

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 should immediately notify by telephone an appropriate law enforcement authority in addition to filing 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 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, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity. This exception does not apply to a report of a violation of the BSA and its implementing regulations.

(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.

(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, any other appropriate law enforcement agency or regulatory

agency, and for purposes of paragraph (g) of this section, to any registered futures association or registered entity, 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 or registered entity, 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 shall be made available to the CFTC and any registered futures association or registered entity examining an FCM or IB-C for compliance with the requirements of this section. 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 [date that is 180 days after the publication in the **Federal Register** of a final rule based on this notice of proposed rulemaking].

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;

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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.

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(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.

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Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN152-1b; FRL-7481-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).