

examples of indicia of illegal activity, and is by no means exhaustive. Determinations as to whether a transaction should be refused or terminated must be based on the facts and circumstances relating to the transaction and the dealer's knowledge of the customer or supplier in question. It is not intended that dealers automatically refuse to engage in or terminate transactions simply because such transactions involve one or more of the factors listed in the rule. Rather, it is intended that dealers will develop procedures for identifying transactions involving potentially illegal activity, and procedures setting forth the actions that a dealer will take in response to such transactions.

Section 103.140(c)(2) requires that a dealer designate a compliance officer to be responsible for administering the anti-money laundering program. The person (or group of persons) should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the dealer's business. The role of the compliance officer is to ensure that (1) The program is being implemented effectively; (2) the program is updated as necessary; and (3) appropriate persons are trained in accordance with the rule. Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the dealer's business and the risks posed. In all cases, the person responsible for the supervision of the overall program should be an officer or employee of the dealer.

Section 103.140(c)(3) requires that a dealer provide for training of appropriate persons. Employee training is an integral part of any anti-money laundering program. Employees of the dealer 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 internal or external seminars, and could include videos, computer-based training, booklets, etc. The level, frequency, and focus of the training should 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.¹¹ 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.

Section 103.140(c)(4) requires that a dealer conduct periodic testing of its program, in order to ensure that the program is indeed functioning as designed. Such testing should be accomplished by personnel knowledgeable regarding BSA requirements. Testing may be accomplished either by dealer employees or unaffiliated service providers so long as those same individuals are not involved in the operation or oversight of the program. The frequency of such a review would depend upon factors such as the size and complexity of the dealer and the extent to which its business model may be more subject to money laundering than other institutions. Any useful recommendations resulting from such review should be implemented promptly or reviewed by senior management.

Section 103.140(d) provides that a dealer must develop and implement an anti-money laundering program within 90 days after enactment of a final rule based on the Notice, or not later than 90 days after the date a person becomes a dealer for purposes of the rule.

III. Regulatory Flexibility Act

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. Because the requirements of the proposed rule closely parallel the requirements for anti-money laundering programs for all financial institutions mandated by section 352 of the Act, the costs associated with the establishment and implementation of anti-money laundering programs are attributable to the statute and not the proposed rule. Moreover, FinCEN believes that the

¹¹ 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 need to review OFAC and other government lists.

definition of "dealer" in section 103.140(a)(1), which excludes dealers who have less than \$50,000 in gross proceeds in a year, will exclude most small dealers from the requirements of the rule.

Furthermore, the proposed rule provides for substantial flexibility in how each dealer may meet its requirements. This flexibility is designed to account for differences among dealers, including size. In this regard, the costs associated with developing and implementing an anti-money laundering program will be commensurate with the size of a dealer. If a dealer is small, the burden to comply with section 352 and the proposed rule should be similarly small.

FinCEN specifically solicits comment on the impact of section 352 and the proposed rule on small dealers, particularly whether the proposed \$50,000 threshold should be higher or lower, and whether an alternative threshold (such as one based upon specific physical quantities of precious metals, stones, or jewels, or other types of thresholds) would be more appropriate.

IV. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information in the proposed rule should be sent (preferably by fax ((202)395-6974)) to the 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.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, and whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the collection of information (see below), including the number of dealers (as defined in section 103.140(a)(1)) who will be subject to the requirements of the proposed rule; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways