(c) *Minimum requirements.* At a minimum, the program required by paragraph (b) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its covered products. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this part, integrating the company's insurance agents and insurance brokers into its anti-money laundering program, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring compliance by the company's insurance agents and insurance brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. An insurance company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's insurance agents and insurance brokers with their obligations under the program. The scope and frequency of the testing shall be commensurate with the risks posed by the insurance company's covered products. Such testing may be conducted by a third party or by any officer or employee of the insurance company, other than the person designated in paragraph (c)(2) of this section.

(d) *Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an anti-money laundering program pursuant to § 103.120 and complies with such program.

(e) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act and of this part.

Dated: October 28, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 05–21917 Filed 11–2–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA36

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Insurance Companies Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: This document contains an amendment to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendment requires insurance companies to report suspicious transactions to the Financial Crimes Enforcement Network. The amendment constitutes a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States.

DATES: *Effective Date:* December 5, 2005.

Applicability Date: This rule applies to transactions occurring after May 2, 2006. *See* 31 CFR 103.16(h) of the final rule contained in this document.

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Office of Regulatory Programs on (202) 354–6400 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–14, 5316–5332, authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA PATRIOT Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that:

> [i]f a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United

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[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities, including analysis, to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the Money Laundering Suppression Act), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution:

> That makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [3] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' *Id.* at subsection (g)(4)(B).

Published elsewhere in this separate part of the **Federal Register** is a final rule prescribing minimum standards applicable to insurance companies regarding the establishment of anti-money laundering programs pursuant to section 5318(h) of the Bank Secrecy Act, as amended by section 352 of the USA PATRIOT Act. That final rule applies to the same universe of insurance companies and covered products as this final rule. The requirement to detect and report suspicious activity is an integral part of an insurance company's anti-money laundering program.

B. Importance of Suspicious Transaction Reporting

The Congressional authorization for requiring the reporting of suspicious transactions recognizes two basic principles. First, money launderers must go to financial institutions, either initially, to conceal their unlawful funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification or that otherwise cannot be explained as constituting a legitimate use of the institution's financial products and services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, relates to the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to government agencies responsible for detecting and investigating money laundering and other financial crime, has made it more difficult for criminals to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including insurance companies in attempts to launder funds. Indeed, many non-bank financial institutions have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious activity is recognized in the international community as essential to an effective anti-money laundering regime. One of the central recommendations of the Financial Action Task Force [4] is that ''[i]f a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of criminal activity, or are related to terrorist financing, it should be required * * * to report promptly its suspicions * * *.'' Financial Action Task Force Forty Recommendations (Recommendation 13). The recommendation applies equally to banks and non-bank financial institutions, including insurance companies.

Moreover, on October 31, 2001, the Financial Action Task Force issued its Special Recommendations on Terrorist Financing. Special Recommendation Four provides that:

> If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of the Financial Action Task Force's Special Recommendation Four, the term ''financial institutions'' is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, insurance companies.[5]

C. Insurance Company Regulation and Money Laundering

This final rule applies only to insurance companies offering covered products, as defined in the rule. The limited definition of insurance company for purposes of this rule, as well as the final rule requiring insurance companies to establish anti-money laundering programs, is not intended to limit the kinds of financial institutions that may voluntarily report suspicious activity under the protection of the safe harbor from liability contained in 31 U.S.C. 5318(g)(3). Insurance companies offer a variety of products aimed at transferring the financial risk of a certain event, such as personal injury or damage to property, from the insured to the insurer. These products include life insurance policies, annuity contracts, property and casualty insurance policies, and health insurance policies. These products are offered through a number of different distribution channels. Some insurance companies sell their products through direct marketing in which the insurance company sells a policy directly to the insured. Other companies employ agents, who may either be captive or independent. Captive agents generally represent only one insurance company or group of affiliated companies; independent agents may represent a variety of insurance carriers. A customer also may employ a broker (*e.g.*, a person who searches the marketplace for insurance in the interest of the customer

[3] This designation does not preclude any supervisory agency for any financial institutions from requiring such financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[4] The Financial Action Task Force is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[5] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire*, Special Recommendation Four, paragraph 19 (March 27, 2002).

rather than the insurer) to obtain insurance.

