v. What would be the costs of such a rule?

Dated: March 22, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–7467 Filed 3–26–02; 12:05 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Amendments to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions; Request for Additional Comments

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

ACTION: Proposed regulations: Reopening of comment period and request for additional comments.

SUMMARY: FinCEN is soliciting additional comments concerning the proposed standard for the reporting by casinos and card clubs of suspicious activity. To allow the submission of such comments, it is re-opening for 60 additional days the comment period for the relevant notice of proposed rulemaking.

DATES: Additional written comments about the reporting standard must be received on or before May 28, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, Attention: NPRM—Casino SAR Rule. (Comments may also be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text ''Attention: NPRM—Casino SAR Rule.'') For additional instructions and terms for the submission of comments, see Supplementary Information under the heading ''IV. Submission of Comments'' in the notice of proposed rulemaking, published on May 18, 1998, about casino reporting of suspicious transactions. 63 FR 27230, 27237 (May 18, 1998).

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director (Regulatory Policy), FinCEN, (703) 905–3930; Judith Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION: On May 18, 1998, FinCEN issued a notice of proposed rulemaking, 63 FR 27230 (the ''Notice''), under the terms of the Bank Secrecy Act,[1] concerning the reporting by casinos [2] of suspicious transactions.[3] The comment period for the Notice ended on September 15, 1998.

FinCEN received 18 comment letters on the Notice. In addition, FinCEN held four public meetings on the Notice during the comment period. The meetings were held in New Orleans, Louisiana on July 14, 1998; Chicago, Illinois on July 23, 1998; Scottsdale, Arizona on August 6, 1998; and New York City, New York on September 9, 1998.

One of the primary issues raised in the written comments and public meetings was the nature of the proposed standard for reporting of suspicious transactions. As explained more fully below, FinCEN has determined to reopen the comment period with respect to that issue.

I. The Proposed Reporting Standard.

The rule proposed in the Notice would require a casino to report a transaction to the Treasury Department, if that transaction is:

conducted or attempted by, at, or through a casino, and involves or aggregates at least $3,000 in funds or other assets, *and the casino knows, suspects, or has reason to suspect* that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or any other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.[4] (Emphasis added.)

The proposed reporting standard (except for differing dollar thresholds) is the same as that adopted by the Treasury Department for suspicious transaction reporting by depository institutions, money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks. *See* 31 CFR 103.18(a)(2), relating to suspicious activity reporting by banks, and 31 CFR 103.20(a)(2), relating to suspicious activity reporting by certain money services businesses.[5] It is also the same reporting standard that the Treasury Department proposed in a Notice of Proposed Rulemaking relating to extension of the requirement to report suspicious activity to brokers and dealers in securities.[6]

Commenters on the Notice have argued strongly, however, that requiring reporting if a casino ''has reason to suspect'' that a transaction falls into one of the three categories of reportable transaction,[7] is inappropriate, because the ''fast-paced, entertainment-filled environment'' at casinos is vastly different from the environment of most other financial institutions. They assert that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated in the way they transfer and wager funds by factors such as gambling strategies, intuition, or gambling superstitions. The wider range of motivations reflected in

[1] Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–59, and 31 U.S.C. 5311–5330. The Bank Secrecy Act authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, P.L. 107–56.

[2] In this document, the term ''casino'' when used alone, includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(8), unless the context clearly indicates otherwise. See 31 CFR 103.11(n)(7)(iii).

[3] The Notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently re-numbered as 103.64) relating to casino compliance programs.

[4] *See* proposed 31 CFR 103.21(a)(2)(i)–(iii), 63 FR at 27239 (May 18, 1998).

[5] Banks have been required to file suspicious activity reports since April 1, 1996. The suspicious transaction reporting rules for depository institutions were renumbered as part of the rulemaking relating to the reporting of suspicious transactions by certain money services businesses. *See* 65 FR 13683 (March 14, 2000). The suspicious transaction reporting rules for the categories of money services businesses described in the text took effect on January 1, 2002.

[6] See 66 FR 67670 (December 31, 2001).

[7] Because the standard requires reporting when a financial institution has ''reason to suspect'' that a transaction is suspicious, the standard is referred to in the comments and in this document as an ''objective reporting standard.''

the actions of casino customers, in turn, will multiply the difficulties that casinos face in seeking to determine which transactions are truly suspicious. The commenters thus assert that casinos should be subject to a standard in which reporting of suspicious activities is required only if a casino ''knows, suspects, or, *in the judgment of the casino,* has reason to suspect'' that a transaction is suspicious. (Emphasis added.) [8]

FinCEN is concerned that the commenters may have misperceived the meaning of the reporting standard proposed in the Notice. A ''reason to suspect'' standard takes as its baseline the practical experience and expertise of industry officials in evaluating risks in the enterprise involved. Financial institutions (and different institutions within a particular segment of the financial industry) operate in different ways and under different conditions, and the self-adjusting quality of a ''reason to suspect'' standard is what makes that standard sufficiently flexible to apply, for example, to international or money center banks, community banks, non-bank money transmitters, and sellers of money orders.

