

particular proposed rule whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.²⁸ This proposed rule would affect CTAs of all sizes. However, the economic burden should be minimal. The costs associated with the development of anti-money laundering programs are attributable to the mandates of section 352 of the Act. In addition, the proposed rule would not impose significant burdens on those CTAs covered by the rule because they are already subject to Form 8300 reporting and may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule. Similarly, the procedures currently in place at other financial institutions such as futures commission merchants and introducing brokers to comply with existing BSA rules should help guide CTAs in establishing their own anti-money laundering programs. Finally, CTAs subject to the proposed rule would not be compelled to obtain more sophisticated legal or accounting advice than that already required to run their businesses.

Finally, FinCEN believes that the flexibility incorporated into the proposed rule will permit each CTA to tailor its anti-money laundering program to fit its own size and needs. In this regard, FinCEN believes that expenditures associated with establishing and implementing an anti-money laundering program will be commensurate with the size of a CTA. If a CTA is small, the burden to comply with the proposed rule should be *de minimis*.

VI. Executive Order 12866

This proposed rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VII. Paperwork Reduction Act

The collection of information (recordkeeping requirement) contained in this proposed rule has been 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 July 7, 2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the Paperwork Reduction Act unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information (recordkeeping requirement) in this proposed rule is in 31 CFR 103.133(b). The information would be used by federal agencies to verify compliance by CTAs with the provisions of 31 CFR 103.133. The collection of information is mandatory.

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 concerning the collection of information as required by 31 CFR 103.133(b) is presented to assist those persons wishing to comment on the information collection.

Description of Recordkeepers: Commodity trading advisors as defined in 31 CFR 103.133(a).

Estimated Number of Recordkeepers: 650.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the collection of information in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 650 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on commodity trading advisors, 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 provide information.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations

(Government agencies), Banks and banking, Brokers, Commodity futures, Counter money laundering, Counterterrorism, Currency, Reporting and recordkeeping requirements.

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 is amended 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, 321, 326, 352, Pub. L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

2. Section 103.56 is amended by redesignating paragraph (b)(8) as (b)(9) and revising it, and by adding a new paragraph (b)(8) to read as follows:

* * * * *

(b) * * *
(8) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers, commodity pool operators and commodity trading advisors (as that term is defined in § 103.133(a));

(9) To the Commissioner of Internal Revenue with respect to all financial institutions for which examination authority is not otherwise delegated pursuant to this paragraph (b).

3. Subpart I of part 103 is amended by adding new § 103.133 to read as follows:

§ 103.133 Anti-money laundering programs for commodity trading advisors.

(a) *Definitions.* For the purposes of this section:

(1) The term "*commodity trading advisor*" means a person registered or required to be registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) and that directs client commodity futures or options accounts.

(2) For purposes of this definition the term "*directs*" refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity futures or options account without the client's specific authorization.

(b) *Anti-money laundering program required.* Effective [date that is 90 days after the date of publication of a final rule in the **Federal Register**]:

(1) Each commodity trading advisor shall develop and implement a written

²⁸ 47 FR 18618, 18620 (April 30, 1982).