

(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.

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Dated: November 13, 2003.

**William F. Baity,**

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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