announced in the April 27, 1998, **Federal Register** (63 FR 20561).

During the course of its review, OSM determined that the required amendments at 30 CFR 917.16(b)(1) and in the first sentence of (b)(2), which mandate a staffing level of 408 for Kentucky, and (b)(3), which requires that Kentucky provide a report to OSM describing the actions taken to achieve the staffing level, could possibly be removed based on the additional documentation Kentucky provided. Specifically, the Director proposes to remove the entire required amendment at 917.16(b) because Kentucky appears to have met all the requirements in 30 CFR 917.16(b) (1), (2), and (3). The comment period is being reopened because this proposed action was not specified in the two earlier announcements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–13079 Filed 5–15–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Proposed Amendment to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the Bank Secrecy Act regulations to require casinos and card clubs to report suspicious transactions involving at least $3,000 in funds or other assets, relevant to a possible violation of law or regulation; reports would be made on a reporting form specifically designed for use in the gaming industry. The proposed amendments to the Bank Secrecy Act regulations would also require casinos and card clubs to establish procedures designed to detect occurrences or patterns of suspicious transactions and would make certain other changes to the requirements that casinos maintain Bank Secrecy Act compliance programs. The proposal is a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering programs of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before September 15, 1998.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, Virginia 22182–2536, *Attention:* NPRM—Suspicious Transaction Reporting—Casinos. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov,'' with the following caption in the body of the text: ''*Attention:* NPRM—Suspicious Transaction Reporting—Casinos''. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of Comments: Comments may be inspected, between 10:00 a.m. and 4:00 p.m., at FinCEN's Washington office, in the Franklin Court Building, 1099 14th Street, N.W., Fourth Floor,

Washington, D.C. 20005. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 216–2870.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Senior Financial Enforcement Officer, Office of Program Development, FinCEN, (703) 905–3931 or Cynthia L. Clark, Deputy Chief Counsel, Office of Chief Counsel, FinCEN, (703) 905–3758.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes to add a new § 103.21 to 31 CFR part 103, to require casinos and card clubs to report to the Department of the Treasury suspicious transactions to the extent provided in such section relevant to a possible violation of law or regulation.[1] The proposal would extend to casinos and card clubs the suspicious transaction reporting regime to which the nation's banks, thrift institutions, and credit unions have been subject since April 1, 1996.[2] Related changes are made to the provisions of 31 CFR 103.54 relating to casino compliance programs. FinCEN has previously proposed a rule that would require suspicious transaction reporting by (i) money transmitters, (ii) issuers, sellers, and redeemers of money orders, and (iii) issuers, sellers, and redeemers of traveler's checks, see 62 FR 27900, which is a part of the set of rules proposed at 62 FR Part V (May 21, 1997). It intends in the near future to propose a rule extending the suspicious transaction reporting requirement to brokers or dealers in securities.

II. Background

A. Statutory Provisions

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, 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, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR part 103.[3] The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The provisions of the Bank Secrecy Act relating to the reporting of suspicious transactions are contained in 31 U.S.C. 5318(g).[4] That subsection grants the Secretary of the Treasury the authority to require the reporting of such transactions by financial institutions subject to the Bank Secrecy Act, and contains provisions protecting reporting institutions from liability to customers on account of the making of such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent.

> That makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[5] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' *Id.*, at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h) grant the Secretary authority to

> Require financial institutions to carry out anti-money laundering programs, including at a minimum,
> (A) the development of internal policies, procedures, and controls,
> (B) the designation of a compliance officer,
> (C) an ongoing employee training program, and
> (D) an independent audit function to test programs.

These provisions, enacted at the same time as the explicit provisions relating to reporting of suspicious transactions, complement the latter provisions.

B. Application of the Bank Secrecy Act to Gaming Businesses

State licensed gambling casinos were generally made subject to the Bank Secrecy Act as of May 7, 1985, by regulation issued early that year. *See* 50 FR 5065 (February 6, 1985).[6] The 1985 action was based on Treasury's statutory authority to designate as financial institutions for Bank Secrecy Act purposes (i) businesses that engage in activities ''similar to'' the activities of the businesses listed in the Bank Secrecy Act, as well as (ii) other businesses ''whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.'' *See* 31 U.S.C. 5312(a)(2)(Y) and (Z)[7]. Special Bank Secrecy Act regulations relating to casinos were issued in 1987, and amended in 1989 and (more significantly) in 1994. *See* 52 FR 11443 (April 8, 1987), 54 FR 1165 (January 12, 1989), and 59 FR 61660 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538 (March 12, 1993)). These actions reflect the continuing determination not only that casinos are vulnerable to manipulation by money launderers and tax evaders but, more generally, that gaming establishments provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services,

[1] As used hereafter in this document, the phrase ''casino'' when used singly 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). 31 CFR 103.11(n)(7)(iii) and (n)(8) were added to the Bank Secrecy Act Regulations by the final rule published at 63 FR 1919 (January 13, 1998).

[2] The suspicious transaction reporting rules for banks are at present found at 31 CFR 103.21, which is proposed to be renumbered as 301 CFR 103.18 as part of the pending rulemaking relating to the reporting of suspicious transactions by money transmitters and other money services businesses (discussed immediately below in the text).

[3] Bank Secrecy Act provisions relating specifically to gaming establishments are discussed at paragraph B, below.

[4] Subsection (g) of section 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (''Annunzio-Wylie Act''), Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, to require designation of a single government recipient for reports of suspicious transactions.

