

Epidemiology & Statistics Unit, Research and Scientific Affairs, January 2009.

10. Mannino, D. M. et al., "Surveillance for Asthma—United States, 1980–1999," *Morbidity and Mortality Weekly Report*, 51(SS01):1–13, March 29, 2002.

11. Analysis completed by FDA based on information provided by IMS Health, IMS National Sales Perspective (TM), 2009, extracted September 2009. These data can be purchased from IMS Health. Please send all inquiries to: IMS Health, Attn: Brian Palumbo, Account Manager, 660 West Germantown Pike, Plymouth Meeting, PA 19462.

12. Rozek, R. P., and E. R. Bishko, "Economic Issues Raised in the FDA's Proposed Rule on Removing the Essential-Use Designation for Albuterol MDIs," National Economic Research Associates, August 13, 2004 (FDA Docket No. 2003P–0029/C25).

13. Hendeles, L. G., L. Colice, and R. J. Meyer, "Withdrawal of Albuterol Inhalers Containing Chlorofluorocarbon Propellants," *New England Journal of Medicine*, 356:1344–1351, March 29, 2007.

14. Goldman, D. P. et al., "Pharmacy Benefits and the Use of Drugs by the Chronically Ill," *The Journal of the American Medical Association*, 291:2344–2350, May 19, 2004.

15. DeNavas-Walt, C., B. D. Proctor, and J. C. Smith, U.S. Census Bureau, Current Population Reports, P60–236(RV), Income, Poverty, and Health Insurance Coverage in the United States: 2008, Table 7, p. 21, 2009.

#### List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, 21 CFR part 2 is amended as follows:

#### PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

■ 1. The authority citation for 21 CFR part 2 continues to read as follows:

**Authority:** 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

#### § 2.125 [Amended]

■ 2. Effective June 14, 2010, in § 2.125, remove and reserve paragraphs (e)(2)(iii) and (e)(4)(vii).

#### § 2.125 [Amended]

■ 3. Effective December 31, 2010, in § 2.125, remove and reserve paragraphs (e)(1)(v) and (e)(4)(iv).

#### § 2.125 [Amended]

■ 4. Effective June 30, 2011, in § 2.125, remove and reserve paragraph (e)(1)(iii).

#### § 2.125 [Amended]

■ 5. Effective December 31, 2013, in § 2.125, remove and reserve paragraphs (e)(2)(iv) and (e)(4)(viii).

Dated: April 8, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–8467 Filed 4–13–10; 8:45 am]

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#### DEPARTMENT OF THE TREASURY

#### 31 CFR Part 103

**RIN 1506–AA93**

#### Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions.

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to include mutual funds within the general definition of "financial institution" in regulations implementing the Bank Secrecy Act ("BSA"). The final rule subjects mutual funds to rules under the BSA on the filing of Currency Transaction Reports ("CTRs") and on the creation, retention, and transmittal of records or information for transmittals of funds. Additionally, the final rule amends the definition of mutual fund in the rule requiring mutual funds to establish anti-money laundering ("AML") programs. The amendment harmonizes the definition of mutual fund in the AML program rule with the definitions found in the other BSA rules to which mutual funds are subject. Finally, the final rule amends the rule that delegates authority to examine institutions for compliance with the BSA. The amendment makes it clear that FinCEN has not delegated to the Internal Revenue Service the authority to examine mutual funds for compliance with the BSA, but rather to the U.S. Securities and Exchange Commission ("SEC") as the federal functional regulator of mutual funds.

**DATES:** Effective Date: This rule is effective May 14, 2010.

Compliance Date: Mutual funds must comply with 31 CFR 103.33 by January 10, 2011. The compliance date for all other aspects of this rulemaking is the same as the effective date.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

##### A. Statutory Provisions.

The Bank Secrecy Act, Public Law 91–508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332, authorizes the Secretary of the Treasury ("Secretary") 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 investigations or proceedings, 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.<sup>1</sup> Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The definition of "financial institution" in the BSA includes investment companies.<sup>2</sup> The Investment Company Act of 1940, codified at 15 U.S.C. 80a–1 *et seq.* (the "Investment Company Act"), defines "investment company"<sup>3</sup> and subjects investment companies to regulation by the SEC.

