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) conducted or attempted by, at or through the national 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 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 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.

(d) *Time for reporting.* A national bank is required to file a SAR no later than 30 calendar days after the date of the 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 national bank 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 financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the OCC in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* National banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.* (1) A national bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A national bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Retention of records.* A national bank 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 bank as such, and shall be deemed to have been filed with the SAR. A national bank shall make all supporting documentation available to appropriate law enforcement agencies upon request.

(h) *Notification to board of directors*—(1) *Generally.* Whenever a national bank files a SAR pursuant to this section, the management of the bank shall promptly notify its board of directors, or a committee of directors or executive officers designated by the board of directors to receive notice.

(2) *Suspect is a director or executive officer.* If the bank files a SAR pursuant to paragraph (c) of this section and the suspect is a director or executive officer, the bank may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects.

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

(j) *Obtaining SARs.* A national bank may obtain SARs and the Instructions from the appropriate OCC District Office listed in 12 CFR part 4.

(k) *Confidentiality of SARs.* SARs are confidential. Any national bank 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 section, applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both, and shall notify the OCC.

(l) *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 required to be filed pursuant to this section or are filed on a voluntary basis.

Dated: January 30, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–2246 Filed 2–2–96; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211 and 225

[Regulations H, K and Y; Docket No. R–0885]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Control; Reports of Suspicious Activities Under Bank Secrecy Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its regulations on the reporting of known or suspected criminal and suspicious activities by the domestic and foreign banking organizations supervised by the Board. This final rule streamlines reporting requirements by providing that such an organization file a new Suspicious Activity Report (SAR) with the Board and the appropriate federal law enforcement agencies by sending a SAR 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 it suspects involves money laundering or violates the Bank Secrecy Act (BSA).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, (202) 452–2620, Richard A. Small, Special Counsel, Division of Banking Supervision and Regulation, (202) 452–5235, or Mary Frances Monroe, Senior Attorney, Division of Banking Supervision and Regulation, (202) 452–5231. For the users of Telecommunications Devices for the Deaf (TDD) *only*, contact Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board, the Office of the Comptroller of the Currency (OCC), the

Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) have issued for public comment substantially similar proposals to revise their regulations on the reporting of known or suspected criminal conduct and suspicious activities. The Department of the Treasury, through FinCEN, has issued for public comment a substantially similar proposal to require the reporting of suspicious transactions relating to money laundering activities.

The Board's proposed regulation (60 FR 34481, July 3, 1995) noted that the interagency Bank Fraud Working Group, consisting of representatives from the Agencies, the National Credit Union Administration, 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 suspicious activities. The Board's proposed regulation, as well as those proposed by the OCC, FDIC, OTS and FinCEN, attempted to simplify and clarify reporting requirements and reduce banking organizations' reporting burdens by raising mandatory reporting thresholds for criminal offenses and by requiring the filing of only one report with FinCEN.

The Board's final rule adopts its proposal with a few additional changes that have been made in response to the comments received. The changes will result in burden reductions even greater than those that were proposed. The Board's, the other Agencies', and FinCEN's final rules relating to the reporting of suspicious activities are now substantially identical, and they:

(1) Combine the current criminal referral rules of the federal financial institutions regulatory agencies with the Department of the Treasury's suspicious activity reporting requirements;

(2) Create a uniform reporting form, the new Suspicious Activity Report or SAR, for use by banking organizations in reporting known or suspected criminal offenses, or suspicious activities related to money laundering and violations of the BSA;

(3) Provide a system whereby a banking organization 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 will be provided by the Board to all of the domestic and foreign banking organizations it supervises, to prepare a SAR on a computer and file it by magnetic media, such as a computer disc or tape;

(7) Establish a database that will be accessible to 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 suspicious transactions related to money laundering and violations of 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 banking organizations and their employees for reporting of known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, and provide criminal sanctions for the unauthorized disclosure of such report to any party involved in the reported transaction.