[5] This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[6] Casinos whose gross annual gaming revenue did not exceed $1 million were, and continue to be, excluded from Bank Secrecy Act coverage.

[7] In 1985, these provisions were numbered 31 U.S.C. 5312(a)(2)(X) and (Y). The numbering changed with the addition to section 5312(a)(2) of a new subparagraph (X), described in the text, dealing with gaming establishments, by the Money Laundering Suppression Act of 1994.

such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

In recognition of the importance of the application of the Bank Secrecy Act to the gaming industry, section 409 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, codified the application of the Bank Secrecy Act to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the Bank Secrecy Act itself. The statutory specification reads:

(2) financial institution means—

* * * * *

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act) * * *.

31 U.S.C. 5312(a)(2)(X). Gambling casinos authorized to do business under the Indian Gaming Regulatory Act became subject to the Bank Secrecy Act on August 1, 1996. *See* 61 FR 7054 (February 23, 1996), and the class of gaming establishments known as ''card clubs'' will become subject to the Bank Secrecy Act on August 1, 1998.[8] *See* 63 FR 1919 (January 13, 1998).

Casinos in Nevada were exempted from direct coverage under the Bank Secrecy Act as a result of Treasury action taken in 1985 at the request of state authorities. *See* 50 FR 5064 (February 6, 1985). The exemption carries with it a continuing requirement that Nevada casinos must be subject to a state ''regulatory system [that] substantially meets the reporting and recordkeeping requirements'' of 31 CFR part 103, in the judgment of the Department of the Treasury, *see* 31 CFR 103.45(c)(1), and that meets certain additional conditions specified in 31 CFR 103.45(c)(2).

Nevada Gaming Commission Regulation 6A, Cash Transactions Prohibitions, Reporting, and Recordkeeping, has required Nevada casinos to report currency transactions in excess of $10,000 as part of its continuing responsibilities pursuant to a May 1985 cooperative agreement between the State of Nevada and the U.S. Department of the Treasury that implements the exemption. As a result of a recent Treasury review of Nevada's regulatory system, Regulation 6A was amended, *inter alia,* to enhance the counter-money laundering rules to which casinos are subject. The enhanced state rules require casinos to report directly to the Department of the Treasury both: (i) Large currency transactions (on Internal Revenue Service Form 8852, Currency Transaction Report by Casinos—Nevada), and (ii) potentially suspicious transactions and activities (under rules reflecting the same concerns, in the context of Nevada's state regulatory system, as the rules contained in 31 CFR 103.21 as proposed in this document, and as reflected in Treasury Form TD F 90–22.49 (Suspicious Activity Report by Casinos)).[9]

C. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Programs

The Congressional mandate to require reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the casino's financial services. Moreover, because money laundering transactions are designed to appear legitimate in order to avoid detection, the creation of an effective system for detection and prevention of money laundering is impossible without the cooperation of financial institutions, including, in this case, gaming establishments. Indeed, many non-banks have come increasingly to recognize the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The provisions of the Annunzio-Wylie and Money Laundering Suppression Acts recognize that the traditional reliance of Treasury counter-money laundering programs on the reporting of currency transactions between financial institutions and their customers and the reporting of the transportation of currency and certain monetary instruments into or out of the United States, is not adequate to prevent or detect money laundering activities. This document is thus one of a group of proposed rule changes that signals a move from reliance solely on currency transaction reporting to reliance as well upon the timely reporting of information equally, if not more, likely to be of use to law enforcement officials and financial regulators, namely, information about suspicious transactions and activities. Suspicious transaction reporting is a key component of a flexible and effective compliance system required to prevent the use of the nation's financial system for illegal purposes.

The reporting of suspicious transactions is also a key to the emerging international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force—recently updated and reissued—is that:

If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[10] Annex 1 (Recommendation 15). The recommendation, which applies equally to banks and non-banks, revises the original recommendation, issued in 1990, that required institutions to be

[8] Generally card clubs would be subject to the same rules as casinos, unless a specific provision of the rules in 31 CFR part 103 applicable to casinos explicitly requires a different treatment for card clubs. As in the case of casinos, card clubs whose gross annual gaming revenue is $1 million or less are excluded from Bank Secrecy Act coverage. *See* 31 CFR 103.11(n)(8).

[9] At present, the use of the form is required only for casinos that file reports subject to Nevada Gaming Commission Regulation 6A. A more thorough discussion of the current status of Form TD F 90–22.49 appears below, under the heading ''Paperwork Reduction Act Notices.''

[10] The Financial Action Task Force, commonly referred to as the ''FATF,'' is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

either ''*permitted or* required.'' (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

Similarly, the European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering* calls for member states to—

> Ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[11] All of these documents recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-banks as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8).

The FATF's research and national mutual evaluation projects have expanded in recent years the degree of attention paid to non-banks, including gaming establishments. The Caribbean Financial Action Task Force (or ''CFATF''), a 24 nation regional counterpart of the FATF, has also paid special attention to the vulnerability of the gaming industry in the Caribbean to penetration by money launderers.

D. Importance of Suspicious Transaction Reporting by Casinos and Card Clubs

Billions of dollars of U.S. currency are laundered each year, through many different types of financial institutions and businesses. The corrosive effects of money laundering are well understood. Growing government knowledge about the way illegally-obtained proceeds are laundered has led to a more sophisticated understanding of the steps that can and should be taken to counter this crime.

