

which had been superseded by the new Standards. See 59 FR 37157.

OGE has not yet issued new regulations implementing 18 U.S.C. 207, as amended by the Ethics Reform of 1989, pursuant to its authority under that Act and the Executive Orders 12674 and 12731. However, OGE indicated in its notice of the new Standards that it expects to do so. Further, OGE has since advised the Agency that to the extent the NLRB's current post-employment regulations set forth in sections 102.119 and 102.120 if the Board's rules are more restrictive than 18 U.S.C. 207, as amended by the Ethics Reform Act of 1989, they are unenforceable as to any employees leaving the Agency on or after January 1, 1991, the effective date of the 1989 amendments to that statute. Accordingly, the Board is repealing those regulations, and substituting therefor a reference to 18 U.S.C. 207.

### Regulatory Requirements

This rule merely conforms current regulations to statutory requirements, affects only former Agency employees, relates solely to agency organization, procedure and practice, and will not have a significant impact on a substantial number of small businesses or impose any information collecting requirements. Accordingly, the Agency finds that prior notice and comment is not required for these rules and that good cause exists for waiving the general requirement of delaying the effective date under the Administrative Procedure Act (5 U.S.C. 553), and that the rules are not subject to the Regulatory Flexibility Act (5 U.S.C. 601), Small Business Regulatory Enforcement Act (5 U.S.C. 801), Paperwork Reduction Act (44 U.S.C. 3501), or Executive Order 12866.

### List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For reasons set forth above, 29 CFR part 102 is amended as follows:

### PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 103.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 and 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Subpart L is revised to read as follows:

### Subpart L—Post-employment Restrictions on Activities by Former Officers and Employees

#### § 102.119 Post-employee restrictions on activities by former Officers and employees.

Former officers and employees of the Agency who were attached to any of its Regional Offices or the Washington staff are subject to the applicable post-employment restrictions imposed by 18 U.S.C. 207. Guidance concerning those restrictions may be obtained from the Designated Agency Ethics Officer and any applicable regulations issued by the Office of Government Ethics.

Dated, Washington, D.C., October 28, 1997.

By direction of the Board.

**John J. Toner,**

*Executive Secretary.*

[FR Doc. 97-28926 Filed 10-30-97; 8:45 am]

BILLING CODE 7545-01-M

### DEPARTMENT OF THE TREASURY

#### Departmental Offices

#### 31 CFR Part 1

#### Privacy Act of 1974; Implementation

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final Rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to 31 CFR 1.36 to exempt a new system of records, the Suspicious Activity Reporting System (the SAR System), Treasury/DO.212, from certain provisions of the Privacy Act.

**EFFECTIVE DATE:** October 31, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Stephen R. Kroll, Legal Counsel, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, (703) 905-3590.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury published in the **Federal Register**, at 62 FR 14376, March 26, 1997, a proposed rule exempting the Suspicious Activity Reporting System (the SAR System), Treasury/DO.212, from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). A notice of this proposed new system of records was also published in the **Federal Register**, at 62 FR 14532, March 26, 1997.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system

of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision."

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section."

The notice, proposing that the SAR System of records be exempted from sections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Privacy Act, requested that public comments be sent to FinCEN no later than April 25, 1997. FinCEN received one comment. The commenter, a banking trade association, noted that the proposed exemption "is appropriate." Accordingly, the Department of the Treasury is hereby giving notice that its proposed rule, exempting the SAR System from the above referenced provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and the authority of 31 CFR 1.23(c), is being adopted as a final rule without change, except for minor corrections in paragraphs (k)(3) and (k)(4), pertaining to cross references within paragraph (k) of the rule. The reasons for exempting the system of records from the above referenced provisions of the Privacy Act are set forth in the rule.

The Department of the Treasury has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, for the reasons set forth in the

preamble to the notice of proposed rulemaking, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Department of the Treasury has determined that this rule will not impose new recordkeeping, application, reporting, or other types of information collection requirements.

#### List of Subjects in 31 CFR Part 1

Privacy.

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

#### PART 1—[AMENDED]

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

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

2. Section 1.36 of subpart C is amended by revising the heading "Office of the Assistant Secretary for Law Enforcement" to read "Assistant Secretary (Enforcement)" and under Financial Crimes Enforcement Network by redesignating paragraph (g) as (l) and by adding paragraphs (g) through (k) to read as follows:

#### § 1.36 Systems exempt in whole or in part from the provisions of 5 U.S.C. 552a and this part.

\* \* \* \* \*

#### ASSISTANT SECRETARY (ENFORCEMENT) Financial Crimes Enforcement Network

\* \* \* \* \*

(g) *In general.* The Assistant Secretary (Enforcement) exempts the system of records entitled "Suspicious Activity Reporting System" (Treasury/DO .212) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(h) *Authority.* 5 U.S.C. 552a(j) and (k); 31 CFR 1.23(c).

(i) *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary (Enforcement) hereby exempts the Suspicious Activity Reporting System (SAR System) of records, maintained by FinCEN, an office reporting to the Assistant Secretary (Enforcement), from the following provisions of the Privacy Act of 1974:

5 U.S.C. 552a(c)(3) and (4);  
5 U.S.C. 552a(d)(1), (2), (3), and (4);  
5 U.S.C. 552a(e)(1), (2), and (3);  
5 U.S.C. 552a(e)(4)(G), (H), and (I);  
5 U.S.C. 552a(e)(5) and (8);  
5 U.S.C. 552a(f); and  
5 U.S.C. 552a(g).

