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Deputy Director for Operations, Pension Benefit Guaranty Corporation.

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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; Extension of Compliance Date

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

ACTION: Final rule; extension of compliance date.

SUMMARY: FinCEN is issuing this final rule extending the compliance date for those provisions in 31 CFR 103.33 that apply to mutual funds. On April 14, 2010, FinCEN issued a final rule that included mutual funds within the general definition of "financial institution" in regulations implementing the Bank Secrecy Act ("BSA"). The final rule subjects mutual funds to 31 CFR 103.33, which requires the creation, retention, and transmittal of records or information for transmittals of funds. FinCEN is extending, from January 10, 2011 to April 10, 2011, the date on which mutual funds must begin to comply with 31 CFR 103.33.

DATES: This final rule is effective on October 15, 2010. The compliance date for 31 CFR 103.33 is extended from January 10, 2011 to April 10, 2011.

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

On April 14, 2010, FinCEN published a final rule [1] to include mutual funds within the general definition of "financial institution" in regulations implementing the BSA (the "Final Rule").[2] 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 as the Federal functional regulator of mutual funds.

Section 103.33—The Recordkeeping and Travel Rule and Related Recordkeeping Requirements

The Final Rule subjects mutual funds to requirements relating to the creation and retention of records for transmittals of funds, and the requirement to transmit information on these transactions to other financial institutions in the payment chain ("Recordkeeping and Travel Rule").[3] The Recordkeeping and Travel Rule applies to transmittals of funds in amounts that equal or exceed $3,000,[4] and requires the transmittor's financial institution to obtain and retain name, address, and other information on the transmittor and the transaction.[5] Furthermore, the Recordkeeping and Travel Rule requires the recipient's financial institution—and in certain instances, the transmittor's financial institution—to obtain or retain identifying information on the recipient.[6] The Recordkeeping and Travel Rule requires that certain information obtained or retained by the transmittor's financial institution "travel" with the transmittal order through the payment chain.[7]

Mutual funds are subject to record retention requirements under the Investment Company Act of 1940, and mutual fund transfer agents are subject to recordkeeping requirements under the Securities Exchange Act of 1934.[8] In light of these existing regulatory obligations, FinCEN stated in the notice of proposed rulemaking 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.[9] 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.[10]

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. All commenters requested additional time to comply with the Recordkeeping and Travel Rule. Commenters stated that 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 determined that extending the compliance date with respect to the requirements of the Recordkeeping and Travel Rule to 270 days after the rule

[1] Amendments to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions, 75 FR 19241 (April 14, 2010).

[2] *See* 31 CFR 103.11(n)(10) (general definition of "financial institution"). The BSA is codified in part at 31 U.S.C. 5311 *et seq.* Rules implementing the BSA are codified at 31 CFR part 103.

[3] *See* 31 CFR 103.33(f) and (g). Financial institutions must retain records for a period of five years. 31 CFR103.38(d).

[4] 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), (q), (r), (s), (v), (w), (cc), (dd), (jj), (kk), (ll), and (mm). A "transmittal of funds" includes funds transfers processed by banks, as well as similar payments where one or more of the financial institutions processing the payment is not a bank. If the mutual fund is processing a payment sent by or to its customer, then the mutual fund would be either the "transmittor's financial institution" or the "recipient's financial institution."

[5] *See* 31 CFR 103.33(f)(1)(i) and (f)(2).

[6] *See* 31 CFR 103.33(f)(3) (information that the recipient's financial institution must obtain or retain).

[7] *See* 31 CFR 103.33(g) (information that must "travel" with the transmittal order); 31 CFR 103.11(kk) (defining "transmittal order"). Additionally, the Final Rule includes 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 transmittor, originator, recipient, or beneficiary. *See* 31 CFR 103.33(e)(6)(i) and 31 CFR 103.33(f)(6)(i). Further, 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. *See* 31 CFR 103.33(a)–(c). Financial institutions must retain these records for a period of five years. 31 CFR 103.38(d).

[8] *See, e.g.,* 15 U.S.C. 80a–30 (mutual funds); 15 U.S.C. 78q(a)(3) (transfer agents).

[9] Amendment to Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions, 74 FR 26996, 26998 (June 5, 2009).

[10] *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).

was published in the **Federal Register** (January 10, 2011) was appropriate.

On July 13, 2010, the Investment Company Institute ("ICI") [11] submitted a letter stating that it will be difficult for its members to comply with the Recordkeeping and Travel Rule by January 10, 2011. Due to unique industry end-of-year systems issues,[12] as well as systems changes necessitated by other new regulatory requirements,[13] the ICI has requested a three month extension of the date by which mutual funds are required to comply with the requirements of the Recordkeeping and Travel Rule.

