbers, addresses and telephone numbers, must be reported.

(iii) *Violations aggregating $25,000 or more regardless of potential suspects.* Whenever the savings association or service corporation detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the savings association or service corporation or involving a transaction or transactions conducted through the savings association or service corporation and involving or aggregating $25,000 or more in funds or other assets, where the savings association or service corporation believes that it was either an actual or potential victim of a criminal violation or series of criminal violations, or that it was used to

facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(iv) *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 (d)(3)(iv) 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 savings association or service corporation and involving or aggregating $5,000 or more in funds or other assets, if the savings association or service corporation knows, suspects, or has reason to suspect that:

(A) 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 law or regulation or to avoid any transaction reporting requirement under Federal law;

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

(C) The transaction 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 institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(4) *Service corporations.* When a service corporation is required to file a SAR under paragraph (d)(3) of this section, either the service corporation or a savings association that wholly or partially owns the service corporation may file the SAR.

(5) *Time for reporting.* A savings association or service corporation is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association or service corporation may delay filing a SAR 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. In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the savings association or service corporation shall immediately notify, by telephone, an appropriate law enforcement authority and the OTS in addition to filing a timely SAR.

(6) *Reports to state and local authorities.* A savings association or service corporation is encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(7) *Exception.* A savings association or service corporation need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(8) *Retention of records.* A savings association or service corporation shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the savings association or service corporation as such, and shall be deemed to have been filed with the SAR. A savings association or service corporation shall make all supporting documentation available to appropriate law enforcement agencies upon request.

(9) *Notification to board of directors*—(i) *Generally.* Whenever a savings association (or a service corporation in which the savings association has an ownership interest) files a SAR pursuant to this paragraph (d), the management of the savings association or service corporation shall promptly notify its board of directors, or a committee of directors or executive officers designated by the board of directors to receive notice.

(ii) *Suspect is a director or executive officer.* If the savings association or service corporation files a SAR pursuant to this paragraph (d) and the suspect is a director or executive officer, the savings association or service corporation may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects.

(10) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the savings association or service corporation, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(11) *Obtaining SARs.* A savings association or service corporation may obtain SARs and the instructions from the appropriate OTS Regional Office listed in 12 CFR 516.1(b).

(12) *Confidentiality of SARs.* SARs are confidential. Any institution or person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (d), applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both, and shall notify the OTS.

(13) *Safe harbor.* The safe harbor provision of 31 U.S.C. 5318(g), which exempts any financial institution 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, covers 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 paragraph (d), or are filed on a voluntary basis.

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Dated: February 5, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–3110 Filed 2–15–96; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28461; Amdt. No. 1710]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to