

F. 103.15(f)—Examinations and Enforcement

Section 103.15(f) notes that the Department of the Treasury or its delegate will examine compliance with the obligation to report suspicious transactions, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations. In examining any particular failure to report a transaction as required by this section, FinCEN and the SEC may take into account the relationship between the particular failure to report and the adequacy of the implementation and operation of a mutual fund's compliance procedures.

G. 103.15(g)—Effective Date

Finally, section 103.15(g) provides that compliance with the new suspicious activity reporting rule would be required by a date 180 days after the date on which the final regulations discussed in this notice of proposed rulemaking are published in the **Federal Register**.

III. Submission of Comments

FinCEN invites comment on all aspects of the proposed regulation. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400.

IV. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. Investment companies, regardless of their size, are currently subject to the Bank Secrecy Act. Procedures currently in place at mutual funds to comply with existing Bank Secrecy Act rules should help mutual funds to identify suspicious transactions. In addition, the limited use of currency to purchase mutual fund shares will likely reduce the number of suspicious activity reports required to be filed. Finally, certain small mutual funds may have an established and limited customer base whose transactions are well known to the fund.

V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

VII. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information 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), 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. Comments on the collection of information should be received by March 24, 2003. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 3,000 suspicious activity reports by mutual funds. This result is an estimate based on the estimated number of respondents under the rule.

Description of Respondents: Mutual funds as defined in 31 CFR 103.15(a).

Estimated Number of Respondents: 3,000.

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.15 will be reflected in the burden of the form used by mutual funds to report suspicious transactions. The recordkeeping burden of 31 CFR 103.15 is estimated as an average of 3 hours per form, which includes internal review of records to determine whether the activity requires reporting.

Estimated Total Annual Recordkeeping Burden: 9,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, and whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

In addition the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In connection with this, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Securities, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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, 352, Pub. L. 107-56, 115 Stat. 307.