II. Extension of Compliance Date for the Recordkeeping and Travel Rule

FinCEN believes that it is appropriate to extend the date by which mutual funds must comply with the Recordkeeping and Travel Rule. Therefore, mutual funds now will have until April 10, 2011 to comply with 31 CFR 103.33. We do not anticipate granting a further extension beyond April 10, 2011 and expect that mutual funds thereafter will have adequate processes in place to comply with the Recordkeeping and Travel Rule.

[11] The ICI is an association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). Members of ICI manage total assets of $11.42 trillion and serve 90 million shareholders.

[12] According to the ICI, most mutual funds and transfer agents refrain from implementing material modifications or enhancements to their transaction processing and recordkeeping systems for varying periods beginning in early December (generally referred to as a "freeze") to ensure that the systems are capable of handling the large number of end-of-year fund and shareholder transactions, as well as the preparation of year-end account statements and tax reporting information. Because the January 10, 2011 compliance date falls within the period when mutual fund transaction processing and recordkeeping systems are frozen, mutual funds will need to come into compliance with the Recordkeeping and Travel Rule by the middle of November 2010—before the systems are frozen. A three-month extension of the compliance date would allow mutual funds sufficient time to come into compliance with the Recordkeeping and Travel Rule without disrupting the year-end operations and reporting functions.

[13] According to the ICI, mutual fund transfer agents are currently redesigning their systems in order to comply with new cost basis reporting requirements, which entail significant operational and technological changes to allow funds to capture, report, and transfer required tax information, such as when shareholders transfer their accounts (*see* Basis Reporting by Securities Brokers and Basis Determination for Stock, 74 FR 67010 (Dec. 17, 2009)). In addition, mutual funds and their transfer agents are updating their systems to comply with a new requirement that money market mutual funds and their transfer agents be able to process purchases and redemptions electronically at a price other than $1.00 per share (*see* Money Market Fund Reform, SEC Release No. IC–29132 (Jan. 27, 2010)).

III. Proposed Location in Chapter X

As discussed in a previous **Federal Register** Notice, 73 FR 66414, Nov. 7, 2008, 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). If the notice of proposed rulemaking for Chapter X is finalized, the changes in the present rule would be reorganized according to the proposed Chapter X. The planned reorganization will have no substantive effect on the regulatory changes herein. The regulatory changes of this specific rulemaking would be renumbered according to the proposed Chapter X as follows: § 103.33 would be moved to § 1010.410.

IV. Notice and Comment Under the Administrative Procedure Act

FinCEN for good cause finds that, for the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date are impracticable, unnecessary and contrary to the public interest. In this regard, FinCEN notes that mutual funds need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation processes accordingly.[14]

Dated: October 6, 2010.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

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[14] *See* 5 U.S.C. 553(b)(3)(B) (an agency may dispense without prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, and contrary to the public interest"). The change to the compliance date is effective upon publication in the **Federal Register.** The Administrative Procedure Act allows effective dates less than 30 days after publication in the **Federal Register** for "a substantive rule which grants or recognizes an exemption or relieves a restriction." *See* 5 U.S.C. 553(d)(1).

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0029]

RIN 0720–AB45

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA–08) states with respect to any prescription filled on or after the date of enactment, the TRICARE Retail Pharmacy Program shall be treated as an element of the DoD for purposes of procurement of drugs by Federal agencies under section 8126 of title 38, United States Code (U.S.C.), to the extent necessary to ensure pharmaceuticals paid for by the DoD that are provided by network retail pharmacies under the program to eligible covered beneficiaries are subject to the pricing standards in such section 8126. DoD issued a final rule on March 17, 2009, implementing the law. On November 30, 2009, the U.S. District Court for the District of Columbia remanded the final rule to DoD (without vacating the rule) for DoD to consider in its discretion whether to readopt the current iteration of the rule or adopt another approach. This final rule is the product of that reconsideration. DoD is readopting the 2009 final rule, with some revision.

DATES: This final rule is effective December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Rear Admiral Thomas McGinnis, Chief, Pharmacy Operations Directorate, TRICARE Management Activity, telephone 703–681–2890.

SUPPLEMENTARY INFORMATION:

A. Background

Section 703 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA–08) (Pub. L. 110–181) enacted 10 U.S.C. 1074g(f). It provides that with respect to any prescription filled on or after the date of enactment (January 28, 2008), the TRICARE Retail Pharmacy Program shall be treated as an element of DoD for purposes of the procurement of drugs by Federal agencies under 38 U.S.C. 8126 to the extent necessary to ensure pharmaceuticals paid for by DoD that are provided by network retail pharmacies to TRICARE beneficiaries are subject to Federal Ceiling Prices (FCPs). This section 8126 established FCPs for covered drugs (requiring a minimum 24% discount) procured by DoD and three other agencies from manufacturers. The NDAA required implementing regulations.

DoD issued a proposed rule July 25, 2008 (73 FR 43394–97) and a final rule March 17, 2009 (74 FR 11279–93). Among other things, the preamble to the final rule stated that DoD interpreted the statute as automatically capping the price manufacturers may get paid for