Section-by-Section Analysis

Under the Board's final rule, state member banks, bank holding companies and their nonbank subsidiaries, most U.S. branches and agencies and other offices of foreign banks, and Edge and Agreement corporations need only follow SAR instructions for completing and filing the SAR to be in compliance with the Board's and FinCEN's reporting requirements. The following section-by-section analysis correlates the specific SAR instruction number with the applicable section of the Board's final rule:

Section 208.20(a) (Instruction No. 1 on the SAR) provides that a state member bank must file a SAR when it detects a known or suspected violation of federal law or a suspicious activity pertinent to a money laundering offense.

Section 208.20(b) provides pertinent definitions.

Sections 208.20(c) (1), (2), and (3) (Instructions 1 a., b., and c. on the SAR) instruct a state member bank to file a SAR with FinCEN in order to comply with the requirement to notify federal law enforcement agencies if the bank detects any known or suspected federal criminal violation, or pattern of violations, committed or attempted against the bank, or involving one or more transactions conducted through the bank, and the bank believes it was an actual or potential victim of a crime, or was used to facilitate a crime. If the bank has a substantial basis for identifying one of its insiders or other institution-affiliated parties in connection with the known or suspected crime, reporting is required regardless of the dollar amount involved. If the bank can identify a non-insider suspect, the applicable transaction threshold is $5,000. In cases in which no suspect can be identified, the applicable transaction threshold is $25,000. These sections were not changed from the proposed regulations published for public comment in July 1995.

Section 208.20(c)(4) (Instruction 1 d. on the SAR) instructs a state member bank to file a SAR with FinCEN in order to comply with the requirement to notify federal law enforcement agencies and the Department of the Treasury of transactions involving $5,000 or more in funds or other assets when the bank knows, suspects or has reason to suspect that the transaction: (i) Involves money laundering, (ii) is designed to evade any regulations promulgated under the Bank Secrecy Act, or (iii) has no business or apparent lawful purpose or is not the sort in which the particular customer normally engages and, after examining the available facts, the bank knows of no reasonable explanation for the transaction. Section 208.20(c)(4) has been modified in the final rule to reflect comments received on the proposal. Most notably, the circumstances under which a transaction should be reported under this section were clarified, and a reporting threshold of $5,000 was added.

Section 208.20(c)(4) recognizes the emerging international consensus that the efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted by the reporting of suspicious transactions by banking organizations. 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 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.

Section 208.20(d) (Instruction 2 on the SAR) provides that SARs must be filed within 30 calendar days of the initial detection of the criminal or suspicious activity. An additional 30 days is permitted in order to enable a bank to identify a suspect, but in no event may a SAR be filed later than 60 days after the initial detection of the reportable conduct. The Board and law enforcement must be notified in the case of a violation requiring immediate action, such as an on-going violation. These reporting requirements were not changed from the July 1995 proposal,

with the exception of the addition of the requirement that the Board be notified about on-going offenses requiring immediate notification to law enforcement authorities.

Section 208.20(e) encourages a state member bank to file a SAR with state and local law enforcement agencies. This section is unchanged from the July 1995 proposal.

Section 208.20(f) (Instruction 3 on the SAR) provides that a state member bank need not file a SAR for an attempted or committed burglary or robbery reported to the appropriate law enforcement agencies. In addition, a SAR need not be filed for missing or counterfeit securities that are the subject of a report pursuant to Rule 17f–1 under the Securities Exchange Act of 1934. This section of the final rule was not modified from the version published for public comment in July 1995.

Section 208.20(g) requires that a state member bank retain a copy of the SAR and the original or business record equivalent of supporting documentation for a period of five years. The section also requires that a state member bank identify and maintain supporting documentation in its files and that the bank make available such documentation to law enforcement agencies upon their request. The Board made three changes to this section from the version published for public comment in July 1995. First, the record retention period was shortened from 10 years to five years. Second, provision was made for the retention of business record equivalents of original documents, such as microfiche and computer imaged record systems, in recognition of modern record retention technology. The third change involves the clarification of a state member bank's obligation to provide supporting documentation upon request to law enforcement officials. Supporting documentation is deemed filed with a SAR in accordance with this section of the Board's final rule; as such, law enforcement authorities need not make their access requests through subpoena or other legal processes.

Section 208.20(h) requires the management of a state member bank to report the filing of all SARs to the board of directors of the bank, or a designated committee thereof. No change was made from the July 1995 proposal.

