

per vessel per year. Therefore, if every registered vessel in Monroe County were previously discharging all waste into the federal waters as opposed to using a pumpout station, the annual cost to Monroe County boaters (assuming 1,080 vessels are affected) is expected to be \$140,400 to \$561,600. It should also be noted that pump out fees may qualify as a business expense and may be tax deductible for some vessel owners, so the actual economic impact may be less.

The elimination of vessel discharges in the federal waters of the FKNMS may have a positive socioeconomic impact from improved water quality and healthier reefs and the indirect effects that has on the economy. For example, the tourist-based economy of the Florida Keys depends upon clean water and abundant natural resources. If vessels were allowed to continue to discharge the impacted area, the sanctuary's water quality would decrease, which would negatively impact the health and quantity of the sanctuary's unique biological resources, and ultimately impact the sanctuary as a tourist destination.

For the reasons above, the Chief Counsel for Regulation certified that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

**John H. Dunnigan,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife Management Areas, Sanctuary Preservation Areas, Ecological Reserves, Areas to be Avoided, State of Florida, U.S. Coast Guard.

For the reasons above, NOAA proposes to amend title 15, part 922 of the Code of Federal Regulations as follows:

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

**Authority:** 15 U.S.C. 1431 *et seq.*

2. Amend § 922.163 as follows:

- a. By removing paragraph (a)(4)(i)(B);
- b. By redesignating paragraphs (a)(4)(i)(C) and (a)(4)(i)(D) as (a)(4)(i)(B) and (a)(4)(i)(C), respectively;

c. By adding a new paragraph (a)(5)(vi) as follows:

#### § 922.163 Prohibited activities—Sanctuary wide.

(a) \* \* \*

(5) \* \* \*

(vi) Having a marine sanitation device that is unlocked or that allows discharge or deposit of sewage.

\* \* \* \* \*

[FR Doc. E9-27453 Filed 11-13-09; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

#### RIN 1506-AB04

#### Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

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

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** FinCEN is issuing this notice of proposed rulemaking to amend the relevant Bank Secrecy Act ("BSA") information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury, may submit such requests. Modification of the information sharing rules is a part of the Department of the Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

**DATES:** Written comments are welcome and must be received on or before December 16, 2009.

**ADDRESSES:** Those submitting comments are encouraged to do so via the Internet. Comments submitted via the Internet may be submitted at <http://www.regulations.gov/search/index.jsp>, Docket number Fincen-2009-0005, with the caption in the body of the text, "Attention: Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506-XXXX." Comments may also be submitted by written mail to: Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention:

Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506-AB04. Please submit comments by one method only. All comments submitted in response to this notice of proposed rulemaking will become a matter of public record; therefore, you should submit only information that you wish to make available publicly.

**Inspection of comments:** Public comments received electronically or through the U.S. Postal Service sent in response to a "Notice and Request for Comment" will be made available for public review as soon as possible on <http://www.regulations.gov>. All comments received may be physically inspected in the FinCEN reading room located in Vienna, VA. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905-5034 (not a toll free call).

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949-2732 and select Option 3.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT ACT") Act of 2001, Public Law 107-56 ("the Act"). Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b and 1951-1959 and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the BSA has been delegated to the Director of FinCEN.

Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury with developing regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

[t]he Secretary shall \* \* \* adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

#### *B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program*

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.<sup>1</sup> That rule (“the 314(a) rule”) allows FinCEN to require U.S. financial institutions to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected based on credible evidence of engaging in terrorist activity or money laundering.<sup>2</sup> Before processing a request from a Federal law enforcement agency, FinCEN also requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use this authority (“the 314(a) program”).

Since its inception, the 314(a) program has yielded significant investigative benefits to Federal law enforcement users in terrorist financing and major money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN seeks to broaden access to the program as outlined in the following paragraphs.

#### *C. Objectives of Proposed Changes*

##### *a. Allowing Certain Foreign Law Enforcement Agencies To Initiate 314(a) Queries*

In order to satisfy the United States’ treaty obligation with certain foreign governments, FinCEN is proposing to extend the use of the 314(a) program to

include foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union (EU) (hereinafter, the “U.S.–EU MLAT”) was signed. Between 2004 and 2006, twenty-five bilateral implementing agreements also were signed by the United States and EU Member States. In 2006, the U.S.–EU MLAT, along with twenty-five bilateral instruments, was submitted to the U.S. Senate for its advice and consent to ratification. An additional two bilateral instruments, with Romania and Bulgaria, were concluded and submitted to the Senate in 2007, following those countries’ accession to the EU. The U.S.–EU MLAT and all twenty-seven bilateral instruments were ratified by the President on September 23, 2008, upon the advice and consent of the U.S. Senate.