(j) *Specific exemptions under 5 U.S.C. 552a(k)(2).* To the extent that the

exemption under 5 U.S.C. 552a(j)(2) does not apply to the SAR System of records, the Assistant Secretary (Enforcement) hereby exempts the SAR System of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3);  
5 U.S.C. 552a(d)(1), (2), (3), and (4);  
5 U.S.C. 552a(e)(1);  
5 U.S.C. 552a(e)(4)(G), (H), and (I); and  
5 U.S.C. 552a(f).

(k) *Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the SAR System would allow individuals to learn whether they have been identified as suspects or possible subjects of investigation. Access by individuals to such knowledge would seriously hinder the law enforcement purposes that the SAR System is created to serve, because individuals involved in activities that are violations of law could:

- (i) Take steps to avoid detection;
- (ii) Inform associates that an investigation is in progress;
- (iii) Learn the nature of the investigation;
- (iv) Learn whether they are only suspects or identified as violators of law;
- (v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records, or
- (vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (f)(3) and (f)(5) grant individuals access to records containing information about them. The application of these provisions to the SAR System would compromise the ability of the component agencies of the SAR System to use the information effectively for purposes of law enforcement.

(i) Permitting access to records contained in the SAR System would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension, because they could:

- (A) Discover the facts that would form the basis of an arrest;
- (B) Destroy or alter evidence of criminal conduct that would form the basis of their arrest, and
- (C) Delay or change the commission of a crime that was about to be discovered by investigators.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which

could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(3) 5 U.S.C. 552a(d)(2), (d)(3) and (d)(4), (e)(4)(H) and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record or note the disputed portion of the record and, if the agency refuses to amend the record, to provide a copy of the individual's statement of disagreement with the agency's refusal, to persons or other agencies to whom the record is thereafter disclosed. Because these provisions depend on the individual's having access to his or her records, and since these rules exempt the SAR System from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (k)(2), these provisions do not apply to the SAR System.

(4) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency, if an accounting of the disclosure was made. Because this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and because these rules exempt the SAR System from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set forth in paragraphs (k)(2) and (3), this provision does not apply to the SAR System.

(5) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of any disclosures of records required by 5 U.S.C. 552a(c)(1) available to the individual named in the record upon his or her request. The accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the effective use of information collected in the SAR System. Making an accounting of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical

areas, or by destroying or concealing evidence that would form the basis for arrest.

(ii) Moreover, providing an accounting to the subjects of investigations would alert them to the fact that FinCEN has information regarding possible criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the information-gathering and analysis systems of FinCEN, the Federal Supervisory Agencies and other SAR System Users and permit violators to take steps to avoid detection or apprehension.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the SAR System could compromise FinCEN's and the Federal Supervisory Agencies' ability to provide useful information to law enforcement agencies, because revealing sources for the information could:

(i) Disclose investigative techniques and procedures,

(ii) Result in threats or reprisals against informers by the subjects of investigations, and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The application of this provision to the SAR System could impair the effectiveness of law enforcement because in many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary, upon further evaluation or upon collation with information developed subsequently, often may prove helpful to an investigation.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the SAR System would impair FinCEN's ability to collect, analyze and disseminate to System Users investigative or enforcement information. The SAR System is

designed to house information about known or suspected criminal activities or suspicious transactions that has been collected and reported by financial institutions, or their examiners or other enforcement or supervisory officials. It is not feasible to rely upon the subject of an investigation to supply information. An attempt to obtain information from the subject of any investigation would alert that individual to the existence of an investigation, providing an opportunity to conceal criminal activity and avoid apprehension. Further, with respect to the initial SAR, 31 U.S.C. § 5318(g)(2) specifically prohibits financial institutions making such reports from notifying any participant in the transaction that a report has been made.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The application of these provisions to the SAR System would compromise the ability of the component agencies of the SAR System to use the information effectively for purposes of law enforcement.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Application of this provision to the SAR System would hinder the collection and dissemination of information. Because Suspicious Activity Reports are filed by financial institutions with respect to known or suspected violations of law or suspicious activities, it is not possible at the time of collection for the agencies that use the SAR System to determine that the information in such records is accurate, relevant, timely and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. Application of these requirements to the SAR System would prematurely reveal the existence of an

ongoing investigation to the subject of investigation where there is need to keep the existence of the investigation secret. It would render ineffective 31 U.S.C. § 5318(g)(2), which prohibits financial institutions and their officers, employees and agents from disclosing to any person involved in a transaction that a SAR has been filed.

(12) 5 U.S.C. 552a(g) provides an individual with civil remedies when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when any determination relating to an individual is based on records that are not accurate, relevant, timely and complete, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. Because the SAR System is exempt from these provisions it follows that civil remedies for failure to comply with these provisions are not appropriate.

\* \* \* \* \*

Dated: September 26, 1997.

**Alex Rodriguez,**

*Deputy Assistant Secretary (Administration)*

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA12

#### **Financial Crimes Enforcement Network; Bank Secrecy Act Regulations; Exemption From the Requirement to Report Transactions in Currency—Phase II; Open Working Meeting**

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Meeting on proposed regulations.

**SUMMARY:** The Financial Crimes Enforcement Network ("FinCEN") will hold a working meeting to give interested persons the opportunity to discuss with Treasury officials issues regarding proposed Bank Secrecy Act regulations relating to exemptions from the requirement to report transactions in currency in excess of \$10,000.

**DATES:** November 7, 1997, 9:00 a.m. to 12 noon.

**ADDRESSES:** Renaissance Washington D.C. Hotel, Renaissance West Salon, 999 9th Street, NW, Washington, D.C. 20001.

**FOR FURTHER INFORMATION CONTACT:** Charles Klingman, Financial Institutions