##### B. Overview of Current Regulatory Provisions.

Regulations implementing the BSA currently apply only to investment companies that are "open-end companies," as the term is defined in the Investment Company Act. More commonly known as mutual funds, open-end companies are the predominant type of investment company. Open-end companies are management companies that offer or have outstanding securities that are redeemable at net asset value.<sup>4</sup>

Although FinCEN has issued individual rules that apply to mutual funds,<sup>5</sup> FinCEN has not included

<sup>1</sup> Language expanding the scope of the BSA was added by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"), Public Law 107–56.

<sup>2</sup> 31 U.S.C. 5312(a)(2)(I).

<sup>3</sup> See 15 U.S.C. 80a–3.

<sup>4</sup> 15 U.S.C. 80a–4; 15 U.S.C. 80a–5(a)(1); 15 U.S.C. 80a–2(a)(32). Face-amount certificate companies and unit investment trusts are excluded from the definition of "management company." 15 U.S.C. 80a–4(3).

<sup>5</sup> *Anti-Money Laundering Programs for Mutual Funds*, 67 FR 21117 (April 29, 2002); *Customer Identification Programs for Mutual Funds*, 68 FR 25131 (May 9, 2003); *Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Activity*, 71 FR 26213 (May 4, 2006); *Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts*, 71 FR 496 (Jan. 4, 2006); *Anti-Money*

Continued

mutual funds within the definition of “financial institution” at 31 CFR 103.11(n), which is less inclusive than the definition in the BSA itself.<sup>6</sup> The definition of “financial institution” at 31 CFR 103.11(n) determines, among other things, the scope of rules that require the filing of CTRs and the creation, retention, and transmittal of records or information on transmittals of funds and other specified transactions.<sup>7</sup>

## II. Notice of Proposed Rulemaking and Comments

On June 5, 2009, FinCEN published a notice of proposed rulemaking (the “Notice”) that proposed including mutual funds within the general definition of financial institution at 31 CFR 103.11(n).<sup>8</sup> The proposed rule would subject mutual funds to rules on the filing of CTRs and on the creation, retention, and transmittal of records or information for transmittals of funds.<sup>9</sup> The comment period for the Notice ended on September 3, 2009. FinCEN received three comment letters from various industry associations.<sup>10</sup> All of the commenters supported the proposed rule and offered many reasons why including mutual funds within the definition of “financial institution” at 31 CFR 103.11(n) is appropriate. These reasons are discussed below in greater detail in the section-by-section analysis. All of the commenters requested additional time to comply with the Recordkeeping and Travel Rule requirements that would be imposed under 31 CFR 103.33.

## III. Section-by-Section Analysis

### A. Sections 103.11(n)(10) and 103.11(ccc)—Mutual Funds Move From Filing Reports on Form 8300 to the Currency Transaction Report

The final rule adds mutual funds to the definition of “financial institution” at 31 CFR 103.11(n)(10). The final rule defines a “mutual fund” for this purpose at 31 CFR 103.11(ccc). The definition of

“mutual fund” covers only those entities registered or required to register with the SEC. Specifically, “mutual fund” is defined as:

an “investment company” (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) registered or required to register with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

There were no comments concerning the definition of mutual fund. FinCEN is adopting the definition as proposed.

The final rule has the effect of replacing a mutual fund’s requirement to file a Form 8300 with a requirement to file a CTR under 31 CFR 103.22.<sup>11</sup> A mutual fund will now be required to file a CTR for a transaction involving a transfer of more than \$10,000 in currency by, through, or to the mutual fund.<sup>12</sup> The CTR filing obligation covers incoming, outgoing, and exchange transactions in currency. The definition of “currency” for purposes of the CTR rule is different from and less inclusive than the definition of “currency” in the Form 8300 rule.<sup>13</sup> Under the CTR rule, a financial institution must treat multiple transactions as a single transaction if the financial institution has knowledge that the transactions are conducted by or on behalf of the same person.<sup>14</sup>

In the Notice, FinCEN asserted that the volume of Form 8300s filed is relatively low when compared to the overall volume of mutual fund transactions.<sup>15</sup> Commenters also concurred with FinCEN that since mutual funds are subject to SAR reporting requirements, the ability to

report suspicious transactions on a Form 8300 is redundant.<sup>16</sup>

In the Notice, FinCEN requested comment on the anticipated time and monetary savings that could result from replacing the requirement to file reports on Form 8300 with a requirement to file CTRs. One commenter stated that requiring mutual funds to file CTRs instead of Form 8300s would streamline and reduce overall compliance burdens for mutual funds and could aid in facilitating enterprise-wide risk management programs. Commenters were in agreement that requiring mutual funds to file CTRs instead of Form 8300s should reduce the expense and burden of reporting for mutual funds and their transfer agents,<sup>17</sup> and one commenter stated that there likely will be greater efficiency in larger entities that have staff and systems in place to produce CTR filings.