Section 208.20(i) reminds a state member bank and its institution-affiliated parties that failure to file a SAR may expose them to supervisory action. No change from the July 1995 proposal was made.

Section 208.20(j) provides that SARs are confidential. Requests for SARs or the information contained therein should be declined. The final rule also adds a requirement that a request for a SAR or the information contained therein should be reported to the Board. With the exception of the added requirement that requests for SARs be reported to the Board, no changes were made to this section from the July 1995 proposal.

Section 208.20(k) sets forth the safe harbor provisions of 31 U.S.C. 5318(g). This new section, which was added to the final rule as the result of many comments concerning this important statutory protection for banking organizations, states that the safe harbor provisions of the law are triggered by a report of known or suspected criminal violations or suspicious activities to law enforcement authorities, regardless whether the report is made by the filing of a SAR in accordance with the Board's rules or for other reasons by different means.

Sections 211.8, 211.24(f), and 225.4(f) of the Board's rules relating to the activities of foreign banking organizations and bank holding companies have not been changed in a substantive manner. Only the references in the sections to ''criminal referral forms'' have been changed to reflect the new name for the reporting form, the SAR. The SAR filing requirements, as well as the safe harbor and notification prohibition provisions of 31 U.S.C. 5318(g), continue to be applicable to all foreign banking organizations and bank holding companies and their nonbank subsidiaries supervised by the Federal Reserve through these provisions.

Comments Received

The Board received letters from 44 public commenters. Comments were received from 15 community banks, 13 multinational or large regional banks, eight trade and industry research groups, seven Federal Reserve Banks and one law firm.

The large majority of commenters expressed general support for the Board's proposal. None of the commenters opposed the proposed new suspicious activity reporting rules. A number of suggestions and requests for clarification were received. They are as follows.

Criminal Versus Suspicious Activities

Many commenters expressed confusion over the difference between the known or suspected criminal conduct that would be subject to the dollar reporting thresholds (provided such conduct does not involve an institution-affiliated party of the reporting entity) and the suspicious activities that would be reported regardless of dollar amount. Section 208.20(c)(4) has been revised to add a $5,000 reporting threshold and to clarify that the suspicious activity must relate to money laundering and Bank Secrecy Act violations. A threshold for the reporting of suspicious activities was added to reduce further the reporting burdens on banking organizations.

Reporting of Crimes Under State Law

A number of commenters requested clarification of whether activities constituting crimes under state law, but not under federal law, should be reported on the SAR. The Board continues to encourage banking organizations to refer criminal and suspicious activities under both federal and state law by filing a SAR. Under the new reporting system designed by the Board, the other Agencies, and FinCEN, state chartered banking organizations should be able to fulfill their state reporting obligations by filing a SAR with FinCEN.

Safe Harbor Protections; Potential Liability Under Federal and State Laws

Some commenters expressed the concern that banking organizations and their institution-affiliated parties could be liable under federal and state laws, such as the Right to Financial Privacy Act, for filing SARs with respect to conduct that is later found not to have been criminal. Another concern was 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 protections provided in 31 U.S.C. 5318(g).

The Board is of the opinion that the safe harbor statute is broadly defined to include the reporting of known or suspected criminal offenses or suspicious activities, by filing a SAR or by reporting by other means, with state and local law enforcement authorities, as well as with the Agencies and FinCEN.

A few commenters requested that the Board make explicit the safe harbor protections of 31 U.S.C. 5318(g)(2) and (3) on the SAR. They are included in new Section 208.20(k) of this rule and on the form.

Record Retention

Several commenters expressed the view that the 10-year period for the retention of records in Section 208.20(g) was excessive, especially in light of a five-year record retention requirement for records that is contained in the Bank Secrecy Act. The 10-year period in the Board's proposed regulation would have

continued the Board's existing record retention requirement for criminal referral forms. However, in recognition of the potential burden of document retention on financial institutions, the Board has limited the record retention period to five years.