The placement of illegally-derived currency into the financial system and the smuggling of such currency out of the country remain two of the most serious issues facing financial law enforcement efforts in the United States and around the world. But as financial institutions have responded to the challenges posed by money laundering, it has become far more difficult than in the past to pass large amounts of currency unnoticed directly into the nation's financial system and far easier to identify and isolate those institutions and officials that remain willing to assist or turn a blind eye to money launderers.

Moreover, the placement of currency into the financial system is at most only the first stage in the money laundering process. The money launderer's objective is to integrate the funds into the financial system, passing the funds through multiple transactions, financial instruments, or layers of formal ownership, so that they can be used for consumption or reinvestment in either legitimate or criminal activity without calling attention to their origin. While many currency transactions are *not* indicative of money laundering or other violations of law, many non-currency transactions *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering itself a crime. *See* 18 U.S.C. 1956 and 1957.

Owing in part to different business and transactional patterns, non-banks have historically not been subject to the same counter-money laundering controls as depository institutions. As government and industry programs have made it more difficult for customers to launder money at banks and other depository institutions, the interest of money launderers in moving funds into the financial system through non-bank financial services providers has increased.

Gaming establishments have not been spared from this trend.[12] The experience of law enforcement and regulatory officials suggests that the gambling environment can attract criminal elements involved in a variety of illicit activities, including fraud, narcotics trafficking, and money laundering. With large volumes of currency being wagered by legitimate gaming customers from throughout the United States (and, indeed, from around the world), the fast-paced environment of casino gaming can create an especially valuable ''cover'' for money launderers. The explosive growth of casino gaming in the United States in the last decade vastly increases the ''targets of opportunity'' for such criminals, as casino sites, amounts wagered, and casino attendance have multiplied.[13]

[11] The Organization of American States (OAS) reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

[12] *U.S.* v. *Marks,* 97 CR 20069 (District Court Western District of Louisiana), June 1997 (defendants indicted for laundering drug proceeds by buying and cashing casino tokens); *U.S.* v. *Zottola* (District Court Western District of Pennsylvania) and *U.S.* v. *Zottola,* 97 CR 0953T (District Court Southern District of California), April 1997 (defendants indicted for laundering $2.1 million in organized crime proceeds to open a casino on tribal lands); *New Jersey Division of Gaming Enforcement* v. *Freedman,* October 1996, 96–0609–RC NJ–DGE (defendants charged with structuring transactions to avoid reporting by cashing $20,000, in increments of $1,000, in casino chips); *U.S.* v. *Vacanti,* 96 CR 593(SMO) (District Court New Jersey), September 1996 (structuring token purchases to avoid transaction reporting requirements); *U.S.* v. *McClintock,* 96 CR 91(JEI) (District Court New Jersey), February 1996 (structuring transactions totalling $124,000); *U.S.* v. *Baxter,* 95 CR 116 (District Court Eastern District of Louisiana), August 1995 (president of a casino laundered $200,000 by manipulating the books of the casino to show the funds were from legitimate gambling); *U.S.* v. *Grittini,* 1:95 CR 17GR (District Court Southern District of Mississippi), May 1995 (rigged blackjack games used to launder $520,000 for organized crime); *New Jersey Division of Gaming Enforcement* v. *Meyerson,* 96–0393–RC (casino employee advised gamblers to structure $360,000 and assisted in structuring $30,000 to avoid transaction reporting requirements); *U.S.* v. *Freapane,* 94 CR 287 (District Court Eastern District of Louisiana), November 1994, (owner of illegal video slot machine business indicted for laundering profits from the business through casino slot machines in another state).

[13] The General Accounting Office cites in its January 1996 report on money laundering that ''the proliferation of casinos, together with the rapid growth of the amounts wagered, may make these operations highly vulnerable to money laundering.'' General Accounting Office, *Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Money Laundering: Rapid Growth of Casinos Makes Them Vulnerable* GAO/GGD–96–28. According to *International Gaming and Wagering Business* (August 1997), the amount of money legally wagered in casinos exceeded $480 billion in 1996. This is a substantial increase from the $101 billion wagered in casinos in 1982. Casino gaming accounts for 82 percent of the total amount of money wagered for all gaming activities throughout the United States. Similarly, according to *International Gaming and Wagering Business* (August 1997), the amount of money legally wagered in card rooms constituted an additional $9.8 billion in 1996 (i.e., 1.7 percent of the total amount of money wagered). It is estimated that 125 million people visit government licensed casinos each year.

E. Coordinated System for Reporting Suspicious Transactions

The proposed rule is one of a series of rulemakings designed to extend suspicious activity reporting to institutions subject to the Bank Secrecy Act.[14] As in the case of the other rules, this proposed rule is designed to permit creation of a unified system for all reports of suspicious casino and card club transactions and activities. Under that system, all such reports will be filed with FinCEN and made available, in a single data base, to federal and state law enforcement authorities and gaming regulators nationwide. The single data base will not only permit rapid dissemination of reports to appropriate law enforcement agencies, but will facilitate more thorough analysis and tracking of those reports, and, in time, the provision to the financial community of information about trends and patterns gleaned from the information reported. The single filing location will also facilitate development of procedures for magnetic and ultimately electronic filing of such reports.

FinCEN is developing a form, the Suspicious Activity Report by Casinos (''SARC''), that will be used by casinos and card clubs around the nation to report a suspicious transaction or activity under the proposed rule. A variant of that form is already in use by casinos in Nevada that (as described above) became subject to a state requirement to report suspicious transactions to FinCEN on October 1, 1997. *See* 62 FR 44032 (August 18, 1997) (Paperwork Reduction Act Notice for Form TD F 90–22.49 to be used initially by casinos in Nevada).