This final rule focuses on those insurance products possessing features that make them susceptible to being used for money laundering or the financing of terrorism. For example, life insurance policies that have a cash surrender value are potential money laundering vehicles. Cash value can be redeemed by a money launderer or can be used as a source of further investment of tainted funds—for example, by taking out loans against such cash value. Similarly, annuity contracts also pose a money laundering risk because they allow a money launderer to exchange illicit funds for an immediate or deferred income stream or to purchase a deferred annuity and obtain clean funds upon redemption.[6] These risks do not exist to the same degree in term life insurance products, group life insurance products, group annuities, or in insurance products offered by property and casualty insurers or by title or health insurers.

A 2002 federal grand jury indictment illustrates the money laundering risks associated with insurance products and the corresponding need for vigilance in the insurance industry.[7] That indictment charged five Colombian nationals with conspiring to launder millions of dollars originating from the illicit sale of cocaine. The scheme involved the purchase and subsequent redemption of life insurance policies.

According to court documents and interviews related to that indictment, federal law enforcement officials have discovered that Colombian drug cartels bought life insurance policies in continental Europe, the United Kingdom, and in smaller jurisdictions such as the Isle of Man, to launder the proceeds of drug trafficking. Using narcotics proceeds from the United States and Mexico, the traffickers purchased 250 life insurance policies in the Isle of Man alone. The insurance policies, worth as much as $1.9 million each, were sometimes taken out in the names of cartel associates and members of their families. The traffickers would typically cash out all or part of the Isle of Man policies prematurely, in some cases after only a year, paying penalties of 25 percent or more. The penalties, however, merely represented a ''business cost'' of using the insurance policies to launder the illicit narcotics proceeds. Thus far, federal law enforcement officials have seized more than $9.5 million in Florida in connection with the investigation. If the insurance companies in the relevant jurisdictions had been subject to anti-money laundering controls, they might have detected the money laundering scheme because the policyholders were authorizing unrelated third parties to withdraw money from the cash value of their policies or were frequently cashing out their policies early.

A review of Suspicious Activity Reports filed with the Financial Crimes Enforcement Network also reveals instances in which financial institutions have reported the suspected use of insurance products for the purpose of laundering the proceeds of criminal activity. During the past five years, a number of Suspicious Activity Reports were filed that reference the use of an insurance product in suspected money laundering activity. For example, several reports describe as suspicious the large, lump-sum purchase of annuity contracts, followed almost immediately by several withdrawals of those funds. In some cases, the entire balance of the annuity contract was withdrawn shortly after the purchase of the contract. Other reports detail suspicious loans taken out against an annuity contract and life insurance premiums being paid by unrelated third parties.

II. Notice of Proposed Rulemaking

On October 17, 2002, we published a notice of proposed rulemaking, 67 FR 64067, that would extend the requirement to report suspicious transactions to insurance companies. The comment period for the proposed rule ended on December 16, 2002. We received over 50 comments from insurance companies and agents, banks, trade associations, attorneys, and a government agency addressing issues raised by either the proposed rule, or by the related proposed rule, 67 FR 60625 (September 26, 2002), that would require insurance companies to establish anti-money laundering programs.

III. Summary of Comments

Most of the comments focused on the following matters: (1) The potential application of a suspicious transaction reporting requirement to agents and brokers of insurance companies, rather than just their insurance company principals; and (2) the appropriate scope of the products that cause an entity to be considered an insurance company for purposes of the rule. These comments are discussed below. Other significant comments are discussed in the section-by-section analysis.

A. Treatment of Agents and Brokers

The proposed rule posited that an insurance company, but not its agents or brokers, should be required to report suspicious transactions. Under the proposed rule, an insurance company would be responsible for obtaining customer information from all relevant sources, including from its agents and brokers, necessary to properly report suspicious activity involving the purchase of any of its covered products. We specifically sought comments on whether an insurance company's agents and brokers should be subject to a separate obligation to report suspicious transactions. Commenters were almost evenly divided on this issue. Several agreed with the approach taken in the proposed rule, stating that the benefit of requiring tens of thousands of insurance agents and brokers to independently report suspicious transactions would be outweighed by the costs. Other commenters disagreed, arguing that a direct obligation is necessary because insurance companies lack sufficient control over their distribution channels to ensure the adequate reporting of suspicious customer activity.