FinCEN also requested comment on the nature, volume, content, and value of any potentially lost information to law enforcement, tax, regulatory, and counter-terrorism investigations or activities that could result from this rulemaking. FinCEN did not receive any comments specific to this request. One commenter, however, stated generally that requiring mutual funds to file CTRs, rather than Form 8300s, would not diminish the quality or quantity of useful BSA data reported by mutual funds.

### B. Section 103.33—The Recordkeeping and Travel Rule and Related Recordkeeping Requirements

The final rule subjects mutual funds to requirements on the creation and retention of records for transmittals of funds, and the requirement to transmit

*Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts*, 72 FR 44768 (Aug. 9, 2007).

<sup>6</sup> See 31 U.S.C. 5312(a)(2).

<sup>7</sup> See 31 CFR 103.22; 31 CFR 103.28; 31 CFR 103.29; 31 CFR 103.33; and 31 CFR 103.38. Defining a business as a financial institution would make the business ineligible for exemption from a bank’s requirement to file CTRs with respect to the business’ large cash transactions. See 31 CFR 103.22(d)(5)(viii).

<sup>8</sup> *Amendment to the Bank Secrecy Regulations; Defining Mutual Funds as Financial Institutions*, 74 FR 26996 (June 5, 2009).

<sup>9</sup> See 31 CFR 103.22; 31 CFR 103.28; 31 CFR 103.29; 31 CFR 103.33; and 31 CFR 103.38.

<sup>10</sup> All comments to the Notice are available for public viewing at <http://www.regulations.gov> or [http://www.fincen.gov/statutes\\_regs/bsa/regs\\_proposal\\_comment.html](http://www.fincen.gov/statutes_regs/bsa/regs_proposal_comment.html).

<sup>11</sup> 31 CFR 103.30(a)(1)(ii) (the requirement to file a Form 8300 does not apply to transactions reported under 31 CFR 103.22).

<sup>12</sup> 31 CFR 103.22(b)(1).

<sup>13</sup> See 31 CFR 103.11(h) (currency is defined as the coin and paper of the United States or of any other country that is designated as legal tender and that circulates and is customarily used as a medium of exchange in a foreign country).

<sup>14</sup> 31 CFR 103.22(c)(2). The obligation to file a CTR is conditioned on knowledge that the transactions are conducted by or on behalf of the same person and result in either cash in or cash out totaling more than \$10,000 during any one business day. The threshold in 31 CFR 103.22 applies to transactions conducted during a single business day, whereas the requirement to file a Form 8300 can cover transactions that occur over a longer period of time. See 31 CFR 103.22(c)(2) and 31 CFR 103.30(c)(12)(ii).

<sup>15</sup> A review of BSA data revealed that while hundreds of millions of transactions involving mutual funds were conducted in calendar years 2004, 2005, 2006, and 2007, fewer than 19,500 Form 8300s were filed by mutual funds over the same period.

<sup>16</sup> FinCEN also offered that because mutual funds rarely receive from or disburse to shareholders significant amounts of currency, mutual funds are not as likely as depository institutions to be used during the initial “placement” stage of the money laundering process. *Amendment to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions*, 74 FR 26,996, 26,998 (June 5, 2009). Two commenters agreed with FinCEN. A third commenter stated that the terms and conditions of the mutual fund account, rather than the type of financial institution offering such product, is more likely to determine whether a mutual fund can be used to place illicit funds in the financial system.

