

check other lists provided to them by the Federal government following the events of September 11, 2001. FinCEN believes that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, FinCEN believes the provision in 31 CFR 103.121 that requires a bank to provide adequate notice to its customers that it is requesting information to verify their identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements of 31 CFR 103.121 similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. FinCEN believes that the compliance burden, if any, is minimized for banks, including small banks, because banks have the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, FinCEN believes that the flexibility incorporated into the customer identification rules of 31 CFR 103.121 will permit each bank to tailor its customer identification program to fit its own size and needs. In this regard, FinCEN believes that expenditures associated with establishing and implementing a customer identification program will be commensurate with the size of a bank. If a bank is small, the burden to comply with the customer identification requirements should be *de minimis*.

### III. Executive Order 12866

Treasury has determined that this proposal is not a "significant regulatory action" under Executive Order 12866.

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

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

#### Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the

Code of Federal Regulations is proposed to be 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. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by revising paragraph (a)(2)(ii) of § 103.121 to read as follows:

#### **§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.**

- (a) \* \* \*
- (2) \* \* \*

(ii) A bank, as set forth in § 103.11(c), that does not have a Federal functional regulator.

\* \* \* \* \*

Dated: April 28, 2003.

**James F. Sloan,**

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[FR Doc. 03–11015 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P