Article 4 of the U.S.–EU MLAT (entitled “Identification of Bank Information”) obligates a requested Signatory State to search on a centralized basis for bank accounts within its territory that may be important to a criminal investigation in the requesting Signatory State. Article 4 also contemplates that Signatory States may search for information in the possession of a non-bank financial institution. Under Article 4, a Signatory State receiving a request may limit the scope of its obligation to provide assistance to terrorist activity and money laundering offenses, and many did so in their respective bilateral instruments with the United States. In addition, Article 4 makes clear that the United States and the EU are under an obligation to ensure that the application of Article 4 does not impose extraordinary burdens on States that receive search requests. Certain EU States are expected to accommodate search requests from the United States by querying a single centralized database which identifies all bank accounts within that State. In negotiating the terms of Article 4, the United States expressly envisioned that EU member States would be able to access the information sharing process created by the implementation of section 314(a) of the Act. Expanding that process to include certain foreign law enforcement requesters would greatly benefit the United States by granting law enforcement agencies in the United States with reciprocal rights to obtain information about matching accounts in EU member States.

Foreign law enforcement agencies would be able to use the 314(a) program in a way analogous to how Federal criminal law enforcement agencies

currently access the program. Thus, a foreign law enforcement agency, prior to initiating a 314(a) query, would have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. FinCEN also anticipates that the foreign request will be screened initially by a Federal law enforcement official serving as an attaché to the requesting jurisdiction. The application of these internal procedures will help ensure that the 314(a) program is utilized only in significant situations, thereby minimizing the cost on reporting financial institutions.

##### *b. Allowing State and Local Law Enforcement Agencies To Initiate 314(a) Queries*

By regulation, access to the 314(a) program currently is only available to Federal law enforcement agencies. When the section 314(a) rule was drafted, FinCEN considered expanding the process to include requesters from other types of law enforcement agencies. However, because of uncertainty about how the new information-sharing rules would impact financial institutions, FinCEN ultimately decided to defer expansion beyond Federal law enforcement agencies. FinCEN now has the benefit of drawing upon six years of experience in administering the section 314(a) rule. In that time, financial institutions have made necessary adjustments to comply with these rules and have developed more efficient ways to respond to section 314(a) requests.

Money laundering and terror-related financial crimes are not limited by jurisdiction or geography. Detection and deterrence of these crimes require information sharing across all levels of investigative authorities, to include State and local law enforcement, to ensure the broadest United States Government defense.

State and local law enforcement investigations run the gamut of criminal violations, to include money laundering and to a lesser extent, terrorist financing, and some of these investigations could benefit from the use of the 314(a) program. Access to the 314(a) program by State and local law enforcement would provide them a platform from which they could more effectively and efficiently fill information gaps, including those connected with multi-jurisdictional financial transactions, in the same manner as Federal law enforcement agencies. This expansion of the 314(a) program, in certain limited

<sup>1</sup> Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60579 (Sept. 26, 2002).

<sup>2</sup> 31 CFR 103.100.

circumstances, to include State and local law enforcement authorities, would benefit overall efforts to ensure that all law enforcement resources are made available to combat money laundering and terrorist financing.

Therefore, the proposal would broaden 314(a) access to allow State and local law enforcement agencies to submit 314(a) queries. As is the case currently with requesting Federal criminal law agencies, State and local law enforcement, prior to initiating a 314(a) query, would have to certify that, in the case of a money laundering investigation, the matter is significant, and that it has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program. The application of these internal procedures will help ensure that the 314(a) program will be utilized only in the most compelling situations, thereby minimizing the cost incurred by reporting financial institutions.