No system for the reporting of suspicious transactions can be effective unless information flows from as well as to the government. FinCEN anticipates working on an ongoing basis with gaming establishments and state regulatory officials in their efforts to detect suspicious activities.

Treasury ultimately must rely on the creation of a working partnership with the gaming industry that will assist gaming establishments to apply their knowledge of both their customers and business patterns to identify and report suspicious activity and permit the implementation of suspicious activity reporting by gaming establishments in an efficient and cost-effective manner. Joint efforts will include exchanges of information, training, and advisory guidance as to examples and patterns of potentially suspicious casino transactions and activities. (Of course no list of potentially suspicious activities will apply with equal force to all gaming establishments or all jurisdictions in which gaming is permitted, due in part to differences in the range of gaming activities permitted in various areas.)

In addition, FinCEN intends to hold several public meetings, which will be announced by notice published in the **Federal Register**, to provide additional opportunities for the industry and other interested parties to discuss the various provisions of this proposed rule. During such meetings, FinCEN will also welcome discussion of a new advisory entitled ''Guidance for Detecting and Reporting Suspicious Casino Transactions and Activities,'' which is in preparation.

III. Specific Provisions [15]

A. 103.11(ii)—Transaction

The definition of ''transaction'' in the Bank Secrecy Act regulations for purposes of suspicious transaction reporting conforms generally to the definition Congress added to 18 U.S.C. 1956 when it criminalized money laundering in 1986. See Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986). This notice proposes to amend that definition to include explicit references to ''the purchase or redemption of casino chips or tokens, or other gaming instruments,'' to eliminate any question of the application of the definition to transactions of a sort common to gaming establishments. These changes are necessary so that the reporting rules will cover all activity that should be reported under the proposed rule.

B. 103.21—Reports of Suspicious Transactions

General

Proposed § 103.21 contains the rules setting forth the obligation of casinos and card clubs to report suspicious transactions. The rule itself does not contain a separate reference to card clubs, since 31 CFR 103.11(n)(7)(iii) generally provides that ''[a]ny reference in [31 CFR part 103] . . . to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application.'' *See* 63 FR 1919, 1923 (January 13, 1998). No such varying provision is contained in the proposed rule.

Proposed paragraph (a)(1) contains a general statement of the obligation to file a suspicious activity report, as well as language designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $3,000 threshold in the rule. The Department of the Treasury continues to believe that such a voluntary report (that is, the report of a suspicious transaction relevant to a possible violation of law or regulation, in circumstances not required by the rule proposed in 31 CFR 103.21(a)(1)) is fully covered by the rules against disclosure and protections against liability specified in 31 U.S.C. 5318(g)(2) and (g)(3) and in proposed 31 CFR 103.21(d).

Proposed paragraph (a)(2) provides that with respect to casinos, a transaction requires reporting under 31 CFR 103.21 if it is conducted or attempted by, at, or through the casino, involves or aggregates at least $3,000 in funds or assets, and the casino knows, suspects, or has reason to suspect that the transaction is one that must be reported.

Proposed paragraph (a)(2) embodies two important points. First, FinCEN is proposing a $3,000 threshold to the reporting of suspicious casino and card club transactions and activities, so that reports will be required for a transaction (or a pattern of transactions of which the transaction is a part) that involves at least that amount in funds or assets and that otherwise satisfies the terms of the proposed rule. The proposed language makes it clear that related suspicious transactions ''aggregating'' $3,000 or more in funds or assets are also reportable under the Bank Secrecy Act. Transactions are reportable under proposed paragraph (a) whether or not they involve currency.

The proposed $3,000 threshold is intended to focus attention on customers who are conducting suspicious transactions at a level that warrants attention and, at the same time, to limit the application of the reporting requirement to a small, but important percentage of total customer transactions that occur at a casino each day. Casino regulations in several

[14] Several casinos have already voluntarily reported suspicious transactions and activities by filing on Form TD F 90–22.47, Suspicious Activity Report (SAR), which is the form required for banks and other depository institutions. Other casinos have reported such transactions by telephone to local offices of federal law enforcement or gaming regulatory agencies.

[15] Because proposed § 103.21 reflects the terms of the reporting rule for banks, readers of this document may wish to consult the notice of proposed rulemaking and the document containing the final reporting rule for banks, at 60 FR 46556 (September 7, 1995) (proposed rule) and 61 FR 4326 (February 5, 1996) (final rule). The bank rule is found at § 103.21, but is proposed by this notice to be renumbered as § 103.18.

States, namely, Colorado, Illinois, Indiana, Missouri and Nevada, already require the recording and scrutiny of currency transactions occurring at this threshold on the gaming floor or at the cage. Moreover, in other States, such as Louisiana and Mississippi, and at some tribal casinos, customer activity is typically recorded at or slightly below this threshold on cage action control logs and gaming floor multiple currency transaction logs. And, as noted above, Nevada casinos have been subject to a $3,000 threshold for the filing of suspicious activity reports since October 1997.

Second, the use of the term ''knows, suspects, or has reason to suspect'' is intended to introduce a concept of due diligence into the reporting procedures. Casino officials who monitor a customer's gaming activity or conduct transactions with a customer are in a unique position to recognize transactions and activities which appear to have no legitimate purpose, are not usual for a specific player or type of players, or have no apparent business explanation. The suspicious nature of the transaction may first be detected by an employee conducting the transaction, a supervisor observing the transaction, or a surveillance department employee monitoring the transaction. The scrutiny needed to identify suspicious transactions highlights the importance of casinos knowing their customers.

The proposed rule designates three classes of transactions as requiring reporting by casinos. The first class, described in proposed paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii), involves transactions designed to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(iii), involves transactions that appear to have no business purpose or that vary so substantially from normal commercial activities or activities appropriate for the particular customer or type of customer as to have no reasonable explanation.

The determination as to whether a suspicious report is required must be based on all the facts and circumstances relating to the transaction and the customer in question. Suspicious transactions and activities will often take place at a casino cage, gaming table or slot machine, but they can occur anywhere in the casino. *Suspicious transaction reporting is not limited to transactions in currency* such transactions may also involve monetary instruments or credit cards, or may involve funds transfers into, out of, or through casinos. In some situations casinos may be used in an attempt initially to place illegally-obtained funds into the financial system; in other situations, passage of funds through a casino may follow the initial placement of illegal proceeds at another financial institution, as part of the ''placement'' or ''integration'' stages of the money laundering cycle.

Paragraph (a)(2)(iii) includes in the rule a requirement for the reporting of transactions that vary so substantially from normal practice that they legitimately can and should raise suspicions of possible illegality. Unlike many criminal acts, money laundering involves the taking of apparently lawful steps—opening deposit and credit accounts, wiring funds, or cashing checks—for an unlawful purpose. Thus, in attempting to *appear to be* wagering customers, persons may be willing to lose a nominal amount of chips by making small bets or offsetting larger bets and then exchanging their remaining chips for currency, a check or a wire transfer. They may attempt to structure deposits or withdrawals of funds from a casino account to avoid recordkeeping or reporting thresholds or to move substantial funds through a casino's facilities with little or no related gaming activity, or to provide false documents or identifying information to casino officials. A skillful money launderer will often split the movement of funds among different parts of a casino so that no one single person has a complete picture of the transactions or movement of funds involved, and may use agents to conduct multiple transactions for an anonymous individual, layering the transactions to disguise their source.

A casino may also detect suspicious or suspected illegal activity pertaining to transactions involving a check cashing operator, junket operator, gambling tour company, supplier, vendor, etc. with which it has a contractual relationship. For example, a casino may observe a customer (other than an established junket operator) directly supplying large amounts of currency to individuals who then use the currency to make a deposit, purchase of chips, exchange of currency, etc.

Finally, a determination whether a suspicious activity report is required to be filed may not result from face-to-face transactions between customers and casino personnel or from a review of the account of a customer, but instead may be discovered by information contained in the casino's own internal accounts and financial or other records. For instance, patterns of funds transfers by seemingly unrelated customers to a third party account, followed by little or no gaming activity and withdrawal of the consolidated funds, may raise questions that examination of no one transaction would reveal. Such patterns of suspicious activity may be detected during an unrelated review of a casino's internal records, as part of an independent audit of a casino's compliance systems, or as a result of a suspicious activity monitoring program designed to detect the occurrence of potentially suspicious transactions generally.

Proposed paragraph (a)(2)(iii) recognizes the emerging international consensus that efforts to deter, substantially reduce, and eventually eradicate money laundering are greatly assisted by the reporting of unusual financial transactions for which no lawful purpose can be determined. The requirements of this section comply with the recommendations adopted by the FATF and the OAS, and are consistent with the European Community's directive on preventing money laundering through financial institutions.

Given the breadth of the reporting requirement, and the variety of transactions conducted in or through gaming establishments, it is impossible to avoid the need for judgment in administering or applying the reporting standards to particular situations. Different fact patterns will require different types of judgments. In some cases, the facts of the transaction may clearly indicate the need to report. For example, the fact that a customer: (i) Furnishes an identification document which the casino believes is false or altered in connection with the completion of a Currency Transaction Report by Casinos (CTRC), or the opening of a deposit, credit account, or check cashing account; (ii) tries to influence, bribe, corrupt, or conspire with an employee not to file CTRCs; or (iii) converts large amounts of currency from small to large denomination bills; would all clearly indicate that a SARC should be filed.

In other situations a more involved judgment may be needed to determine whether a transaction is suspicious within the meaning of the rule. The need for such judgments may arise, for example, in the case of transactions in which a customer (i) wires out of a casino funds not derived from gaming proceeds, or wires funds to financial institutions located in a country which is not his or her residence or place of

business; (ii) transmits or receives funds transfers without normal identifying information or in a manner that may indicate an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or the beneficiary to whom the funds are sent; (iii) repeatedly uses an account as a temporary resting place for funds from multiple sources; (iv) makes continuous payments or withdrawals of currency in amounts each below the currency transaction reporting threshold applicable under 31 CFR 103.22; or (v) inserts currency into a slot machine validator, accumulates credits with minimal or no gaming activity, and then cashes out the tokens or credits at the cage (or slot booth) for large denomination bills or a casino check. The judgments involved will also extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that would remove it from the suspicious category. Again, it is crucial to recognize that suspicious transactions and activities are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.

For all of these reasons, casinos must know their customers to make an informed decision as to whether certain customer transactions are suspicious. Many casinos already maintain and rely for business purposes on a great deal of information about their customers from data routinely obtained through deposit, credit, check cashing, and player rating accounts. These accounts generally require casinos to obtain basic identification information about the accountholders, at the time the accounts are opened, and to inquire into the kinds of wagering activities the customer is likely to conduct.[16] Also, in certain instances, casinos use credit bureaus to verify information obtained from their customers. All of these sources of information can help a casino to better understand its customer base and to evaluate specific customer transactions that appear to lack justification or otherwise cannot be explained as falling within the usual methods of legitimate business.

