occurring by adoption of a regulatory approval system?

2. Traditionally, the NRC staff has used a variety of documents such as the NRC Standard Review Plan, NRC Regulatory Guides, and associated industry consensus standards to delineate what QA program elements are necessary to meet Appendix B. Should these standards continue to be used to define acceptable QA programs? Should a licensee QA program change that constitutes a departure from a commitment to comply with a specific regulatory position be considered of sufficient importance that the NRC should be notified in advance of implementation? How would such changes be evaluated under the petitioner's proposed criterion?

3. The NRC has allowed licensees to relocate administrative controls for review and audit functions from the technical specifications. Examples include details on safety review committees, audits, and technical review functions. These have been relocated to the QA program based on the existing change control provisions in § 50.54(a). Would it be appropriate for activities such as safety review committees, independent technical review groups, and audits to be controlled so that only licensee changes exceeding the threshold of an unreviewed safety question (USQ) be reported to the NRC for pre-review before implementation? What kind of changes to a licensee's QA program would constitute a USQ? Assuming that the USQ should/could be applied, does not the use of § 50.59 effectively negate the administrative and regulatory advantage of removing this information from technical specifications (because both technical specification changes and USQs are subject to an opportunity for hearing)? If the revised QA change control mechanism is adopted should aspects of the review and audit functions remain in the QA program or be relocated elsewhere to ensure appropriate NRC review of changes prior to implementation?

4. Are there alternative thresholds for determining whether a licensee must submit their QA program changes for advance review in lieu of the USQ threshold? Provide a technical and/or policy explanation as to why this or any other threshold would be more appropriate.

5. The NRC Regulatory Review Group (RRG) examined change control mechanisms in § 50.54 for control of licensee plans and programs (quality assurance, security, and emergency preparedness). The RRG recommended that licensees should have greater flexibility to make changes in their programs without having to receive prior NRC approval. Currently, QA program changes that ''reduce the commitments in the program'' are submitted for NRC staff review before implementation. Similarly, security plan changes that ''decrease the effectiveness'' are submitted for staff review before implementation. Should the staff consider a revision to § 50.54(a) to set the threshold for reporting QA program changes for NRC pre-review that constitute a decrease in effectiveness? Would a ''decrease in effectiveness'' standard in § 50.54(a) provide a sufficiently flexible and technically reasonable criteria for licensees to report QA program changes to the staff before implementation?

6. Should the NRC staff consider retaining the current language of § 50.54(a) and to define explicit guidance or identify examples on what types of QA program changes would be considered to ''reduce the commitments in the program''? By developing this guidance could sufficient flexibility be afforded to licensees to make changes in their QA program without having to undergo a pre-review by the staff?

7. The petition proposes to apply a § 50.59 process to evaluate QA program changes to determine the necessity for pre-review by the staff. Industry guidance for § 50.59 exists within NSAC–125 ''Guidelines for § 50.59 Safety Evaluations.'' NSAC–125 appears to contain little relevant guidance that would be helpful for determining whether QA programmatic changes would constitute a USQ that requires NRC pre-review of the change. In particular, Section 4.2 of NSAC–125 deals principally with evaluating changes associated with nuclear plant equipment and not programmatic controls. Is existing guidance for processing 10 CFR 50.59 evaluations sufficient for evaluating QA program changes? What factors or aspects of the existing industry guidance would need to be supplemented? What types of QA program changes would be necessary to report to the NRC if the current § 50.59 criteria were applied to QA program changes? What are examples of QA program changes that should be considered as meeting the USQ threshold?

8. Would protection of the public health and safety be enhanced if the petition were granted, and if so, in what way? What licensee and NRC costs would be reduced, or increased, if the petition were granted?

Dated at Rockville, Maryland, this 7th day of September, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–22705 Filed 9–13–95; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AB63

Suspicious Activity Reporting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to revise and restructure its regulation on the reporting of suspicious activities by insured state nonmember banks, including the reporting of suspicious financial transactions, such as suspected violations of the Bank Secrecy Act (BSA). This proposal implements a new interagency suspicious activity referral process and updates and clarifies various portions of the underlying reporting regulation. The proposal also reduces substantially the burden on banks in reporting suspicious activities while enhancing access to such information by both the federal law enforcement and the federal financial institutions supervisory agencies, thus meeting the goals of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F–402, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [Fax number: 202/898–3838; (Internet address: comments@fdic.gov] Comments will be available for inspection at the Corporation's Reading Room, Room 7118, 550 17th Street NW., Washington, DC between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Chief, Special Activities Section, (202/898–6750), or Gregory Gore, Counsel, (202) 898–7109.