<sup>17</sup> FinCEN has recognized the role of transfer agents in performing BSA compliance functions. See e.g., 67 FR 2117, (April 29, 2002) (adopting release for mutual fund Anti-Money Laundering Program rule), 68 FR 25131, (May 9, 2003) (adopting release for mutual fund Customer Identification Program rule), 71 FR 26213, (May 4, 2006) (adopting release for mutual fund SAR rule). Many mutual funds contractually delegate their BSA compliance functions, including recordkeeping, to transfer agents, although the mutual fund remains responsible under the BSA for ensuring compliance.

information on these transactions to other financial institutions in the payment chain ("Recordkeeping and Travel Rule").<sup>18</sup> The Recordkeeping and Travel Rule applies to transmittals of funds in amounts that equal or exceed \$3,000,<sup>19</sup> and requires the transmitter's financial institution to obtain and retain name, address, and other information on the transmitter and the transaction.<sup>20</sup> Furthermore, the Recordkeeping and Travel Rule requires the recipient's financial institution—and in certain instances, the transmitter's financial institution—to obtain or retain identifying information on the recipient.<sup>21</sup> The Recordkeeping and Travel Rule requires that certain information obtained or retained by the transmitter's financial institution "travel" with the transmittal order through the payment chain.<sup>22</sup>

FinCEN will adopt as proposed the inclusion of mutual funds within an existing exception designed to exclude from the Recordkeeping and Travel Rule's coverage funds transfers or transmittal of funds in which certain categories of financial institution are the transmitter, originator, recipient, or beneficiary.<sup>23</sup> Additionally, the final rule subjects mutual funds to requirements on the creation and retention of records for extensions of credit and cross-border transfers of currency, monetary instruments, checks, investment securities, and credit.<sup>24</sup> These requirements apply to transactions in amounts exceeding \$10,000.

Mutual funds are subject to record retention requirements under the

Investment Company Act, and mutual fund transfer agents are subject to recordkeeping requirements under the Securities Exchange Act of 1934.<sup>25</sup> In light of these existing regulatory obligations, FinCEN stated in the Notice that the requirements of 31 CFR 103.33 and 31 CFR 103.38 would have a *de minimus* impact on mutual funds and their transfer agents.<sup>26</sup> Furthermore, rules under the BSA on the establishment of customer identification programs by mutual funds and on the reporting by mutual funds of suspicious transactions impose requirements to create and retain records.<sup>27</sup>

FinCEN also requested comment on the anticipated impact of subjecting mutual funds to the requirements of the Recordkeeping and Travel Rule. All three commenters noted that subjecting mutual funds to the requirements of the Recordkeeping and Travel Rule will require mutual funds to implement changes to their transaction processing and recordkeeping systems. One commenter stated that the impact of the Recordkeeping and Travel Rule requirements on a mutual fund and its transfer agent may vary significantly, and that the impact will depend on such factors as the transaction processing and recordkeeping systems currently in place, the size of the mutual fund complex, and how the mutual fund shares are distributed. Other commenters stated that subjecting mutual funds to the requirements of the Recordkeeping and Travel Rule would have a greater impact on smaller mutual funds.

All commenters requested additional time to comply with the Recordkeeping and Travel Rule. Such an extension would provide mutual funds with an opportunity to implement changes to their transaction reporting and recordkeeping systems. Generally, commenters suggested an extension of between 18 to 24 months. FinCEN has determined that extending the compliance date with respect to the requirements of the Recordkeeping and Travel Rule to 270 days after the rule is published in the **Federal Register** is appropriate.

### *C. Section 103.130(a)—Amending the Definition of "Mutual Fund" in the AML Program Rule for Mutual Funds*

FinCEN is amending the definition of "mutual fund" at 31 CFR 103.130(a) by including an explicit reference to open-end companies "registered or required to register under section 8 of the Investment Company Act." The amended definition of mutual fund harmonizes the definition in the anti-money laundering program rule with the definitions in the customer identification program rule for mutual funds, enhanced due diligence program rule for certain foreign accounts, and suspicious activity reporting rule for mutual funds.<sup>28</sup> Rules requiring the establishment of customer identification and enhanced due diligence programs impose requirements that are programmatic in nature. It was FinCEN's intent that the definition of "mutual fund" at 31 CFR 103.130(a) include only those entities registered or required to register with the SEC. Paragraph (a) of section 103.130 will define a mutual fund as follows:

an "investment company" (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a-3)) that is an "open-end company" (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) registered or required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8).

### *D. Section 103.56(b)(8)—Excluding Mutual Funds From the Delegation of Examination Authority to the Internal Revenue Service*

FinCEN is amending 31 CFR 103.56(b)(8) by including mutual funds within the list of financial institutions the Internal Revenue Service lacks the authority to examine for compliance with the BSA. The definition of "mutual fund" at 31 CFR 103.11(ccc) will apply to this provision.

