

overall supervision of the program should be an officer of the investment adviser.

*(4) Provide Ongoing Training for Appropriate Persons.*

Employee training is an integral part of an anti-money laundering program in any firm that has multiple employees involved in managing client assets. Employees of the adviser must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.<sup>26</sup> For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

*C. Administration*

The proposed rule includes a provision under which FinCEN would generally delegate examination authority to the SEC, to enable the SEC to examine investment advisers' compliance with the anti-money laundering program requirement. In addition, because certain investment advisers subject to the rule are not necessarily registered with the SEC or otherwise identifiable to FinCEN, the proposed rule contains a notice provision requiring the firms subject to the rule that are not SEC-registered to file a brief notice with FinCEN providing identifying information about

the firm. Without a methodology for identifying these unregistered entities, there would be no way for FinCEN to assure that they are in compliance with the rule.<sup>27</sup>

**V. Request for Comment**

FinCEN requests comment on all elements of the proposed rule. FinCEN specifically requests comment on the proposed definition of "investment adviser," whether it is appropriate to determine that investment advisers are financial institutions under the BSA and to require these investment advisers to implement anti-money laundering programs, and whether other categories of investment advisers should be covered by or excluded from the rule. FinCEN also requests comment regarding the proposed provisions designed to avoid imposing overlapping or duplicative regulation of investment advisers and other financial institutions that are (or are proposed to be) subject to anti-money laundering program requirements.

**VI. Regulatory Flexibility Act**

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose significant burdens on those investment advisers 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. In addition, investment advisers subject to the proposed rule will 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 investment adviser 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 an investment adviser. If an investment adviser is small, the burden to comply with the proposed rule should be *de minimis*.

**VII. Executive Order 12866**

It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866.

Accordingly, a regulatory impact analysis is not required.

**VIII. Paperwork Reduction Act**

The collections of information contained in this proposed rule are 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 collections 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](mailto:jlackeyj@omb.eop.gov)), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collections 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 collections of information in this proposed rule are in 31 CFR 103.150(b) and (d). The information will be used by federal agencies to verify compliance by investment advisers with the provisions of 31 CFR 103.150. The collections of information are mandatory.

*Description of Recordkeepers and Reporters:* Investment advisers as defined in 31 CFR 103.150(a).

*Estimated Number of Recordkeepers:* 10,000.

*Estimated Average Annual Burden Per Recordkeeper:* The estimated average burden associated with the recordkeeping requirement in this proposed rule is 1 hour per recordkeeper.

*Estimated Total Annual Recordkeeping Burden:* 10,000 hours.

*Estimated Number of Respondents (Notice Requirement):* 3,000.

*Estimated Average Annual Burden Per Respondent:* The estimated average burden associated with the notice requirement in this proposed rule is 15 minutes per respondent.

*Estimated Total Annual Reporting Burden:* 750 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the collections of information are 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

<sup>26</sup> Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the Office of Foreign Assets Control and other government lists of suspected terrorists and terrorist organizations.

<sup>27</sup> The Secretary of the Treasury is authorized to promulgate this notice requirement under the BSA. For a discussion of this authority, see UIC NPRM, *supra* note 17.