

# Rules and Regulations

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Parts 21 and 41

[Docket ID OCC–2011–0003]

RIN 1557–AD38

#### Bank Secrecy Act Compliance; Fair Credit Reporting; Technical Amendments

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The OCC is amending its Bank Secrecy Act (BSA) and Fair Credit Reporting regulations to make minor, non-substantive technical amendments. These technical amendments update citations in OCC regulations to the reorganized Financial Crimes Enforcement Network, Department of the Treasury (FinCEN) BSA regulations.

**DATES:** *Effective Date:* March 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E St., SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Effective March 1, 2011, FinCEN is reorganizing and moving its existing BSA regulations from 31 CFR Part 103 to 31 CFR Chapter X. See 75 FR 65806, October 26, 2010. The OCC is amending provisions of its BSA (12 CFR Part 21) and Fair Credit Reporting (12 CFR Part 41) regulations and Appendix J to 12 CFR Part 41 to make minor, non-substantive technical amendments to conform citations in these OCC regulations and the Appendix to FinCEN's reorganized BSA regulations.

#### Description of the Final Rule

OCC's BSA (12 CFR 21.21(a) and (b)) and Fair Credit Reporting (12 CFR 41.82(c)(2)(A)) regulations and Appendix J to 12 CFR Part 41, Section III(a) cite to FinCEN's BSA regulations in 31 CFR Part 103. Due to FinCEN's reorganization of its BSA regulations, these citations to 31 CFR Part 103 in OCC's regulations would become obsolete on March 1, 2011. To avoid this, the final rule amends OCC's BSA (12 CFR 21.21(a) and (b)) and Fair Credit Reporting (12 CFR 41.82(c)(2)(A)) regulations and Appendix J to 12 CFR Part 41, Section III(a) to comport with FinCEN's reorganized BSA regulations at 31 CFR Chapter X.

#### Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

This final rule makes minor, non-substantive technical amendments to the OCC's BSA and Fair Credit Reporting regulations and Appendix J to Part 41, as described previously in this **SUPPLEMENTARY INFORMATION** section, to conform certain citations to FinCEN's reorganized BSA regulations. For this reason, the OCC, for good cause, finds that the notice and comment procedures prescribed by the APA are unnecessary because the final rule makes technical amendments to citations without substantive change to the relevant provisions of 12 CFR parts 21, 41, and Appendix J to 12 CFR part 41.

This final rule takes effect on March 1, 2011. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. The OCC finds good cause because the revisions in this final rule make minor, non-substantive technical amendments.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking

is not required. See 5 U.S.C. 603 and 604. As noted previously in the **SUPPLEMENTARY INFORMATION** section, the OCC has determined, for good cause, that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

#### Paperwork Reduction Act of 1995

There are no information collection requirements in this final rule.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

#### List of Subjects in 12 CFR Parts 21 and 41

Banks, Banking, Consumer protection, Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, 12 CFR parts 21 and 41 are amended as follows:

#### PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

■ 1. The authority citation for part 21 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

■ 2. Amend § 21.21 by revising paragraphs (a) and (b) to read as follows:

**§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.**

(a) *Purpose.* This subpart is issued to assure that all national banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR Chapter X.

(b) *Establishment of a BSA compliance program—(1) Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR Chapter X. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulations jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 1020.220, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

\* \* \* \* \*

**PART 41—FAIR CREDIT REPORTING**

■ 3. The authority citation for Part 41 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, 1681w, Sec. 214, Pub. L. 108–159, 117 Stat. 1952.

■ 4. Amend § 41.82 by revising paragraph (c)(2)(i)(A) to read as follows:

**§ 41.82 Duties of users regarding address discrepancies.**

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) Obtains and uses to verify the consumer's identity in accordance with the requirements of the Customer Identification Program (CIP) rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220);

\* \* \* \* \*

■ 5. In Appendix J to Part 41, revise Section III, paragraph (a) to read as follows:

**APPENDIX J TO PART 41— INTERAGENCY GUIDELINES ON IDENTITY THEFT DETECTION, PREVENTION, AND MITIGATION**

\* \* \* \* \*

**III. Detecting Red Flags**

\* \* \* \* \*

(a) Obtaining identifying information about, and verifying the identity of, a person opening a covered account, for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 U.S.C. 5318(l) (31 CFR 1020.220); and

\* \* \* \* \*

Dated: January 25, 2011.

**Julie L. Williams,**

*First Senior Deputy Comptroller and Chief Counsel.*

[FR Doc. 2011–2747 Filed 2–7–11; 8:45 am]

**BILLING CODE 4810–33–P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**19 CFR Parts 123, 142 and 178**

**[Docket No. USCBP–2006–0132; CBP Dec. No. 11–04]**

**RIN 1651–AA68**

**Land Border Carrier Initiative Program**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Final rule.

**SUMMARY:** This document amends U.S. Customs and Border Protection (CBP) regulations by removing the provisions pertaining to the Land Border Carrier Initiative Program (LBCIP). The LBCIP was established as a voluntary industry partnership program under which participating land and rail commercial carriers would agree to enhance the security of their facilities and conveyances to prevent controlled substances from being smuggled into the United States. Because CBP has developed a more comprehensive voluntary industry partnership program known as the Customs-Trade Partnership Against Terrorism (C-TPAT), CBP is terminating the LBCIP and will focus its partnership efforts on the further development of C-TPAT. C-TPAT builds upon the best practices of the LBCIP, while providing greater border and supply chain security with

expanded benefits to approved participants.

**DATES:** *Effective Date:* March 10, 2011.

**FOR FURTHER INFORMATION CONTACT:** Glenn Woodley, Jr., Office of Field Operations, (202) 344–2725.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Land Border Carrier Initiative Program (LBCIP) was established as a CBP-industry partnership regulatory program enlisting the voluntary cooperation of commercial conveyance entities as part of an effort to prevent the smuggling of controlled substances into the United States.

Under the LBCIP regulations set forth in title 19 of the Code of Federal Regulations (19 CFR 123.71–76), land and rail commercial carrier participants may enter into a written agreement with CBP that specifies methods by which the carrier will enhance the security of its facilities and conveyances. In exchange for this cooperation, CBP would provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Additionally, only LBCIP participants could be approved for Line Release entry processing at certain high-risk border locations as set forth in 19 CFR 142.41.<sup>1</sup>

In 2001, CBP introduced the Customs-Trade Partnership Against Terrorism (C-TPAT) program. C-TPAT is a voluntary industry partnership initiative that meets the objectives of the LBCIP while providing a more comprehensive approach to border and supply chain security. The program entails CBP's ongoing participation in a joint effort with importers, carriers, brokers, warehouse operators, manufacturers, and other industry sectors to develop a seamless security-conscious environment from manufacturing through transportation and importation to ultimate distribution. In addition to providing greater security for both government and business, C-TPAT provides its members with the same privileges accorded to LBCIP participants, as well as additional benefits such as priority processing for CBP inspections, reduced number of CBP inspections, assignment of a C-TPAT Supply Chain Security Specialist who will work with the company to validate and enhance security throughout the company's international supply chain, and eligibility to attend

<sup>1</sup> Line Release provides for advance cargo screening and expedited release at land border ports.