The SEC examines mutual funds for compliance with the Investment Company Act, and FinCEN has delegated to the SEC the authority to examine mutual funds for compliance with the BSA.<sup>29</sup> The SEC has expertise in the operations of mutual funds and experience addressing the adequacy of mutual fund compliance programs. Mutual funds are subject to rules under the Investment Company Act that require the implementation of internal controls and other aspects of a

<sup>18</sup> See 31 CFR 103.33(f) and (g). Financial institutions must retain records for a period of five years. 31 CFR 103.38(d).

<sup>19</sup> Rules under the BSA define a "transmittal of funds" and the persons or institutions involved in a "transmittal of funds." See 31 CFR 103.11(d), (e), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (ab), (ac), (ad), (ae), (af), (ag), (ah), (ai), (aj), (ak), (al), (am), (an), (ao), (ap), (aq), (ar), (as), (at), (au), (av), (aw), (ax), (ay), (az), (ba), (bb), (bc), (bd), (be), (bf), (bg), (bh), (bi), (bj), (bk), (bl), (bm), (bn), (bo), (bp), (bq), (br), (bs), (bt), (bu), (bv), (bw), (bx), (by), (bz), (ca), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci), (cj), (ck), (cl), (cm), (cn), (co), (cp), (cq), (cr), (cs), (ct), (cu), (cv), (cw), (cx), (cy), (cz), (da), (db), (dc), (dd), (de), (df), (dg), (dh), (di), (dj), (dk), (dl), (dm), (dn), (do), (dp), (dq), (dr), (ds), (dt), (du), (dv), (dw), (dx), (dy), (dz), (ea), (eb), (ec), (ed), (ee), (ef), (eg), (eh), (ei), (ej), (ek), (el), (em), (en), (eo), (ep), (eq), (er), (es), (et), (eu), (ev), (ew), (ex), (ey), (ez), (fa), (fb), (fc), (fd), (fe), (ff), (fg), (fh), (fi), (fj), (fk), (fl), (fm), (fn), (fo), (fp), (fq), (fr), (fs), (ft), (fu), (fv), (fw), (fx), (fy), (fz), (ga), (gb), (gc), (gd), (ge), (gf), (gg), (gh), (gi), (gj), (gk), (gl), (gm), (gn), (go), (gp), (gq), (gr), (gs), (gt), (gu), (gv), (gw), (gx), (gy), (gz), (ha), (hb), (hc), (hd), (he), (hf), (hg), (hh), (hi), (hj), (hk), (hl), (hm), (hn), (ho), (hp), (hq), (hr), (hs), (ht), (hu), (hv), (hw), (hx), (hy), (hz), (ia), (ib), (ic), (id), (ie), (if), (ig), (ih), (ii), (ij), (ik), (il), (im), (in), (io), (ip), (iq), (ir), (is), (it), (iu), (iv), (iw), (ix), (iy), (iz), (ja), (jb), (jc), (jd), (je), (jf), (jg), (jh), (ji), (jj), (jk), (jl), (jm), (jn), (jo), (jp), (jq), (jr), (js), (jt), (ju), (jv), (jw), (jx), (jy), (jz), (ka), (kb), (kc), (kd), (ke), (kf), (kg), (kh), (ki), (kj), (kl), (km), (kn), (ko), (kp), (kq), (kr), (ks), (kt), (ku), (kv), (kw), (kx), (ky), (kz), (la), (lb), (lc), (ld), (le), (lf), (lg), (lh), (li), (lj), (lk), (ll), (lm), (ln), (lo), (lp), (lq), (lr), (ls), (lt), (lu), (lv), (lw), (lx), (ly), (lz), (ma), (mb), (mc), (md), (me), (mf), (mg), (mh), (mi), (mj), (mk), (ml), (mm), (mn), (mo), (mp), (mq), (mr), (ms), (mt), (mu), (mv), (mw), (mx), (my), (mz), (na), (nb), (nc), (nd), (ne), (nf), (ng), (nh), (ni), (nj), (nk), (nl), (nm), (nn), (no), (np), (nq), (nr), (ns), (nt), (nu), (nv), (nw), (nx), (ny), (nz), (oa), (ob), (oc), (od), (oe), (of), (og), (oh), (oi), (oj), (ok), (ol), (om), (on), (oo), (op), (oq), (or), (os), (ot), (ou), (ov), (ow), (ox), (oy), (oz), (pa), (pb), (pc), (pd), (pe), (pf), (pg), (ph), (pi), (pj), (pk), (pl), (pm), (pn), (po), (pp), (pq), (pr), (ps), (pt), (pu), (pv), (pw), (px), (py), (pz), (qa), (qb), (qc), (qd), (qe), (qf), (qg), (qh), (qi), (qj), (qk), (ql), (qm), (qn), (qo), (qp), (qq), (qr), (qs), (qt), (qu), (qv), (qw), (qx), (qy), (qz), (ra), (rb), (rc), (rd), (re), (rf), (rg), (rh), (ri), (rj), (rk), (rl), (rm), (rn), (ro), (rp), (rq), (rr), (rs), (rt), (ru), (rv), (rw), (rx), (ry), (rz), (sa), (sb), (sc), (sd), (se), (sf), (sg), (sh), (si), (sj), (sk), (sl), (sm), (sn), (so), (sp), (sq), (sr), (ss), (st), (su), (sv), (sw), (sx), (sy), (sz), (ta), (tb), (tc), (td), (te), (tf), (tg), (th), (ti), (tj), (tk), (tl), (tm), (tn), (to), (tp), (tq), (tr), (ts), (tt), (tu), (tv), (tw), (tx), (ty), (tz), (ua), (ub), (uc), (ud), (ue), (uf), (ug), (uh), (ui), (uj), (uk), (ul), (um), (un), (uo), (up), (uq), (ur), (us), (ut), (uu), (uv), (uw), (ux), (uy), (uz), (va), (vb), (vc), (vd), (ve), (vf), (vg), (vh), (vi), (vj), (vk), (vl), (vm), (vn), (vo), (vp), (vq), (vr), (vs), (vt), (vu), (vv), (vw), (vx), (vy), (vz), (wa), (wb), (wc), (wd), (we), (wf), (wg), (wh), (wi), (wj), (wk), (wl), (wm), (wn), (wo), (wp), (wq), (wr), (ws), (wt), (wu), (wv), (ww), (wx), (wy), (wz), (xa), (xb), (xc), (xd), (xe), (xf), (xg), (xh), (xi), (xj), (xk), (xl), (xm), (xn), (xo), (xp), (xq), (xr), (xs), (xt), (xu), (xv), (xw), (xx), (xy), (xz), (ya), (yb), (yc), (yd), (ye), (yf), (yg), (yh), (yi), (yj), (yk), (yl), (ym), (yn), (yo), (yp), (yq), (yr), (ys), (yt), (yu), (yv), (yw), (yx), (yy), (yz), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz).