Dollar Thresholds

A few commenters encouraged the Board to raise the dollar thresholds for known or suspected criminal conduct by non-insiders, or to establish a dollar threshold for insiders. The Board has considered these comments, but at this time it believes that the thresholds meet and properly balance the dual concerns of prosecuting criminal activity involving banking organizations and minimizing the burden on banking organizations. With respect to the suggestion that the Board adopt a dollar threshold for insider violations, it is noted that insider abuse has long been a key concern and focus of enforcement efforts at the Board. With the development of a new sophisticated automated database, the Board and law enforcement agencies will have the benefit of a comprehensive and easily accessible catalogue of known or suspected insider wrongdoing. The Board does not wish to limit the information it receives regarding insider wrongdoing. Some petty crimes, for example, repetitive thefts of small amounts of cash by an employee who frequently moves between banking organizations, may warrant enforcement action or criminal prosecution.

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. While the Board recognizes that there may be regional variations in the dollar amount of financial crimes generally prosecuted, the Board's concern is to place the relevant information in the hands of the investigating and prosecuting authorities. The prosecuting authorities then may consider whether to pursue a particular matter. In the Board's view, the dollar thresholds proposed and adopted in this final rule best balance the interests of law enforcement and banking organizations. The Board also believes that indexed thresholds could create more confusion than benefit to banking organizations.

Commenters also suggested the creation of a dollar threshold for the reporting of suspicious activities relating to money laundering offenses. A $5,000 threshold has been established for reporting of such suspicious activities.

Questions were raised regarding the permissibility of filing SARs in situations in which the dollar thresholds for known or suspected criminal conduct or suspicious activity are not met and the applicability of the safe harbor provisions of 31 U.S.C. 5318(g) to such non-mandatory filings. It is the opinion of the Board that the safe harbor provisions of 31 U.S.C. 5318(g) cover all reports of suspected or known criminal violations and suspicious activities to law enforcement authorities, regardless of whether such reports are filed pursuant to the mandatory requirements of the Board's regulations or are voluntary.

Notification of On-Going Violations and of State and Local Law Enforcement Authorities

Proposed Section 208.20(d) required a banking organization to notify immediately the law enforcement authorities in the event of an on-going violation. Section 208.20(e) encourages the filing of a copy of the SAR with state and local law enforcement agencies in appropriate cases. This requirement and guidance were found by some commenters to be unclear as to when immediate notification or the filing of the SAR with state and local authorities would be required. The Board wishes to clarify that immediate notification is limited to situations involving on-going violations, for example, when a check kite or money laundering has been detected and may be continuing. It is impossible for the Board to contemplate all of the possible circumstances in which it might be appropriate for a banking organization to advise state and local law enforcement authorities. Banking organizations should use their best judgment regarding when to alert them regarding on-going criminal offenses or suspicious activities.

Supporting Documentation

The proposed requirements that an institution maintain ''related'' documentation and make ''supporting'' documentation available to the law enforcement agencies upon request were criticized as inconsistent and vague. One commenter questioned whether the Board intended a substantive difference in meaning between ''related'' and ''supporting.'' As a substantive difference is not intended, the Board has referred to ''supporting'' documentation in the final rule in reference both to the maintenance and production requirements. The Board believes that the use of the word ''supporting'' is more precise and limits the scope of the information which must be retained to that which would be useful in proving that the crime has been committed and by whom it has been committed. As to the criticism that the meaning of ''related'' or ''supporting'' documentation is vague, it is anticipated that banking organizations will use their judgment in determining the information to be retained. It is impossible for the Board to catalogue the precise types of information covered by this requirement, as it necessarily depends upon the facts of a particular case.

Scope of Confidentiality Requirement

One commenter correctly noted that the proposed regulation is unclear as to whether the confidentiality requirement applies only to the information contained on the SAR itself, or whether the requirement extends to the ''supporting'' documentation. The Board takes the position that only the SAR and the fact that supporting documentation to a SAR exists are subject to the confidentiality requirements of 31 U.S.C. 5318(g). The supporting documentation itself is not subject to the confidentiality provisions of 31 U.S.C. 5318(g). The safe harbor provisions of 31 U.S.C. 5318(g), however, apply to the SAR and supporting documentation, as set forth in Section 208.20(k).

