

amended to provide the CFTC with examination authority with respect to FCMs and IB-Cs for BSA compliance.

### III. Submission of Comments

All comments will be available for public inspection and copying, and no material in any 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.

### IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA")<sup>50</sup> requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules proposed today would affect FCMs and IB-Cs. The CFTC has established certain definitions of "small entities" to be used by the CFTC in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>51</sup> The CFTC previously has determined that FCMs are not small entities for the purpose of the RFA.<sup>52</sup> Therefore, the requirements of the RFA do not apply to those entities.

With respect to IB-Cs, the CFTC has stated that it would evaluate within the context of a particular proposal whether all or some affected IB-Cs should be considered small entities, and if so, that it would analyze the economic impact on them of any rule.<sup>53</sup> All IB-Cs, including small IB-Cs, would be affected by the proposed rules. As noted above, the inclusion of IB-Cs within the "financial institution" definition in the BSA regulations would make IB-Cs subject to all of the same requirements that apply to other financial institutions, such as banks and introducing and clearing BDs. Nevertheless, FinCEN does not believe that these requirements modify the existing obligations of IB-Cs, since the transactional information required to be made and retained under the proposed rules would be information that already is required to be made and retained in the ordinary course of an IB-C's business.

Concerning the filing of suspicious activity reports by IB-Cs, FinCEN does not believe that the economic impact of the proposed rule will be significant. Due to mandatory provisions of the USA Patriot Act<sup>54</sup> and obligations imposed by the NFA,<sup>55</sup> FCMs and IB-Cs already are obligated to establish AMLPs that

include policies, procedures, and internal controls that are reasonably designed to assure compliance with the BSA and the implementing regulations. A set of systems and procedures designed to detect and require reporting of suspicious activity complements these existing program requirements. As the NFA's interpretive notice to Compliance Rule 2-9(c) makes clear, an IB-C may tailor its program based on the type of its business, the size and complexity of its operations, the breadth and scope of its customer base, the number of firm employees, and the firm's resources.

Based on the foregoing, FinCEN does not believe the proposed rules will have a significant economic impact on a substantial number of small entities. Accordingly, FinCEN hereby certifies, pursuant to Section 3(a) of the RFA,<sup>56</sup> that the proposed rules will not have a significant economic impact on a substantial number of small entities.

### V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a "significant regulatory action" for purposes of 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 notice of proposed rulemaking is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act ("PRA").<sup>57</sup> Comments on the collection of

information should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of 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 collection of information should be received by July 7, 2003.

In accordance with the PRA<sup>58</sup> and its implementing regulations,<sup>59</sup> the following information concerning the collection of information as required by the proposed rules<sup>60</sup> is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that the proposed suspicious activity reporting requirements, if adopted as proposed, would result in the annual filing of a total of 1,591 SAR-SFs by FCMs and IB-Cs. This result is an estimate based on the size of; the current FCM and IB-C community.

*Description of Respondents:* FCMs and IB-Cs that are or are required to be registered with the CFTC, excluding notice-registered FCMs and IB-Cs.

*Estimated Number of Respondents:* 1,591 (168 FCMs and 1423 IB-Cs).

*Frequency:* As required.

*Estimate of Burden:* The reporting burden of 31 CFR 103.17 will be reflected in the burden of the Form, SAR-SF. The recordkeeping burden of 31 CFR 103.17 is estimated as an average of four hours per form, which is based on the estimate for BDs.

*Estimate of Total Annual Recordkeeping Burden on Respondents:* 6,364 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 respondents, 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.

<sup>50</sup> 5 U.S.C. 601 *et seq.*

<sup>51</sup> 47 FR 18618 (April 30, 1982).

<sup>52</sup> *Id.* at 18619-20.

<sup>53</sup> 47 FR 18618, 18618-18620 (April 30, 1982).

<sup>54</sup> 31 U.S.C. 5318(h).

<sup>55</sup> NFA Compliance Rule 2-9(c).

<sup>56</sup> 5 U.S.C. 605(b).

<sup>57</sup> 44 U.S.C. 3507(d).

<sup>58</sup> 44 U.S.C. 3506(c)(2)(A).

<sup>59</sup> 5 CFR part 1320.

<sup>60</sup> 31 CFR 103.17.