Casino operations, themselves, have different parts. Transactions that take place at a casino's cage—where chips and tokens are purchased or redeemed, customers' deposit and credit accounts are opened or settled, checks are purchased or cashed, and funds transfers are initiated or received—are little different (other than for the use of gambling chips and tokens) than the sorts of transactions that can take place at a teller's window in a depository institution. Transactions on a gaming floor (such as wagering of currency or purchasing of currency for chips), take place in a far different environment. But a ''reason to suspect'' standard adjusts, by its very nature, to the different sorts of activities and the different environments in which financial transactions take place, whether within one financial institution or as between financial institutions. Whether a casino has reason to suspect that a transaction or series of transactions is suspicious under the terms of the rule may, and likely will, involve far different considerations for wagering activity (for precisely the reasons the commenters cite) than for transactions at a casino cage or a slot booth. But that does not mean that it is inappropriate to ask that an institution meet such a standard in evaluating the (different) relevant facts.

Commenters also argued that language protecting a casino's judgment was absolutely necessary to bar after-the-fact determinations by enforcement officials about a casino's decision not to report a transaction. They suggested that casinos would find it necessary, in order to defend their judgment, to document their reasons for not filing a suspicious activity report with respect to transactions that meet the reporting threshold. [9]

Again, FinCEN believes that the commenters may have misperceived the ''reason to suspect'' standard. In adopting the rule requiring the reporting of suspicious transactions by depository institutions, FinCEN stated that it anticipated that, ''in general the area for inquiry in the case of failure to report will center upon both the facts of the particular failure and what the failure indicates about the bank's compliance systems and attention to the Bank Secrecy Act rules in general.'' 61 FR 4326, 4330 (February 5, 1996). The same logic applies to all categories of financial institutions.

The determinative question, in all cases, is whether a ''reason to suspect'' existed at the time and in the circumstances, in which the transaction occurred whenever and by whomever the question is asked.[10] By way of contrast, the standard proposed by the commenters would appear to leave the decision whether to file a suspicious activity report entirely to the discretion of the casino and to preclude altogether review of the casino's compliance with any reporting requirement, unless the government were able to show that the casino's employees possessed actual knowledge or suspicion that they were witnessing or participating in money laundering or structuring of transactions, or in other types of financial crime.

The proposed rule asks a casino to exercise due diligence in evaluating the facts before the institution and seeking to identify those transactions that should appear suspicious in light of the particular circumstances and industry experience.[11] The corresponding rules ask the same of banks and money services businesses.

Casinos understand their business and the nature of the gaming industry. The extent to which casinos carefully monitor gaming activities for loss-protection and other business purposes is well documented. Within that context, a duty to investigate potentially suspicious activity further—to exercise due diligence—would appear no more or less difficult for a casino than for a bank or money transmitter.

As a final note, the rule that Treasury ultimately promulgates requiring casinos to file suspicious transaction reports will apply to casinos located in Nevada. Since May 1985, casinos located in Nevada have been exempt from certain Bank Secrecy Act requirements pursuant to a memorandum of agreement between the Treasury Department and the State of Nevada on behalf of Nevada casinos under 31 CFR 103.45(c)(1) (subsequently renumbered as 103.55).[12] By its terms, the memorandum of agreement only exempts Nevada casinos from the BSA requirements applicable to casinos at the time it was signed, including currency transaction reporting and recordkeeping requirements. Treasury's proposal to extend a requirement to report suspicious activity to casinos would therefore not be covered by the exemption contained in the memorandum of agreement.

In order to obtain an exemption from a Bank Secrecy Act requirement, a state must subject the class of transactions for which the exemption is sought to requirements that the Secretary of the Treasury deems ''substantially similar'' to those promulgated by Treasury under Title 31 with respect to the class of transactions.[13] In addition, there must be adequate provision for enforcement of the class of transactions to be exempted. If Treasury ultimately adopts

[8] Regulations of the Nevada Gaming Control Board, requiring suspicious transaction reporting by casinos in that state, under the Nevada state regulatory system, adopt the ''subjective standard'' sought by the commenters.

[9] Commenters predicted substantial overreporting in an attempt by casinos to avoid later questions, and some commenters even suggested that casinos might file suspicious activity reports with respect to all transactions that exceeded the reporting threshold.

[10] The determination whether a transaction at a casino cage or slot booth, or on the gaming floor, requires reporting will naturally require analysis and judgment on the part of casino personnel, in light of their experience and industry experience. But it is not the purpose of the proposed rule to ''second guess'' casino executives; in fact, articulation of a ''reason to suspect'' standard can as easily restrict government flexibility in challenging casino officials' judgments with the benefit of hindsight, as it can open questions about whether a particular casino's judgments, on particular facts, met that standard.

[11] The rule proposed in the Notice specifically requires the incorporation of considerations relating to the reporting of suspicious transactions into a casino's Bank Secrecy Act compliance programs. *See* proposed 31 CFR 103.54(a)(2)(ii) and (a)(2)(v)(B), 63 FR 27230, 27236–37, 27240. (Section 103.54 was subsequently renumbered as 103.64)

[12] 31 CFR 103.55(c)(1) provides that the Secretary of the Treasury may grant exemptions to the casinos in any state ''whose regulatory system substantially meets the reporting and recordkeeping requirements of this part.''