Provisions of Supporting Documentation to Law Enforcement Authorities Upon Request

Many commenters noted that the guidance provided in the Board's proposed regulation regarding giving supporting documentation to law enforcement agencies upon their request after the filing of a SAR was unclear or contrary to law. Some questioned whether law enforcement agencies would still need to subpoena relevant documents from a banking organization. The Board's regulation requires banking 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 does not require the service of a subpoena or other legal processes normally associated with providing information to law enforcement agencies.

Civil Litigation

The Board was encouraged to adopt regulations that would make SARs undiscoverable in civil litigation in order to avoid situations in which a banking organization 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 Board's rules. In the opinion of the Board, 31 U.S.C. 5318(g) precludes the disclosure of SARs. The final rule requires a banking organization that receives a subpoena or other request for a SAR to notify the Board so that the Board may, if appropriate, intervene in litigation or seek the assistance of the U.S. Department of Justice.

Maintenance of Originals

Proposed Section 208.20(g) required the maintenance of supporting documentation in its original form. A number of commenters noted that electronic storage of documents is becoming 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, upon further consideration, the Board wishes to clarify that the electronic storage of original documentation related to the filing of a SAR is permissible. In addition, the Board recognizes that a banking organization 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 disks or photocopies, should be acceptable. This has been reflected in the final rule by changing the reference to original documents to ''original documents or business record equivalents.''

Investigation and Proof Burdens

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. The Board does not intend that banking organizations assume the burden of proving illegal conduct; rather, banking organizations are required to report known or suspected crimes or suspicious activities in accordance with this final rule.

Supplementary or Corrective Information; Reporting of Multiple Crimes or Suspects

Material information that supplements or corrects a SAR should be filed with FinCEN by means of a subsequent SAR. The first page of the SAR provides boxes for the reporter to indicate whether the report is an initial, a corrected or a supplemental report.

One commenter requested guidance on the reporting of multiple crimes or related crimes committed by more than one individual. The instructions to the SAR contemplate that additional suspects may be reported by means of a supplemental page. Likewise, multiple crimes committed by a suspect may be reported by means of multiple check-offs on the SAR, or if needed, by a written addendum to the SAR. In the event that related crimes have been committed by more than one person, a description of the related crimes may be made by addendum to the SAR. The Board encourages filers to make a complete report of all known or suspected criminal or suspicious activity. The SAR may be supplemented in order to facilitate a complete disclosure.

Calculation of Time Frame for Reporting

A number of commenters requested that the Board clarify the application of the deadline for filing SARs. The Board's proposed regulation used the broadest possible language to set the time frames for the reporting of known or suspected criminal offenses and suspicious activities in order to best guide reporting institutions. Absolute deadlines for the filing of SARs are important to the investigatory and prosecutorial efforts of law enforcement authorities. It is expected that banking organizations will meet the filing deadlines once conduct triggering the reporting requirements is identified. Further clarification of the time frames is not needed in the Board's view.

Board Notification Requirements

Several commenters expressed general support for the modification of the reporting requirement that permits reporting of SARs to a committee of the board. As a matter of clarification, notification of a committee of the board relieves the banking organization of the obligation to disclose the SARs filed to the entire board. It would be expected, however, that the appointed committee, such as the audit committee, would report to the full board at regular intervals with respect to routine matters in the same manner and to the same extent as other committees report at board meetings. With respect to serious crimes or insider malfeasance, the appointed committee likely should consider it appropriate to make more immediate disclosure to the full board.

Some larger banking organizations expressed the view that prompt disclosure of SARs to the board or a committee would impose a serious burden because larger organizations typically file a larger number of criminal referral forms (now, SARs). While the Board acknowledges that larger institutions may have more SARs to report to the board or a committee, this does not alter the directors' fiduciary obligation to monitor, for example, the condition of the institution and to take action to prevent losses. The final regulation 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. The Board expects the management of banking organizations to provide a more detailed notification to the boards or committees of SARs involving insiders or a potential material loss to the institutions.

Information Sharing

Commenters 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.

Single Filing Requirement; Acknowledgement of Filings

Some commenters requested clarification of the single form filing requirement. The Board reiterates that the filing of a SAR with FinCEN is the only filing that is required. Federal and state law enforcement and bank supervisory agencies will have access to the database created and maintained by FinCEN on behalf of the Agencies and the Department of Treasury; thus, a single filing with FinCEN is all that is required under the new reporting system.