Filing Procedures

Paragraph (b) sets forth the filing procedures to be followed by casinos making reports of suspicious transactions. Within 30 days after a casino becomes aware of a suspicious transaction, the casino must report the transaction by completing a SARC and filing it in a central location, to be determined by FinCEN.

Supporting documentation relating to each SARC is to be collected and maintained separately by the casino and made available to FinCEN and any appropriate law enforcement or gaming regulatory agency upon request. Special provision is made for situations requiring immediate attention, in which case casinos are to immediately notify, by telephone, the appropriate law enforcement authority in addition to filing a SARC.

Reports filed under the terms of the proposed rule will be lodged in a central data base (on the model of the data base used to process, analyze, and retrieve bank suspicious activity reports). Information will be made automatically available to federal and state law enforcement and gaming regulatory agencies, to enhance the ability of those agencies to carry out their mandates to fight financial crime.

Maintenance of Records

Paragraph (c) provides that filing casinos must maintain copies of SARCs and the original related documentation for a period of five years from the date of filing; the relevant records may include not only paper or electronic accounting or other entries but also (without limitation) appropriate segments of video or audio tapes recorded by the casino as part of its operations. Even though not required to be filed with the SARC, the supporting documentation is deemed to be a part of the SARC and is required to be held by the casino (in effect as agent for FinCEN). This provision is intended to relieve casinos of the need to transmit supporting documentation immediately to FinCEN without lessening the utility or availability of the supporting documentation. Thus, identification of supporting documentation must be made at the time the SARC is filed, and such supporting documentation is deemed filed with a SARC in accordance with paragraph (c); as such, FinCEN, law enforcement authorities and appropriate gaming regulatory agencies need not make their access requests through subpoena or other legal processes.[17]

Prohibition From Disclosing SARCs; Safe Harbor From Civil Liability

Paragraph (d) incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3). This paragraph thus specifically prohibits persons filing SARCs from making any disclosure, except to law enforcement and regulatory agencies, about either the fact of the filing of the reports or the reports themselves, the information contained therein, or the supporting documentation. The non-disclosure provisions of section 5318(g)(2) are intended to ensure that suspicious activity report information is restricted to appropriate law enforcement and regulatory personnel and are not otherwise made public. It is also designed to prevent the subject of a report from learning that his suspicious conduct has been reported to the government. SARC information, like other reports required to be filed under the Bank Secrecy Act, are not subject to disclosure to the public without the express authorization of FinCEN.

Auditing and Enforcement

Finally, paragraph (e) notes that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying casinos to an enforcement action.

C. 103.54—Related Changes to Casino Compliance Program Requirements

General

31 CFR 103.54 contains special compliance program rules for casinos, adopted by Treasury in 1994. See 59 FR 61660 (December 1, 1994). The compliance program requirement contained in the 1994 final rule was revised to include procedures to determine the occurrence of unusual or suspicious transactions.

As noted above, the compliance program and suspicious transaction reporting rules are complementary, and FinCEN believes that it is appropriate to propose modification of those rules in light of the projected commencement of suspicious transaction reporting for casinos. Two specific modifications are proposed.

a. *Testing for compliance.* 31 CFR 103.54(a)(2)(ii) requires that casino compliance programs include ''[i]nternal and/or external independent

[16] The deposit and credit accounts track customer deposits and casino extensions of credit. Casino customers can draw down on either account to fund their gaming, purchase chips and conduct other activities on casino properties. The player rating account tracks gaming activity and is designed primarily to award complimentary perquisites to volume players, and to serve as a marketing tool to identify customers and to encourage continued patronage.

[17] References to ''appropriate law enforcement and regulatory agencies'' naturally include the Examination Division of the Internal Revenue Service, to which authority to examine, *inter alia,* gaming establishments for compliance with the Bank Secrecy Act has been delegated. *See* 31 CFR 103.46(b)(8).

testing for compliance.'' FinCEN proposes to modify the requirement so that (i) the necessary testing must occur at least annually, and (ii) must include a specific determination whether programs at the casino are working effectively to: (i) detect and report suspicious transactions of $3,000 or more, and currency transactions of more than $10,000, to proper authorities, and (ii) comply with recordkeeping and compliance program standards. The change would emphasize a casino's responsibility to comply with all Bank Secrecy Act requirements and assure ongoing evaluation of the adequacy of casino compliance programs.

b. *Occurrence or patterns of suspicious transactions.* 31 CFR 103.54(a)(2)(v)(B) requires casinos to maintain procedures to determine ''[w]hen required by [31 CFR part 103] the occurrence of unusual or suspicious transactions.'' FinCEN proposes to modify the requirement to make clear that the necessary procedures extend to analysis not only of customer accounts but also of the casino's own records derived from or used to record, track, or monitor casino activity. FinCEN believes that casinos should utilize available information, including information in existing computerized systems that monitor a customer's account activity to assist in identifying transactions, activities and patterns which appear to have no legitimate purpose, are not usual for a specific player or type of players, or have no apparent business explanation. This will encompass activity occurring through deposit and credit accounts, player rating accounts, as well as any other account that may be feasible.