After careful consideration of all the views expressed, we are adopting the approach set forth in the proposed rule. Under the terms of the final rule, the obligation to identify and report suspicious transactions applies only to an insurance company, and not its agents or brokers.[8] Nevertheless, because insurance agents and brokers are an integral part of the insurance industry due to their direct contact with customers, the final rule requires an insurance company to establish and implement policies and procedures reasonably designed to obtain customer information necessary to detect suspicious activity from all relevant sources, including from its agents and brokers, and to report suspicious activity based on such information.

The final rule imposes a direct obligation only on insurance companies, and not their agents or brokers, for a number of reasons. First, whether an insurance company sells its products directly or through agents, we believe that it is appropriate to place on the insurance company, which develops and bears the risks of its products, the responsibility for guarding against such

[6] For an example of money laundering involving the fraudulent conversion of money in an insurance premium trust account, see *U.S.* v. *Boscarino, Aulenta, and Mangurten*, No. 02 CR 0086 (N.D. Ill. ED 2002) (Superseding Indictment).

[7] *United States of America* v. *Rodrigo Jose Murillo, Alexander Murillo, Jaime Eduardo Rey Albornoz, Arturo Delgado, and Esperanza Romero*, Mag. Docket No. 02 CR 21007 (S.D. FL. 2002) (Grand Jury Indictment).

[8] Certain insurance agents may be required under separate rules to report suspicious transactions. *See infra* note 14.

products being used to launder illegally derived funds or to finance terrorist acts. Second, insurance companies, due to their much larger size relative to that of their numerous agents and brokers, are in a much better position to shoulder the costs of compliance connected with the sale of their products.[9] Finally, numerous insurers already have in place compliance programs and best practices guidelines for their agents and brokers to prevent and detect fraud. We believe that insurance companies largely will be able integrate their obligation to report suspicious transactions into their existing compliance programs and best practices guidelines.

Insurance agents and brokers will play an important role in the effective operation of an insurance company's obligation to report suspicious transactions. By not placing an independent reporting obligation on agents and brokers, we do not intend to minimize their role and also intend to assess the effectiveness of the rule on an ongoing basis. If it appears that the effectiveness of the rule is being undermined by the failure of agents and brokers to cooperate with their insurance company principals, we will consider proposing appropriate amendments to the rule. We also expect that an insurance company faced with a non-compliant agent or broker will take the necessary actions to secure such compliance, including, when appropriate, terminating its business relationship with such an agent or broker.

B. Covered Products

Under the proposed rule, the issuing, underwriting, or reinsuring of a life insurance policy, an annuity product, or any product with investment or cash value features, would have caused an insurance company to fall within the scope of the rule. A company that offered exclusively other kinds of insurance products, such as a property and casualty insurance policy, would not have been required to report suspicious transactions. The overwhelming majority of commenters agreed with the distinction that we made between higher-risk and lower-risk insurance products.[10] Some of those commenters requested that we take the additional step of further excluding other kinds of insurance contracts and products relating to life insurance and annuities, such as reinsurance, group life insurance policies, group annuities, and term life insurance policies.

We, not having been informed or otherwise having learned of examples proving otherwise, agree that some of these contracts and products pose little or no risk of being used for money laundering. For example, reinsurance and retrocession contracts and treaties are arrangements between insurance companies by which they reallocate risks within the insurance industry and do not involve transactions with customers. Similarly, group life insurance policies and group annuities are typically issued to a company, financial institution, or association, and generally do not allow an individual insured or participant to manipulate their investment. These products pose low money laundering risks. Consequently, the final rule does not include in its coverage reinsurance or retrocession contracts or treaties, group life insurance, or group annuities.

After careful consideration of the comments, we also have decided not to cover term life (which includes credit life) insurance policies at this time. Given the operating characteristics of these products—e.g., the absence of a cash surrender value and the underwriting scrutiny given to term policies, especially those with large face amounts—we believe that it would be impractical to launder money through term life insurance policies, and that the corresponding money laundering risks associated with such products are not significant. Nevertheless, as with all new exclusions, we will reconsider this position if circumstances warrant.