Commenters also requested that the final rule permit the filing of SARs via telecopier. Such filings are not compatible with the system developed by the Agencies and FinCEN. Banking organizations can file the SAR via magnetic media using the computer software to be provided to all banking organizations by the Board and each of the other Agencies with respect to the institutions they supervise. Larger banking organizations that currently file currency transaction reports via magnetic tape with FinCEN may also file SARs by magnetic tape.

Regulatory Flexibility Act

The Board certifies that this final regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Paperwork Reduction Act

In accordance with Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this regulation are found in 12 CFR 208.20, 211.8, 211.24, and 225.4. This information is mandatory and is necessary to inform appropriate law enforcement agencies of known or suspected criminal or suspicious activities that take place at or were perpetrated against financial institutions. Information collected on this form is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The federal financial institution regulatory agencies and the U.S. Department of Justice may use and share the information. The respondents/recordkeepers are for-profit financial institutions, including small businesses.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0212.

No comments specifically addressing the hour burden estimate were received.

It is estimated that there will be 12,000 responses from state member banks, bank holding companies, Edge and agreement corporations, and U.S. branches and agencies of foreign banks.

Both the new regulation and revisions made to the proposed regulation and reflected in this final rule simplify the submission of the reporting form and shorten the records retention requirement. However, the same amount of information will be collected under the new rule. The burden per respondent varies depending on the nature of the criminal or suspicious activity being reported. The Federal Reserve estimates that the average annual burden for reporting and recordkeeping per response will remain .6 hours. Thus the Federal Reserve estimates the total annual hour burden to be 7,200 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $144,000.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551 and to the Office of Management and Budget, Paperwork Reduction Project (7100–0212), Washington, D.C. 20503.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedures, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Parts 208, 211 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR Part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4102a, 4104a, 4104b, 4106, and 4128.

2. Section 208.20 is revised to read as follows:

§ 208.20 Suspicious Activity Reports.

(a) *Purpose.* This section ensures that a state member bank files a Suspicious Activity Report when it detects 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. This section applies to all state member banks.

(b) *Definitions.* For the purposes of this section:

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

(2) *Institution-affiliated party* means any institution-affiliated party as that term is defined in 12 U.S.C. 1786(r), or 1813(u) and 1818(b) (3), (4) or (5).

(3) *SAR* means a Suspicious Activity Report on the form prescribed by the Board.

(c) *SARs required.* A state member bank 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:

(1) *Insider abuse involving any amount.* Whenever the state member 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, where the bank believes that 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 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.

(2) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the state member 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 that 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 drivers' license or social security numbers, addresses and telephone numbers, must be reported.

(3) *Violations aggregating $25,000 or more regardless of a potential suspect.* Whenever the state member 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 $25,000 or more in funds or other assets, where the bank believes that 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 there is no substantial basis for identifying a possible suspect or group of suspects.

(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 (c)(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 state member 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 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 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.

(d) *Time for reporting.* A state member bank 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 state member bank 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 on-going, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* State member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.* (1) A state member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A state member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Retention of records.* A state member bank 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 bank as such, and shall be deemed to have been filed with the SAR. A state member bank must make all supporting documentation available to appropriate law enforcement agencies upon request.

(h) *Notification to board of directors.* The management of a state member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the state member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

(j) *Confidentiality of SARs.* SARs are confidential. Any state member bank 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 section, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the Board.

(k) *Safe harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any state member 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, 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 section or are filed on a voluntary basis.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for 12 CFR Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

§§ 211.8 and 211.24 [Amended]

2. In §§ 211.8 and 211.24(f), remove the words ''criminal referral form'' and add, in their place, the words ''suspicious activity report''.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

§ 225.4 [Amended]

2. In § 225.4, the heading of paragraph (f) is revised to read ''*Suspicious Activity Report.*''.

3. In § 225.4(f), remove the words ''criminal referral form'' and add, in their place, the words ''suspicious activity report''.

By order of the Board of Governors of the Federal Reserve System, January 30, 1996.

William W. Wiles,

Secretary of the Board.

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