

recordkeeping requirement will result in additional costs for mutual funds that do not currently maintain records for the prescribed time period. The total industry-wide burden will depend on the number of new accounts added each year. We estimate that data entry will require approximately two minutes per customer, and therefore that the annual, industry-wide burden will be approximately 533,000 hours.¹⁴⁷

We believe that there is a nominal burden associated with the new recordkeeping requirement. Under the final rule, a mutual fund may rely on another financial institution to perform some or all its CIP under certain conditions, including that the financial institution must enter into a contract requiring the financial institution to certify annually to the fund that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified elements of the fund's CIP. Not all mutual funds will choose to rely on a third party. The minimal burden of retaining the certification described above should allow a mutual fund to reduce its net burden under the rule by relying on another financial institution to perform some or all of its CIP.

2. Providing Notice to Customers

The requirement for mutual funds to provide the required notice to customers regarding use of customers' information will create a one-time burden by necessitating the amendment of mutual funds' account applications, both paper and web-based. As adopted, the rule differs from the proposed rule in providing additional guidance regarding what constitutes adequate notice and on the timing of the notice requirement, and in including sample language that, if appropriate, will be deemed adequate notice to a mutual fund's customers. We estimate that the estimated 3,060 registered mutual funds will each spend approximately two hours modifying their account applications. Thus, we estimate that the industry-wide burden will be approximately 6,120 hours.

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the final rule would be provided by customers and other

sources to mutual funds and maintained by mutual funds. In addition, the information may be used by federal regulators and other authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The final rule requires that the identifying information obtained about a customer be retained until five years after the date the account of the customer is closed and that other records relating to the verification of the customer be retained until five years after the record is made.

H. Request for Comment

Treasury and the Commission invite comment on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506-0033), Washington, DC 20503 (or by the Internet to jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Investment companies, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Securities and Exchange Commission

17 CFR Chapter II

Authority and Issuance

The Commission is adopting 17 CFR 270.0-11 pursuant to the authority set

forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a-6(c) and 80a-37(a)].

■ For the reasons as set out in the preamble, title 17, part 270 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, unless otherwise noted;

* * * * *

■ 2. Section 270.0-11 is added to read as follows:

§ 270.0-11 Customer identification programs.

Each registered open-end company is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation at 31 CFR 103.131, which requires a customer identification program to be implemented as part of the anti-money laundering program required under subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. Where 31 CFR 103.131 and this chapter use different definitions for the same term, the definition in 31 CFR 103.131 shall be used for the purpose of compliance with 31 CFR 103.131. Where 31 CFR 103.131 and this chapter require the same records to be preserved for different periods of time, such records shall be preserved for the longer period of time.

By the Securities and Exchange Commission.

Dated: April 29, 2003.

Margaret H. McFarland,
Deputy Secretary.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

Treasury is adopting 31 CFR 103.131 pursuant to the authority set forth in 31 U.S.C. 5318(l).

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

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

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

¹⁴⁷ Since mutual funds will not be required to comply with the requirements of this final rule until October 1, 2003, the industry-wide burden during the first year will be approximately 133,250 hours.