SUPPLEMENTARY INFORMATION:

Background

The federal financial institutions supervisory agencies (the Agencies)[1] and the Department of the Treasury (Treasury), through its Financial Crimes Enforcement Network (FinCEN), are responsible for ensuring that financial institutions apprise federal law enforcement authorities of any known or suspected violation of a federal criminal statute and of any suspicious financial transaction. Suspicious financial transactions, which will be the subject of regulations and other guidance to be issued by Treasury, can include transactions that the bank suspects involved funds derived from illicit activities, were conducted for the purpose of hiding or disguising funds from illicit activity, otherwise violated the money laundering statutes (18 U.S.C. 1956 and 1957), were potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (BSA) (31 U.S.C. 5311 through 5330), or transactions the bank believes were suspicious for any other reason.

Fraud, abusive insider transactions, check kiting schemes, money laundering, and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial industry. The Agencies and federal law enforcement agencies need to receive timely and detailed information regarding suspected criminal activity to determine whether investigations, administrative actions, or criminal prosecutions are warranted.

An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many federal agencies, including the Agencies and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes cooperation among the Agencies and federal and state law enforcement agencies, and improves the federal government's response to white collar crime in financial institutions. It is under the auspices of the BFWG that the revisions to this regulation and the reporting requirements are being made.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on banks, and to eliminate confusion associated with the current duplicative reporting of suspicious financial transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to revise the procedures used by financial institutions for reporting suspicious financial transactions. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious financial transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and FinCEN developed a new interagency form for reporting known or suspected federal criminal law violations and suspicious financial transactions. The new report is designated the Suspicious Activity Report (SAR). The SAR is a simplified and shortened version of its predecessors. The new referral process and the SAR reduce the burden on banks for reporting known or suspected violations and suspicious financial transactions. The agencies anticipate the new process will be instituted by October, 1995.

Proposal

The FDIC proposes to revise 12 CFR part 353 by updating and clarifying the current rule governing the filing of criminal referral reports; expanding the rule to cover suspicious financial transactions; implementing the new SAR; and simplifying reporting requirements. This action should improve reporting of known or suspected violations and suspicious financial transactions relating to federally insured financial institutions while providing uniform data for entry into a new interagency computer database. The FDIC expects that each of the other Agencies will be making substantially similar changes contemporaneously.

The principal proposed changes to the current criminal referral reporting rules include several notable changes. They include: (i) Raising the mandatory reporting thresholds for criminal offenses, thereby reducing banks' reporting burdens; (ii) filing only one form with a single repository, rather than submitting multiple copies to several federal law enforcement and banking agencies, thereby further reducing reporting burdens; and (iii) clarifying the criminal referral and reporting requirements of the Agencies and Treasury associated with suspicious financial transactions, thereby eliminating confusion concerning the filing of referrals related to suspicious financial transactions of less than $10,000 and eliminating duplicative referrals.

The proposal also involves the manner in which financial institutions file a SAR. In following the instructions on a SAR, banks may file the referral form in several ways, including submitting an original form or a photocopy or filing by magnetic means, such as by a computer disk.

The Agencies, working with FinCEN, are developing computer software to assist banks in preparing and filing SARs. The software will allow a bank to complete a SAR, to save the SAR on its computers, and to print a hard copy of the SAR for its own records. The computer software will also enable a bank to file a SAR using various forms of magnetic media, such as computer disk or magnetic tape. The FDIC will make the software available to all its supervised institutions free of charge.

Part 353—Suspicious Activity Reports

The title of the regulation has been changed to conform to the name on the SAR. The current part is titled ''Reports of Apparent Crimes Affecting Insured Nonmember Banks''. The proposed heading, ''Suspicious Activity Reports'', conforms to the name of the report.

Section 353.1 Purpose and Scope

The proposal restructures the current § 353.0, redesignates it as § 353.1, and clarifies the scope of the current rule. Under the proposal, the SAR replaces the various criminal referral forms that the Agencies currently require banks to file. Also, a bank files a SAR to report a suspicious financial transaction. Presently, many banks are confused over whether to file a CTR or a criminal referral form when a suspicious financial transaction occurs, and often needlessly file both forms or the wrong form.[2]

Combining suspicious financial transaction reporting and criminal referral reporting should reduce confusion, increase the accuracy and efficiency of reporting, and reduce the burden on banks in reporting known or

[1] The federal financial institutions supervisory agencies are the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

[2] The BSA requires all financial institutions to file CTRs in accordance with the Department of the Treasury's implementing regulations (31 CFR part 103). Part 103 requires a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the bank, under these new requirements, will file both a CTR (reporting the currency transaction) and a SAR (reporting the suspicious criminal aspect of the transaction). If a currency transaction equals or is below $10,000 but is suspicious, the bank will file only a SAR.

suspected violations, including suspicious financial transactions.