<sup>20</sup> See 31 CFR 103.33(f)(1)(i) and (f)(2).

<sup>21</sup> See 31 CFR 103.33(f)(3) (information that the recipient's financial institution must obtain or retain).

<sup>22</sup> See 31 CFR 103.33(g) (information that must "travel" with the transmittal order); 31 CFR 103.11(kk) (defining "transmittal order").

<sup>23</sup> See 31 CFR 103.33(e)(6)(i) and 31 CFR 103.33(f)(6)(i). The inclusion of mutual funds within the exceptions is intended to provide mutual funds with treatment similar to that of banks, brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.

<sup>24</sup> See 31 CFR 103.33(a)–(c). Financial institutions must retain these records for a period of five years. 31 CFR 103.38(d).

<sup>25</sup> See, e.g., 15 U.S.C. 80a-30 (mutual funds); 15 U.S.C. 78q(a)(3) (transfer agents).

<sup>26</sup> Amendment to Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions, 74 FR 26996, 26998 (June 5, 2009).

<sup>27</sup> See 31 CFR 103.131 (mutual funds must obtain and record identifying information for persons opening new accounts, and verify the identity of persons opening new accounts); 31 CFR 103.15(c) (mutual funds must maintain records of documentation that supports the filing of a SAR).

<sup>28</sup> 31 CFR 103.130(a), 103.131(a)(5), 103.175(f)(1)(x), 103.15(a).

<sup>29</sup> See 31 CFR 103.56(b)(6) (examination authority under the BSA is delegated to the SEC with respect to "investment companies," as the term is defined in the Investment Company Act).

compliance program.<sup>30</sup> Examinations by the Internal Revenue Service would result in duplication of effort and limited benefit in terms of increased compliance.