IV. Section-by-Section Analysis

A. 103.16(a)—Definitions

Section 103.16(a) defines the key terms used in the final rule. In response to comments seeking clarification of certain terms used in the proposed rule, the final rule includes definitions of the terms ''annuity contract,'' ''bank,'' ''broker-dealer in securities,'' ''covered product,'' ''group annuity contract,'' ''group life insurance policy,'' ''insurance agent,'' ''insurance broker,'' and ''permanent life insurance policy.''

The final rule defines an annuity contract as ''any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.'' For purposes of the rule, contracts of indemnity, as well as workers compensation insurance and structured settlements, are not annuity contracts.

The definition of an insurance company reflects our determination that a suspicious activity reporting requirement should be imposed only on those sectors of the insurance industry that offer products that pose a significant risk of money laundering or terrorist financing. Thus, an ''insurance company'' includes any person engaged within the United States as a business in the issuing or underwriting of a covered product. The term ''as a business'' is intended to exclude those persons that offer annuities or another covered product as an incidental part of their non-insurance business.[11] At this time, we believe that such persons present a much lower risk of being used for money laundering or terrorist financing than those persons that offer a covered product as an integral part of their business. We leave open the possibility of revisiting this issue in a future rulemaking if circumstances warrant.

There is an explicit exception to the definition of an insurance company. That exception clarifies that insurance agents and insurance brokers are not required under the final rule to report suspicious transactions. However, as explained below, an insurance company is responsible for obtaining customer information from all relevant sources, including its agents and brokers, necessary for the purpose of detecting and reporting suspicious transactions. In addition, the definition of an insurance company refers only to the business of issuing or underwriting certain kinds of insurance products and, therefore, does not cover the reinsuring or retrocession of insurance products.

The term ''covered product'' is defined to mean: (i) A permanent life insurance policy, other than a group life insurance policy; (ii) any annuity contract, other than a group annuity contract; and (iii) any other insurance product with features of cash value or investment. Permanent life insurance

[9] Although some agents work within large structures, only a small fraction of agencies employ more than a handful of people. According to one commenter, there are ''independent agents who operate on their own or in offices with just a few of their independent agent colleagues and thus comprise the quintessential notion of a small business operation.'' *Letter from the American Council of Life Insurers*, Nov. 25, 2002, at 4.

[10] *See, e.g., Joint Letter from the Independent Insurance Agents and Brokers of America and the National Association of Professional Insurance Agents*, Nov. 25, 2002, at 1 (''This distinction [between life insurance and property and casualty insurance] is legitimate and provides relief from the administrative and regulatory burdens of the proposed rule for the segments of the insurance industry that are at very low risk of money laundering.'').

[11] For example, a tax-exempt organization that offers charitable gift annuities (as defined in section 501(m)(5) of the Internal Revenue Code) as a vehicle for planned charitable giving to the tax-exempt organization, and that would not otherwise fall within the definition of an insurance company, generally would not be considered an insurance company under the final rule.

and annuity products are all covered by the definition of a covered product, with the exception of group life insurance and group annuities. The definition also incorporates a functional approach, and encompasses any insurance product having the same kinds of features that make permanent life insurance and annuity products more at risk of being used for money laundering. To the extent that term life insurance, property and casualty insurance, health insurance, and other kinds of insurance do not exhibit these features, they are not products covered by the rule.

B. 103.16(b)—General

Section 103.16(b) contains the rules setting forth the obligation of insurance companies to report suspicious transactions that are conducted or attempted by, at, or through an insurance company and involve or aggregate at least $5,000 in funds or other assets. This threshold amount is not limited to insurance policies whose premiums meet or exceed $5,000; but rather, includes a policy in which either the premium or maximum potential payout meets the threshold. It is important to recognize that transactions are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.[12]

Section 103.16(b)(1) contains the general statement of the obligation to file reports of suspicious transactions. The obligation extends to transactions involving a covered product conducted or attempted by, at, or through the insurance company. The phrase ''involving a covered product'' was added to the final rule to clarify that the reporting requirement extends only to transactions involving those products that we have determined pose a significant risk of money laundering. The second sentence of this section is designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require, for example in the case of a suspicious transaction falling below the $5,000 threshold in the rule.