The proposal does not specify the method that must be used by a casino to determine the occurrence of or patterns of suspicious transactions that may be occurring nor does it require that all such activity be monitored at such establishments. Rather, it permits flexibility by allowing each casino to rely on its existing information systems and operational characteristics to determine how to identify such transactions and activities. The procedures developed by a casino should be designed to identify not only flagrant attempts to defeat the casino's counter-money laundering controls, but also to determine if customers are using more sophisticated schemes and techniques to the same end.

IV. Submission of Comments

An original and four copies of any written hard copy comment (but not of comments sent via E-Mail), must be submitted. All comments will be available for public inspection and copying, and no material in any such 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.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The Bank Secrecy Act authorizes Treasury to require financial institutions to report suspicious activities. 31 U.S.C. 5313(g). However, the Bank Secrecy Act excludes casinos or gaming establishments with annual gaming revenue not exceeding $1 million from the definition of ''financial institution.'' 31 U.S.C. 5312(a)(2)(X). Thus, certain small casinos and card clubs are excluded by statute from the operation of the proposed regulation. Other casinos, namely those in Colorado and South Dakota, are subject to state law limitations on the size of wagers that may be made at those casinos. In casinos such as these, the burden to establish procedures to detect suspicious activity should be substantially reduced since the low dollar amount of the limits makes it unlikely that customers would engage in transactions at these casinos large enough to trigger a reporting requirement under the proposed regulation.

As to the remaining casinos and card clubs, many of the requirements of the proposed regulation may be satisfied, in large part, using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers from information routinely collected from casino established deposit, credit, check cashing and player rating accounts. This existing data can assist casinos in making decisions about whether a transaction is suspicious. Many casinos also already have policies and procedures in place and have trained personnel to detect unusual or suspicious transactions, as part of their own risk prevention programs. In addition, it is common in the casino industry to perform annual, and in some cases quarterly, testing of their compliance programs. Further, a number of casinos have already begun voluntarily reporting suspicious transactions to Treasury.

In drafting the proposed regulation, FinCEN carefully considered the importance of suspicious activity reporting to the administration of the Bank Secrecy Act. In light of the fact that Congress considers suspicious activity reporting a ''key ingredient in the anti-money laundering effort,'' [18] there is no alternative mechanism for the government to obtain this key information other than by requiring casinos and card clubs to set up procedures to detect and report suspicious activity. The legislative history of the Bank Secrecy Act demonstrates that money launderers will shift their activities away from more regulated to less regulated financial institutions. [19]

FinCEN has met with the casino industry to discuss issues relevant to suspicious transaction reporting and, as indicated in the preamble, plans to conduct a series of public meetings across the country to provide the members of the industry the opportunity to discuss the proposed regulation. In addition, FinCEN is preparing an industry guide to explain suspicious activity reporting.

VI. Paperwork Reduction Act Notices

A. Suspicious Activity Report by Casinos

In accordance with 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 on the *Suspicious Activity Report by Casinos* is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 3,000 *Suspicious Activity Report by Casinos* forms. This result is an estimate, based on a projection of the size and volume of the industry.

Title: Suspicious Activity Report by Casinos.

OMB Number: 1506–0006.

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: Reporting average of 36 minutes per response; recordkeeping average of three hours per response, which includes internal review of records and other information to determine whether the activity warrants reporting under the rule.

[18] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

[19] ''It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions].'' *Id.*, at 19.

Estimate of Total Annual Burden on Respondents: 3,000 responses. Reporting burden estimate = 1,800 hours; recordkeeping burden estimate = 9,000 hours. Estimated combined total of 10,800 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $216,000.

Estimate of Total Other Annual Costs to Respondents: None.

B. Notification to Law Enforcement in Cases Requiring Immediate Attention

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR part 1320, the following information concerning proposed § 103.21(b)(3) is presented to assist those persons wishing to comment on the information collection. Section 103.21(b)(3) would require respondents, in cases requiring immediate attention, to notify a law enforcement agency by telephone of suspicious activity required to be reported under section 103.21.

FinCEN estimates that this provision, if adopted as proposed, would result in casinos and card clubs making 100 telephone notifications of suspicious activity to law enforcement per year. This estimate is based on FinCEN's experience with financial institutions (other than casinos) which have provided similar telephone notice of suspicious activity to law enforcement.

Title: Notification to Law Enforcement in Cases Requiring Immediate Attention.

OMB Number: To be determined.

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: Average of 15 minutes per telephone call to law enforcement.

Estimate of Total Annual Burden on Respondents: 100 responses per year. Reporting burden estimate = 25 hours annually.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $500 annually.

Estimate of Total Other Annual Costs to Respondents: None.

C. Notification to FinCEN of a Request To Disclose SARC Information

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR part 1320, the following information concerning proposed 103.21(d) is presented to assist those persons wishing to comment on the information collection. Proposed 103.21(d) would require notice to FinCEN when a casino or card club has been requested to disclose a SARC form or the information contained in the form to anyone other than FinCEN or a law enforcement or regulatory agency authorized under the proposed rule.

FinCEN estimates that this provision, if adopted as proposed, would result in less than 10 such reports annually. This estimate is based on FinCEN's experience with financial institutions (other than casinos) which have provided similar notice of requests for suspicious activity report information filed with FinCEN.

Title: Notice to FinCEN of Request for Suspicious Activity Report Information.

OMB Number: To be determined.

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: 30 minutes per notice to FinCEN.

Estimate of Total Annual Burden on Respondents: 10 responses per year. Reporting burden estimate = 5 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $100.

Estimate of Total Other Annual Costs to Respondents: None.