#### IV. Notice and Comment Under the Administrative Procedure Act

The Notice did not propose amendments to 31 CFR 103.130(a) and 31 CFR 103.56(b)(8). Under the Administrative Procedure Act, notice of a proposed rulemaking is not required for “rules of agency organization, procedure, or practice,” or when the agency, for good cause, finds “that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest.”<sup>31</sup> The amendment to 31 CFR 103.56(b)(8) is a “rule of agency organization, procedure, or practice.” Furthermore, for the reasons stated above, FinCEN finds that publishing the amendments to 31 CFR 103.130(a) and 31 CFR 103.56(b)(8) for comment is “unnecessary and contrary to the public interest.”<sup>32</sup>

#### V. Proposed Location in Chapter X

In accordance with the November 7, 2008 notice of proposed rulemaking pertaining to a restructuring of its regulations in a new chapter in the Code of Federal Regulations,<sup>33</sup> FinCEN is separately proposing to remove Part 103 of Chapter I of Title 31, Code of Federal Regulations, and add Parts 1000 to 1099 (Chapter X). In the proposed Chapter X, the definition of mutual fund will be located at 1010.100(gg) and inserted into the definition of “financial institution” at 1010.100(t)(10). The planned reorganization would have no substantive effect on the final rule herein. The final rule herein would be renumbered according to the structure established via the finalization of the Chapter X rule.

#### VI. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (“RFA”) (5 U.S.C. 601 *et seq.*),

<sup>30</sup> 17 CFR 270.30a–3 (registered investment companies must implement disclosure controls, and procedures and internal controls over financial reporting.); 17 CFR 270.38a–1 (registered investment companies must implement written policies and procedures reasonably designed to ensure compliance with the federal securities laws).

<sup>31</sup> 5 USC 553(b).

<sup>32</sup> For similar reasons, the amendment to 31 CFR 103.56(b)(8) does not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. 5 USC 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>33</sup> *Transfer and Reorganization of Bank Secrecy Act Regulations*, 73 FR 66414 (Nov. 7, 2008).

FinCEN certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The economic impact of the final rule on small entities should not be significant. Mutual funds, regardless of their size, are already required to comply with many of the rules under the BSA that currently exist. While all mutual funds are captured under this rulemaking, the estimated burden associated with defining mutual funds as financial institutions is minimal. FinCEN believes that mutual funds rarely receive from or disburse to shareholders significant amounts of currency. As discussed above, FinCEN and commenters anticipate that moving mutual funds from a Form 8300 filing requirement to a CTR filing requirement will reduce the regulatory burden on all mutual funds. Finally, mutual funds are already subject to record retention requirements under the Investment Company Act, and mutual fund transfer agents are subject to recordkeeping requirements under the Securities Exchange Act of 1934.

In the Notice, FinCEN requested comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities. FinCEN received one letter commenting on FinCEN’s certification under the RFA. This commenter stated that the requirements of 31 CFR 103.33 might have a significant economic impact on small mutual funds. The commenter noted that most of the larger mutual funds already have affiliations with other financial institutions and that these financial institutions have systems in place enabling mutual funds to achieve economies. The commenter suggested that FinCEN consider a phased-in requirement to allow smaller mutual funds additional time to comply with the requirements of 31 CFR 103.33. FinCEN believes that this rulemaking will not have a significant impact on a substantial number of small mutual funds. FinCEN, however, has determined that a delayed compliance date to allow all mutual funds to make changes to their recordkeeping and transaction reporting systems in order to comply with the requirements of 31 CFR 103.33 is appropriate. FinCEN has, therefore, extended the compliance date with respect to the requirements of 31 CFR 103.33 to 270 days after the rule is published in the **Federal Register**.

#### VII. Executive Order 12866

It has been determined that the final rule is not a “significant regulatory action” for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

#### VIII. Paperwork Reduction Act

The collection of information contained in this 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)) under control number 1506–0004. Based on comments received the collection of information as required by 31 CFR 103.22 will likely reduce the reporting burden for mutual funds. Commenters did not state that the collection of information as required by 31 CFR 103.33 would result in an increased burden for mutual funds.

*Description of Affected Financial Institutions:* “Mutual funds” as defined in 31 CFR 103.11(ccc).