Section 103.16(b)(2) specifically describes the four categories of transactions that require reporting. An insurance company is required to report a transaction if it knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (i) Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (ii) is designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act; (iii) has no business or apparent lawful purpose, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts; or (iv) involves the use of the insurance company to facilitate criminal activity. The final category of reportable transactions is intended to ensure that transactions involving legally-derived funds that the insurance company suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[13]

A determination as to whether a report should be filed must be based on all the facts and circumstances relating to the transaction and customer (*e.g.*, purchaser). Different fact patterns will require different judgments. Some examples of ''red flags'' associated with existing or potential customers include, but are not limited to, the following:

- The purchase of an insurance product that appears to be inconsistent with a customer's needs;
- Any unusual method of payment, particularly by cash or cash equivalents (when such method is, in fact, unusual);
- The purchase of an insurance product with monetary instruments in structured amounts;
- The early termination of an insurance product, especially at a cost to the customer, or where cash was tendered and/or the refund check is directed to an apparently unrelated third party;
- The transfer of the benefit of an insurance product to an apparently unrelated third party;
- Little or no concern by a customer for the investment performance of an insurance product, but much concern about the early termination features of the product;
- The reluctance by a customer to provide identifying information when purchasing an insurance product, or the provision of minimal or seemingly fictitious information; and
- The borrowing of the maximum amount available soon after purchasing the product.

The techniques of money laundering are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions.

Section 103.16(b)(3) provides that an insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Suspicious activity that occurs at the time of sale of the covered product is most likely to be observed by the agent or broker, while suspicious activity that occurs following the issuance of a policy and during the ongoing administration of the product would most likely be observed by the insurance company.

Insurance agents and insurance brokers are not independently required to report suspicious transactions under the final rule. Accordingly, section 103.16(b)(3) also states that an insurance company shall have procedures in place reasonably designed to obtain customer-related information (which includes observations and assessments) from its insurance agents and insurance brokers necessary to detect suspicious activity, and is responsible for reporting suspicious activity based on such information. The specific means to obtain such information are left to the discretion of the insurance company, although we anticipate that the insurance company may need to amend existing agreements with its agents and brokers to ensure that the company receives necessary customer information.

Section 103.16(b)(3) acknowledges that certain insurance agents and insurance brokers, such as broker-dealers in securities with respect to the sale of variable insurance products, may have a separate obligation to report suspicious activity under another Bank Secrecy Act regulation.[14] In those instances, the filing of a joint suspicious activity report is permissible. In all such joint filings, only one of the filing institutions should be identified as the ''filer'' in the filer identification section of the form. The narrative of the Suspicious Activity Report must include the words ''joint filing'' and must identify the other financial institution or institutions on whose behalf the report is being filed. As set forth in section 103.16(e), an insurance company must keep a copy of any joint Suspicious Activity Report filed. To

[12] Many currency transactions are not indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (*See* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions, (for example, funds transfers) *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

[13] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT Act to make it clear that the requirement to report suspicious activity encompasses the reporting of transactions in which legally-derived funds are used for criminal activity, such as the financing of terrorism.

[14] Variable insurance products that are deemed securities under the Securities Exchange Act of 1934 must be sold by registered broker-dealers, which are themselves subject to a suspicious activity reporting obligation. *See* 31 CFR 103.19.

avoid the filing of duplicative reports on the same suspicious transaction or transactions, all insurance companies, insurance agents, insurance brokers, and other financial institutions involved in the same suspicious transaction may share information with one another pertaining to that transaction, so long as such sharing does not notify the subject of the transaction that the transaction has been reported. Conforming language has been added to the retention and confidentiality provisions set forth at sections 103.16(e) and (f).

In addition, some insurance companies issue variable insurance products funded by separate accounts, some of which meet the definition of a mutual fund,[15] and therefore may be obligated to report suspicious activities relating to those products under any final rule that may be adopted requiring mutual funds to report suspicious activity. To avoid a duplicate filing requirement, we intend to amend this rule to require filing in such cases under the rule for mutual funds when a final rule is adopted.

In order to evaluate customer activity and relationships for money laundering and terrorism risks, we expect that insurance companies will incorporate into their anti-money laundering programs a suspicious transaction monitoring program that is appropriate for the particular insurance company and its covered products in light of such risks. The design and implementation of such a program, rather than isolated instances of failing to report suspicious transactions, will be more important when assessing an insurance company's compliance with the requirements of the rule.