D. Suspicious Transaction Compliance Testing and Monitoring

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., and its implementing regulations, 5 CFR part 1320, the following information concerning Suspicious Transaction Recordkeeping and Reporting is presented to assist those persons wishing to comment on the information collection. The proposed rule would amend: (i) § 103.54(a)(2)(ii) to specify, among other things, that required casino internal, and/or external compliance testing be done, at a minimum, annually and result in an annual statement whether internal control standards and procedures are working effectively to detect and report suspicious transactions, as required by this part; and (ii) § 103.54(a)(2)(v)(B) to require casinos to establish procedures designed to detect the occurrence of any transaction or patterns of transactions required to be reported by this part, including any transactions or patterns of transactions indicated by accounts or records maintained by a casino to record or monitor customer activity.

FinCEN estimates that these provisions, if adopted as proposed, would result in a total of 500 hours per respondent annually. Given the fact that the gross annual gaming revenue of casinos and card clubs covered by this part can vary between $1 million and several hundred million dollars, FinCEN's estimate is based on an average casino or card club expending about 500 hours annually complying with the proposed testing and monitoring requirements. (This number is an average; FinCEN recognizes that because there is a wide disparity between the size of casinos in the United States, the number could well be higher or lower than 500 for a particular casino.) This estimate is based on estimates developed for the banking industry for its suspicious transaction program, and takes into account the fact that the banking industry was subject to a criminal referral system prior to the suspicious transaction program. This 500 hour estimate does not include existing casino internal, and/or external Bank Secrecy Act compliance testing already required by § 103.54(a)(2)(ii).

Title: Suspicious Transaction Compliance Testing and Monitoring.

OMB Number: 1506–0009 (formerly control number 1505–0063).

Description of Respondents: All casinos and card clubs subject to this rule.

Estimated Number of Respondents: 550.

Frequency: As required.

Estimate of Burden: Annual testing and monitoring of 500 hours per respondent.

Estimate of Total Annual Burden on Respondents: Testing and monitoring program burden estimate = 275,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $5,500,000.

Estimate of Total Other Annual Costs to Respondents: None.

FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary to further the purposes of the Bank Secrecy Act, including whether the information retained 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 retained; and (d) ways to minimize the burden of the collection of information on the affected industry, including through the use of automated storage and retrieval

techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995, *supra*, requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the information collection. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the information collection covered by the requirement. These comments on costs should be divided into two parts: (i) any additional costs associated with recordkeeping and reporting; and (ii) any additional costs associated with testing and monitoring.

VII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 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.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 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 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11(ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

§§ 103.20 and 103.2 [Redesignated as §§ 103.15 and 103.18]

3. Sections 103.20 and 103.21 are redesignated as §§ 103.15 and 103.18, respectively, and a new § 103.21 is added to read as follows:

§ 103.21 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino (for purposes of this section, a ''reporting casino''), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with the Treasury Department, by using the Suspicious Activity Report by Casinos specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required (whether because of its dollar amount, or otherwise) by this section.

(2) A transaction requires reporting under the terms of this section if it 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.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (''SARC''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) *When to file.* A reporting casino is required to file each SARC no later than 30 calendar days after the date of the initial detection by the reporting casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the reporting casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SARC.

(c) *Retention of records.* A reporting casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years

from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the reporting casino, and shall be deemed to have been filed with the SARC. A reporting casino shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(d) *Confidentiality of reports; limitation of liability.* No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting casino, and any director, officer, employee, or agent of such reporting casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN, or by delegees of the Department of the Treasury under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

4. Section 103.54 is amended by:

a. Revising paragraph (a)(2)(ii),

b. Removing the word ''hereafter'' in paragraph (a)(2)(iii); and

c. Revising paragraph (a)(2)(v)(B).

The revised paragraphs read as follows:

§ 103.54 Special rules for casinos.

(a) *Compliance programs.* * * *

(2) * * *

(ii) Annual internal and/or external independent testing of compliance, including, without limitation, an annual statement whether internal controls and procedures are working effectively to detect and report suspicious transactions of $3,000 or more, and currency transactions of more than $10,000, to the proper authorities, as required by this part, and to comply with the recordkeeping and compliance program standards of this part;

* * * * *

(v) * * *

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 103.21, including, without limitation, any transactions or patterns of transactions indicated by accounts or records maintained by a casino to record or monitor customer activity.

* * * * *

Dated: May 12, 1998.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–134]
RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for the I–280 Bridge (Stickel Memorial), mile 5.8, over the Passaic River at Harrison, New Jersey, to allow the bridge to remain closed to navigation. The District Commander, upon six months notice, may require that the bridge be restored to full operational status.

The bridge owner, the New Jersey Department of Transportation (NJDOT), has requested that the Coast Guard consider a change to the operating regulations for the Route 280 Bridge. There have been only 8 requests to open the Route 280 Bridge since 1987; therefore, the Coast Guard proposed to change the operating regulations for this bridge under § 117.39, which allows closure of a drawbridge due to infrequent use.

Additionally, as part of this proposal, the Coast Guard is correcting an error in this regulation regarding the mile point of the Route 7 (Rutgers Street) Bridge. The Route 7 Bridge Listed at mile 6.9 in the existing regulation should be listed at mile 8.9.

This proposed rule, if adopted, is expected to relieve NJDOT of the requirement to crew the Route 280 Bridge and correct an error in this regulation.

DATES: Comments must be received by the Coast Guard on or before July 17, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 233–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–134) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Cost Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register.**

Background

The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water.