*Estimated Number of Affected Financial Institutions:* 8,029.<sup>34</sup>

*Estimated Average Annual Burden Hours per Affected Financial Institution:* The estimated average burden associated with the collection of information in this notice is one-hour recordkeeping per response per affected financial institution.<sup>35</sup>

*Estimated Total Annual Burden:* 8,029 hours.<sup>36</sup>

In the Notice, FinCEN invited comment on whether the collection of information in the final rule is necessary for the proper performance of FinCEN’s mission.<sup>37</sup> Commenters did not address the issue specifically. However, all commenters stated that subjecting mutual funds to 31 CFR 103.22, and relieving mutual funds of the obligation to file reports on Form 8300, will reduce the reporting burden on mutual funds. All commenters noted that requiring mutual funds to comply with 31 CFR 103.33 could have an impact on small mutual funds. As discussed above in the section by section analysis, all commenters requested a delayed compliance date for 31 CFR 103.33 to allow mutual funds time to implement changes to their transaction reporting and recordkeeping systems. FinCEN has determined that all mutual funds should

<sup>34</sup> See Investment Company Institute (ICI) 2008 *Investment Company Fact Book*, at 110 (2008), available at: [http://www.icifactbook.org/pdf/2008\\_factbook.pdf](http://www.icifactbook.org/pdf/2008_factbook.pdf) (number of mutual funds in the U.S. in 2007).

<sup>35</sup> The single hour is based on an estimate of 45 minutes to complete the CTR form and 15 minutes for recordkeeping and archiving.

<sup>36</sup> While it is not industry practice for mutual funds to accept cash, there is no restriction on mutual funds that prohibits mutual funds from accepting cash. Therefore, for purposes of estimating the annual burden the filing of CTRs will have on mutual funds, FinCEN estimates that each mutual fund will file one CTR per year.

<sup>37</sup> *Amendment to Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions*, 74 FR 26996, 26999 (June 5, 2009).

be granted additional time to comply with 31 CFR 103.33.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor a collection of information, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number.

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

#### Amendment

■ For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

#### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN 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 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

#### Subpart A—Definitions

■ 2. Amend § 103.11 by revising paragraph (n)(9); and by adding paragraphs (n)(10) and (ccc):

##### § 103.11 Meaning of Terms.

\* \* \* \* \*

(n) \* \* \*

(9) An introducing broker in commodities;

(10) A mutual fund.

\* \* \* \* \*

(ccc) *Mutual fund* means an “investment company” (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) registered or required to register with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

\* \* \* \* \*

#### Subpart C—Records Required To Be Maintained

■ 3. Amend § 103.33 by revising paragraphs (e)(6)(i)(I) and (f)(6)(i)(I); and by adding paragraphs (e)(6)(i)(J) and (f)(6)(i)(J), to read as follows:

##### § 103.33 Records to be made and retained by financial institutions.

\* \* \* \* \*

(e) \* \* \*

(6) \* \* \*

(i) \* \* \*

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

\* \* \* \* \*

(f) \* \* \*

(6) \* \* \*

(i) \* \* \*

(I) A federal, state or local government agency or instrumentality; or

(J) A mutual fund; and

\* \* \* \* \*

#### Subpart I—Anti-Money Laundering Programs

■ 4. Section 103.130 is amended by revising paragraph (a) to read as follows:

##### § 103.130 Anti-money laundering programs for mutual funds.

\* \* \* \* \*

(a) For purposes of this section mutual fund means an “investment company” (as that term is defined in section 3 of the Investment Company Act (15 U.S.C. (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) registered or required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

\* \* \* \* \*

#### Subpart E—General Provisions

■ 5. Section 103.56 is amended by revising paragraph (b)(8) to read as follows:

##### § 103.56 Enforcement.

\* \* \* \* \*

(b) \* \* \*

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

\* \* \* \* \*

Dated: April 8, 2010.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2010–8500 Filed 4–13–10; 8:45 am]

**BILLING CODE 4810–02–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2010–0217]

#### Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Berkley Bridge (I–264), across the Elizabeth River, Eastern Branch, mile 0.4, at Norfolk, VA. The deviation is necessary to facilitate structural repairs to the lift spans. This deviation allows the drawbridge to remain in the closed to navigation position.

**DATES:** This deviation is effective from 8 p.m. on April 23, 2010 through 4:30 a.m. on June 21, 2010.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0217 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0217 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail [Terrance.A.Knowles@uscg.mil](mailto:Terrance.A.Knowles@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Virginia Department of Transportation, who owns and operates this bascule-type drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1007(b) and (c) to facilitate the resurfacing of the bridge roadway, as modified by the temporary deviation at Docket No. USCG–2010–0083, published in the **Federal Register** on March 3, 2010, 75 Fed. Reg. 9521.