Section 353.2 Definitions

Proposed new § 353.2 defines the following terms: ''FinCEN'', ''institution-affiliated party'', and ''known or suspected violation''. The definitions should make the rule easier to interpret and apply.

Section 353.3 Reports and Records

Proposed § 353.3, which replaces and restructures current § 353.1, clarifies and expands the provision that requires a bank to file a completed SAR. This provision raises the dollar thresholds that trigger a filing requirement. It also modifies the scope of events that a bank must report by using the term ''known or suspected violation,'' which is defined at § 353.2(c), and by requiring that a bank file a SAR to report a suspicious financial transaction.

Under the current rule, the FDIC requires a bank to file a criminal referral form with many different federal agencies. The proposal requires a bank to file only a single SAR at one location, rather than the multiple copies of the criminal referral form that must now be filed with various federal agencies.

Under proposed § 353.3, a bank effectively files a SAR with all appropriate federal law enforcement agencies by sending a single copy of the SAR to FinCEN, whose address will be printed on the SAR.

FinCEN will input the information contained on the SARs into a newly created database that FinCEN will maintain. This process meets the regulatory requirement that a bank refer any known or suspected criminal violation to the various federal law enforcement agencies. The information is made available on computer to the appropriate law enforcement and supervisory agencies as quickly as possible. The database will enhance federal law enforcement and supervisory agencies' ability to track, investigate, and prosecute, criminally, civilly, and administratively, individuals suspected of violating federal criminal law. This change will reduce the filing burdens of banks.

The proposal modifies current § 353.1(a)(2), which requires reporting of known or suspected criminal activity when a bank has a substantial basis for identifying a non-insider suspect where bank funds or other assets involve or aggregate $1,000 or more. Proposed § 353.3(a)(2), which replaces current § 353.1(a)(2), raises the reporting threshold to $5,000, thereby reducing the reporting burden on banks.

The proposal also modifies current § 353.1(a)(3), which requires banks to report any known or suspected criminal violation involving $5,000 or more where the bank has no substantial basis for identifying a suspect. Specifically, proposed § 353.3(a)(3), which replaces current § 353.1(a)(3), raises the dollar reporting threshold from $5,000 to $25,000, thereby reducing the reporting burden on banks.

Proposed § 353.3(a)(4) clarifies the reporting requirement for any financial transaction, regardless of the dollar amount, that: (1) the bank suspects involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957); (2) the bank suspects was potentially designed to evade the reporting or recordkeeping requirements of the BSA (31 U.S.C. 5311 through 5330); or (3) the bank believes to be suspicious for any reason.

Section 353.3(b) Time for Reporting

Proposed § 353.3(b), which replaces current § 353.1(b), sets forth the time requirements a bank must meet when filing a SAR. The proposal clarifies the reporting requirement in the event a suspect or group of suspects is not immediately identified. The proposal does not substantively change the current requirements.

Section 353.3(c) Reports to State and Local Authorities

No changes are being made to the current § 353.1(c), except to redesignate it as 353.3(c).

Section 353.3(d) Exemptions

No changes are being made to the current 353.1(d), other than to redesignate it as 353.3(d) and to delete the reference to § 326.3(a)(2)(i) of this chapter.

Section 353.3(e) Retention of Records

Proposed § 353.3(e) requires a bank to retain a copy of the SAR and the original of any related documentation relating to a SAR for a period of ten years. This time frame corresponds with the statute of limitations for most federal criminal statutes involving financial institutions. The current rule is silent on this issue.

The proposed 353.3(e) clarifies the requirement that banks make all supporting documentation available to appropriate law enforcement agencies upon request. The proposal requires the supporting documentation be identified and treated as filed with the SAR. This approach ensures federal law enforcement agencies and the Agencies, upon request, have access to any documentation necessary to prosecute a violation or pursue an administrative action by requiring banks to preserve underlying documentation for ten years.