C. 103.16(c)—Filing Procedures

Section 103.16(c) sets forth the filing procedures to be followed by insurance companies making reports of suspicious transactions. Within 30 days after an insurance company becomes aware of a reportable suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report by Insurance Companies (SAR–IC) and filing it in a central location to be determined by the Financial Crimes Enforcement Network. The SAR–IC will resemble the Suspicious Activity Report forms used by depository institutions to report suspicious transactions, and a draft form will be made available for comment in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget's implementing regulations (5 CFR part 1320).[16]

Supporting documentation relating to each SAR–IC is to be collected and maintained separately by the insurance company and made available to appropriate law enforcement and supervisory agencies upon request. Special provision is made for situations requiring immediate attention, in which case insurance companies are to telephone the appropriate law enforcement authority in addition to filing a SAR–IC.

D. 103.16(d)—Exception

Section 103.16(d) provides an exception to the reporting requirement for false information submitted to the insurance company to obtain a policy or support a claim. Language has been added to the final rule to make clear that an insurance company is not required to report instances of suspected insurance fraud unless the company has reason to believe that the false or fraudulent submission of information relates to money laundering or terrorist financing. For example, we do not expect an insurance company to report the submission of false medical records by a customer seeking life insurance coverage unless the company has a reason to believe that the purchase of the covered product is related to money laundering or terrorist financing. Some of the fact patterns that are associated with potential money laundering or terrorist financing are described above.

E. 103.16(e)—Retention of Records

Section 103.16(e) provides that insurance companies must maintain copies of SAR–ICs and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing. This provision has been modified to require an insurance company to retain copies of reports (and supporting documentation) provided to it by its agents that are required to make reports by another provision in 31 CFR part 103 when the agents and the company file a joint report regarding a transaction involving both entities. As indicated above, all supporting documentation is to be made available to the Financial Crimes Enforcement Network and other appropriate law enforcement and supervisory authorities, on request.

F. 103.16(f)—Confidentiality of Reports; Limitation on Liability

Section 103.16(f) reflects the statutory prohibition against the disclosure of information filed in, or the fact of filing, a Suspicious Activity Report (whether the report is required by the final rule or is filed voluntarily). *See* 31 U.S.C. 5318(g)(2). Thus, the paragraph specifically prohibits insurance companies filing SAR-ICs (or receiving a copy of filed joint Suspicious Activity Reports from another financial institution involved in the same transaction) from making any disclosure of a Suspicious Activity Report or the information contained therein, except to appropriate law enforcement and supervisory agencies. As amended by the USA PATRIOT Act, 31 U.S.C. 5318(g)(3) provides a safe harbor from liability to any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency and to any financial institution that reports suspicious activity pursuant to section 5318(g) or pursuant to any other authority. Section 5318(g)(3) further provides protection from liability for the non-disclosure of the fact of such reporting. Section 103.16(f) does not prohibit insurance companies from obtaining customer information from its agents and brokers necessary to detect and report suspicious activity, as required by section 103.16(b)(3). This section also does not prohibit insurance companies from discussing with their agents and brokers, for purposes of section 103.16(b)(3), information pertaining to a suspicious transaction with which each institution is involved, and the determination of which institution will file the Suspicious Activity Report in such a case.

G. 103.16(g)—Compliance

Section 103.16(g) states that compliance with the obligation to report suspicious transactions will be examined, and failure to comply with the rule may constitute a violation of the Bank Secrecy Act and its implementing regulations.

H. 103.16(h)—Insurance Companies That Are Registered Broker-Dealers in Securities.

The proposed rule provided in section 103.16(i) that an insurance company that is registered or required to register with the Securities and Exchange Commission shall be deemed to have

[15] *See* 31 CFR 103.130(a) (anti-money laundering program requirement for mutual funds).