[13] *See* 31 U.S.C. 5318(a)(5), which was added to the BSA by section 410 of the Money Laundering Suppression Act, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub.L. 103–325 (September 23, 1994).

a suspicious transaction reporting requirement that incorporates an objective reporting standard, the difference between such a standard and a subjective reporting standard, a distinction with respect to which commenters have expressed considerable concern, would be a significant factor in determining whether Nevada's suspicious transaction reporting rule would be ''substantially similar'' to Treasury's rule. For this reason, we are formally encouraging Nevada casinos to comment on the ''reason to suspect'' standard contained in the Notice.

II. Request for Additional Comments

FinCEN is reopening the comment period for the reporting of suspicious transactions by casinos, in order to solicit responses to the discussion of the ''reason to suspect'' standard that appears above, and additional views about the best way to apply to casinos the due diligence obligations inherent in suspicious transaction reporting.

Specifically FinCEN requests additional comments on the following issues:

(1) The application of the objective ''reason to suspect'' standard (as proposed in the Notice and as further explained in this document) to the casino industry, given the self-adjusting nature of such a standard. In particular, FinCEN invites comment about whether it would be helpful to add language to the rule or preamble explaining that the objective standard necessarily takes into account differences in the operating environment in various parts of a financial institution (for example, as between casino cage and gaming floor activities).

(2) The ability of casinos to satisfy a due diligence-based standard, especially given the nature of existing casino risk management and customer monitoring practices.

(3) The extent to which the due diligence notion addresses concerns about possible subsequent review by the government of a financial institution's decisions that a report is (or is not) required in particular cases.

(4) The meaning of the phrase ''in the judgment of the casino, has reason to suspect,'' proposed by several commenters, and the result of its application.

Dated: March 22, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–7558 Filed 3–28–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[0720–AA67]

Collection From Third Party Payers of Reasonable Charges for Health Care Services

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to implement provisions of the National Defense Authorization Act for Fiscal Year 2000, which amended the statutory obligation of the third party payers to replace the ''reasonable cost'' basis of the Third Party Collection Program with a ''reasonable charge'' basis, and also authorized methods to be used for the computation of reasonable charges. We propose to adopt the ''reasonable charge'' basis and generally to use CHAMPUS payment rates as the reasonable charges under the Program. This rule also implements the provisions added by the National Defense Authorization Act for Fiscal Year 2002 related to the charging of fees for care to civilians who are not covered beneficiaries.

DATES: Comments must be received by May 28, 2002.

ADDRESSES: Send comments to Lt. Col. Rose Layman, Uniform Business Office, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, Resource Management, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Rose Layman at (703) 681–8910.

SUPPLEMENTARY INFORMATION: Our goal is to publish a final rule in early 2002 with an effective date of April 1, 2002. In keeping with our intention to adopt a rate structure more consistent with the civilian health insurance industry practice, this rule proposes an itemized methodology for outpatient services. A combination of our current rate methodology, based on cost, and new methodology based on CHAMPUS payment rates will be used.

Due to the extensive system and practices required in over 500 facilities, a phased-in approach to our methodology will be applied. The current inpatient methodology of an all-inclusive DRG-based rate (including professional charges) will continue to be utilized for FY 02. In FY 03, we will begin to bill separately for hospital charges (using a DRG-based schedule of costs) and professional charges (using the CPT–4 based CHAMPUS Maximum Allowable Charges (CMAC) rates). Our program changes in FY 02 will focus on outpatient services.

Our analysis indicates that the transition from reasonable costs to reasonable charges will most likely not increase the amount of money collected for the services provided. We undertook an analysis comparing our current rate structure based on cost data with the charges based on the CMAC rates. An initial sample of 500 patient encounters was obtained from Military Treatment Facilities across all three Services from various regions. These patient encounters were priced with the National average CMAC pricing scale as well as the current all-inclusive methodology. The average of both pricing schemes found the totals to be within a ten-dollar range of each other. Thus, we anticipate billing at approximately the same aggregate level. The benefit of the change in methodology is that each bill will be much more appropriate for the actual services provided to the patient and will be itemized in the manner to which the health insurance industry is accustomed. Therefore, although it is not based on actual DoD costs (because our cost accounting systems do not have patient level specification), we believe adoption of the CMAC rates is more representative of actual costs specific to the services provided to a patient than is our current aggregated clinic visit rate.

The format of line-item charges will more closely resemble that currently used by facilities of the Department of Veteran's Affairs. Under this rule, DoD facilities will bill for the majority of outpatient care utilizing the Health Care Common Procedure Coding System with individual charges associated with these codes. Third party payers who receive claims from both entities, will now see greater similarity between the DoD and VA. However, the rates and business rules utilized by these two agencies will vary, with the VA's usual and customary rate based on independent calculation, and the DoD's rate based on the long-established CHAMPUS methodology.

This approach is also consistent with the newly enacted 10 U.S.C. 1079b, which reaffirms the authority of the Secretary of Defense to ''implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other