Section 353.3(f) Notification to the Board of Directors

Current § 353.1(f) requires notification regarding the filing of a SAR to an insured state nonmember bank's board of directors by the bank's management. To reduce burdens on the boards of directors of banks, especially those large banks that file many SARs, the proposal recognizes that the required notification may be made to a committee of the board.

Section 353.3(g) Confidentiality of SARs

FDIC proposes to add a new paragraph relating to the confidentiality of a SAR. Proposed § 353.3(g) states that a SAR and the information contained in a SAR are confidential, and an insured state nonmember bank should decline to produce a SAR citing this regulation and applicable law (31 U.S.C. 5318(g)), or both.

Comments

The FDIC invites public comment on all aspects of this proposal.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal primarily reorganizes the process for making criminal referrals and has no material impact on banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This proposed rule would revise a collection of information that is currently approved by the Office of Management and Budget (OMB) under control number 3064–0077. The revisions raise the reporting thresholds and will permit reporting institutions to use a simplified, shorter form; to file one form only; and to eliminate the submission of supporting documentation with a report. These revisions have been submitted to OMB for review and approval in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The estimated average burden associated with the collection of information contained in a SAR is approximately .6 hours per respondent.

The burden per respondent will vary depending on the nature of the suspicious activity being reported.

Estimated Number of Respondents: 6,500.

Estimated Total Annual Burden Hours: 3,900.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F–400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0077), Washington, DC 20503.

List of Subjects in 12 CFR Part 353

Banks, banking, Crime, Currency, Insider abuse, Money laundering, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 353 is proposed to be revised to read as follows:

PART 353—SUSPICIOUS ACTIVITY REPORTS

Sec.
353.1 Purpose and scope.
353.2 Definitions.
353.3 Reports and records.

Authority: 12 U.S.C. 1818, 1819.

§ 353.1 Purpose and scope.

The purpose of this part is to ensure that insured state nonmember banks file a Suspicious Activity Report when they detect a known or suspected violation of federal law or suspicious financial transaction. This part applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

§ 353.2 Definitions.

For the purposes of this part:

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

(b) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

(c) *Known or suspected violation* means any matter for which there is a basis to believe that a violation of a federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, and there is a basis to believe that a financial institution was an actual or potential victim of the criminal violation or was used to facilitate the criminal violation.

§ 353.3 Reports and records.

(a) *Suspicious activity reports required.* A bank shall file a suspicious activity report with the appropriate federal law enforcement agencies in accordance with the form's instructions, by transmitting a completed suspicious activity report to FinCEN in the following circumstances:

(1) Whenever the bank detects a known or suspected violation of federal criminal law and has a substantial basis to believe that one of its directors, officers, employees, agents, or other institution-affiliated parties committed or aided in the commission of the violation;

(2) Whenever the bank detects a known or suspected violation of federal criminal law, involving or aggregating $5,000 or more (before reimbursement or recovery), and the bank has a substantial basis for identifying a possible suspect or group of suspects;

(3) Whenever the bank detects a known or suspected violation of federal criminal law, involving or aggregating $25,000 or more (before reimbursement or recovery), and the bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Whenever the bank detects any financial transaction conducted, or attempted, at the bank involving funds derived from illicit activity or for the purpose of hiding or disguising funds from illicit activities, or for the possible violation or evasion of the Bank Secrecy Act reporting and/or recordkeeping requirements. A suspicious activity report must be filed for all instances where money laundering is suspected or where the bank believes that the transaction was suspicious for any reason, regardless of the identification of a potential suspect or the amount involved in the violation.

(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 an act described in paragraph (a) of this section. If no suspect was identified on the date of detection of an act triggering the filing, a bank may delay filing a suspicious activity report for an additional 30 calendar days after the identification of a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of detecting a known or suspected violation.

(2) In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the bank shall immediately notify by telephone, or other expeditious means, the appropriate law enforcement agency 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, burglary or larceny, 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 originals of any related documentation for a period of ten years from the date of filing the suspicious activity report. A bank shall make all supporting documentation available to appropriate law enforcement agencies upon request. Supporting documentation shall be identified and treated as filed with the suspicious activity report.

(f) *Notification to board of directors.* The management of the bank shall promptly notify its board of directors, or a designated 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 person subpoenaed or otherwise requested to disclose a suspicious activity report or the information contained in a suspicious activity report shall decline to produce the information citing this part, applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both.

By Order of the Board of Directors.

Dated at Washington, DC, this 6th day of September, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–22750 Filed 9–13–95; 8:45 am]

BILLING CODE 6714–01–P