[16] The only Bank Secrecy Act regulatory requirement currently applicable to insurance companies is the obligation to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than $10,000 in one transaction or in two or more related transactions. We understand that many insurance companies have used the Form 8300 to voluntarily report suspicious transactions. Once the SAR–IC becomes effective, insurance companies should use the SAR–IC, rather than the Form 8300, to report suspicious transactions. In the interim, insurance companies may use the Suspicious Activity Report by Securities and Futures Industries form.

satisfied the requirements of this section for those activities regulated by the Securities and Exchange Commission, to the extent that the company complies with the reporting requirements applicable to such activities that are imposed under section 103.19. [17] The purpose of this provision is to provide that an insurance company that is also registered with the Securities and Exchange Commission as a broker-dealer in securities, and is therefore required to report suspicious activities under section 103.19, would not be subject to duplicate reporting requirements under this final rule as well.[18] To the extent that any such insurance company would be required to report suspicious activities under this final rule that would not be reportable under section 103.19, it would be required to report under this final rule. The provision has been retained in the final rule with non-substantive changes.

I. 103.16(i)—Applicability Date

Section 103.16(i) provides that the new suspicious activity reporting rule applies to transactions occurring after May 2, 2006.

V. Executive Order 12866

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VI. Regulatory Flexibility Act

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule is not likely to have a significant economic impact on a substantial number of small entities. The Bank Secrecy Act anticipates that we will require financial institutions to report suspicious activities. Moreover, the final rule requires insurance companies, rather than their agents or brokers, to file reports of suspicious transactions, and most insurance companies are larger businesses. In addition, all insurance companies, in order to remain viable, have in place policies and procedures to prevent and detect fraud. Such anti-fraud measures should assist insurance companies in reporting suspicious transactions. We anticipate that insurance companies will be readily able to incorporate the suspicious reporting requirements of this rule into those anti-fraud measures. In addition, the costs associated with suspicious activity reporting will be commensurate with the size of an insurance company. If a company is small, the burden of complying with the final rule should be correspondingly small.

Consistent with the principles of the Regulatory Flexibility Act, we considered exempting small insurance companies from some or all of the requirements of the final rule. We do not believe that such an exemption is appropriate, given that money laundering can also be conducted through small insurance companies.

VII. Paperwork Reduction Act

The collection of information contained in the final rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and assigned Office of Management and Budget Control Number 1506–0029. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The only requirement in the final rule that is subject to the Paperwork Reduction Act is the recordkeeping requirement in section 103.16(e). The estimated annual average burden associated with this collection of information is three hours per recordkeeper. We received no comments concerning this burden estimate.

Comments concerning the accuracy of this recordkeeping burden estimate and suggestions for reducing this burden should be sent (preferably by fax on 202–395–6974) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy by paper mail to Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, ''ATTN: Insurance Company SAR Regulation'' or by electronic mail to *regcomments@fincen.treas.gov* with the caption ''ATTN: Insurance Company SAR Regulation'' in the body of the text.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Insurance companies, Currency, Investigations, Law Enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Subpart B of part 103 is amended by adding new § 103.16 to read as follows:

§ 103.16 Reports by insurance companies of suspicious transactions.

(a) *Definitions.* For purposes of this section:

(1) *Annuity contract* means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(2) *Bank* has the same meaning as provided in § 103.11(c).

(3) *Broker-dealer in securities* has the same meaning as provided in § 103.11(f).

(4) *Covered product* means:

(i) A permanent life insurance policy, other than a group life insurance policy;

(ii) An annuity contract, other than a group annuity contract; or

(iii) Any other insurance product with features of cash value or investment.

(5) *Group annuity contract* means a master contract providing annuities to a group of persons under a single contract.

(6) *Group life insurance policy* means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(7) *Insurance agent* means a sales and/or service representative of an insurance company. The term ''insurance agent'' encompasses any person that sells, markets, distributes, or services an insurance company's covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(8) *Insurance broker* means a person who, by acting as the customer's representative, arranges and/or services covered products on behalf of the customer.

[17] 17 We are aware of only one such insurance company, although there may be others.

[18] This is to be distinguished from a broker-dealer in securities acting as agent for an insurance company reporting under section 103.19, where a joint Suspicious Activity Report is permissible under subsection (b)(3)(ii) of the final rule.

(9) *Insurance company or insurer.* (i) Except as provided in paragraph (a)(9)(ii) of this section, the term ''insurance company'' or ''insurer'' means any person engaged within the United States as a business in the issuing or underwriting of any covered product.

(ii) The term ''insurance company'' or ''insurer'' does not include an insurance agent or insurance broker.

(10) *Permanent life insurance policy* means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

(11) *Person* has the same meaning as provided in § 103.11(z).

(12) *United States* has the same meaning as provided in § 103.11(nn).

(b) *General.* (1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network by using the form specified in paragraph (c)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least $5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (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 federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332;

(iii) 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 insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3) (i) An insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Accordingly, an insurance company shall establish and implement policies and procedures reasonably designed to obtain customer-related information necessary to detect suspicious activity from all relevant sources, including from its insurance agents and insurance brokers, and shall report suspicious activity based on such information.

(ii) Certain insurance agents may have a separate obligation to report suspicious activity pursuant to other provisions of this part. In those instances, no more than one report is required to be filed by the financial institutions involved in the transaction, as long as the report filed contains all relevant facts, including the names of both institutions and the words ''joint filing'' in the narrative section, and both institutions maintain a copy of the report filed, along with any supporting documentation.

(c) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR–IC), and collecting and maintaining supporting documentation as required by paragraph (e) of this section.

(2) *Where to file.* The SAR–IC shall be filed with the Financial Crimes Enforcement Network as indicated in the instructions to the SAR–IC.

(3) *When to file.* A SAR–IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR–IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR–IC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–IC if required by this section.

(d) *Exception.* An insurance company is not required to file a SAR–IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, unless the company has reason to believe that the false or fraudulent submission relates to money laundering or terrorist financing.

(e) *Retention of records.* An insurance company shall maintain a copy of any SAR–IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–IC. Supporting documentation shall be identified as such and maintained by the insurance company and shall be deemed to have been filed with the SAR–IC. When an insurance company has filed or is identified as a filer in a joint Suspicious Activity Report, the insurance company shall maintain a copy of such joint report (together with copies of any supporting documentation) for a period of five years from the date of filing. An insurance company shall make all supporting documentation available to the Financial Crimes Enforcement Network and any other appropriate law enforcement agencies or supervisory agencies upon request.

(f) *Confidentiality of reports; limitation of liability.* No insurance company, and no director, officer, employee, agent, or broker of any insurance company, who reports a suspicious transaction under this part (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (b)(3) of this section. Thus, any insurance company subpoenaed or otherwise requested to disclose a SAR–IC or the information contained in a SAR–IC (or a copy of a joint Suspicious Activity Report filed with another financial institution involved in the same transaction, including an insurance agent), except where such disclosure is requested by the Financial Crimes Enforcement Network or another appropriate law enforcement or supervisory agency, shall decline to produce the Suspicious Activity Report or to provide any information that would disclose that a Suspicious Activity Report has been prepared or filed, citing as authority 31 CFR 103.16 and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto. An insurance company, and any director, officer, employee, agent, or broker of such insurance company, that makes a report pursuant to this section, including a joint report (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) *Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company complies with the reporting requirements applicable to such activities pursuant to § 103.19.

(i) *Applicability date.* This section applies to transactions occurring after May 2, 2006.

Dated: October 28, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 05–21918 Filed 11–2–05; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA200–5100; FRL–7985–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is updating the materials submitted by The Commonwealth of Virginia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency, the Virginia Department of Environmental Quality, and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

EFFECTIVE DATE: This action is effective November 3, 2005.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the **Federal Register** (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On April 21, 2000 (65 FR 21315), EPA published a **Federal Register** beginning the new IBR procedure for Virginia. On September 8, 2004 (69 FR 54216), EPA published an update to the IBR material for Virginia. In this document, EPA is doing the following:

1. Announcing the second update to the IBR material.

2. Making corrections to the charts listed in paragraphs 52.2420(c) and (d), as described below:

a. Chapter 20, the two entries for Section 5–20–206 are combined into a single entry, with two separate **Federal Register** date and page citations and expanded text in the ''Explanation [former SIP citation]'' column.

b. Chapter 40, entries for Articles 42 (Emissions Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area), 47 (Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area), and 48 (Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area)—the text in the ''Explanation [former SIP citation]'' column is removed.

c. Chapter 40, entry 5–40–120—the text in the ''Title/subject'' column is revised.

d. Chapter 50, entry 5–50–120—the text in the ''Title/subject'' column is revised.

e. Code of Virginia, entry 10.1–1316.1.A.—the text in the ''EPA approval date'' column is revised by adding a **Federal Register** page citation.

f. Prince William County Landfill—the text in the ''40 CFR part 52 citation'' column is revised.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and