**c. Clarifying That FinCEN, on Its Own Behalf and on Behalf of Appropriate Components of the Department of the Treasury, May Initiate 314(a) Queries**

FinCEN's statutory mandate includes working to identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies, and to support ongoing criminal financial investigations and prosecutions.<sup>3</sup> FinCEN also routinely assists the law enforcement community through proactive analyses to discover trends, patterns, and common activity in the financial information contained in BSA reports. FinCEN's use of the 314(a) program will greatly enhance the scope and utility of its case support efforts beyond the insights provided from the BSA data, thereby delivering critical information about significant criminal activity on a timelier basis. Accordingly, FinCEN would use the 314(a) program to submit self-initiated 314(a) queries.

FinCEN assists law enforcement by providing advanced or specialized analysis of BSA data on significant investigations involving offenses of money laundering or terrorist financing. These investigations often involve multiple locations or are otherwise linked to other investigations. A single 314(a) request issued by FinCEN could more efficiently coordinate and simultaneously support several investigations, thereby eliminating the need for separate requests from each investigating agency or jurisdiction.

There also are instances in which FinCEN's analytical products will

benefit from access to the 314(a) program by providing a more complete picture of financial transactions and mechanisms, as well as interrelationships among investigative subjects and financial transactions or entities. In addition, other appropriate components of the Department of the Treasury that provide analytical support, such as the Department's counter-terrorist financing and money laundering efforts, will be better equipped to fulfill their missions when given access to the 314(a) program. It is anticipated that the findings from the use of the 314(a) program will reveal additional insights and overall patterns of suspicious financial activities.

**II. Section-by-Section Analysis**

**A. Section 103.90(a)**

FinCEN proposes to amend 31 CFR 103.90(a) by changing the definition of the term "money laundering" to include activity that would be criminalized by 18 U.S.C. 1956 or 1957 if such activity occurred in the United States. The change would allow the term to be applied to information requests by foreign law enforcement agencies. State and local law enforcement requesters would be subject to the same definition of money laundering that currently applies to Federal law enforcement agencies—i.e., activity that is criminalized by 18 U.S.C. 1956 or 1957. Thus, in the case of a significant money laundering matter, a State or local law enforcement agency seeking information under the section 314(a) program would have to certify that it is investigating activity that would be criminalized under 18 U.S.C. 1956 or 1957. Such activity could include, for example, conducting a financial transaction with proceeds of murder, kidnapping, or dealing in a controlled substance (as defined in section 102 of the Controlled Substances Act), which is punishable as a felony under State law.<sup>4</sup>

**B. Section 103.100(a)(4)**

FinCEN proposes to add 31 CFR 103.100(a)(4), which would define a "law enforcement agency" to include a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that the foreign law enforcement agency is from a jurisdiction that is a party to a treaty that provides for, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States with reciprocal access to

information comparable to that obtainable under section 103.100. The addition of foreign law enforcement agencies would enable the United States to be compliant with its obligations under the U.S.–EU MLAT, thereby providing law enforcement agencies in the United States with the benefit of reciprocal access to information in EU member States. The U.S.–EU MLAT, and 27 bilateral instruments with EU Member States implementing its terms, require each EU member State to be able to search for the kind of information covered by 31 CFR 103.100 and to promptly report to the requesting State the results of such a search.

The addition of State and local law enforcement agencies would provide a platform for such agencies to deal more effectively with multi-jurisdictional financial transactions in the same manner as Federal law enforcement agencies. Access to the 314(a) program would provide State and local law enforcement agencies with another resource to aide in discovering the whereabouts of stolen proceeds.

**C. Section 103.100(b)(1)**

FinCEN proposes to amend section 103.100(b)(1) to make conforming changes to reflect the addition of State and local law enforcement agencies, and foreign law enforcement agencies, as potential requesters of information. These other categories of law enforcement agencies would be subject to the same standard now applicable to Federal law enforcement agencies—in particular, the requirement to certify that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. To further ensure that financial institutions are not overwhelmed by information requests, FinCEN has, since 2003, adopted an additional operating procedure that requires Federal law enforcement agencies to further certify that, in the case of a money laundering investigation, the matter is significant. FinCEN intends to apply that same standard to State, local and certain foreign law enforcement agencies.

**D. Section 103.100(b)(2)**

FinCEN proposes to add new 31 CFR 103.100(b)(2) which would clarify that FinCEN may request directly, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts

<sup>4</sup> See 18 U.S.C. 1956(c)(7) (defining the term "specified unlawful activity" to include, *inter alia*, an offense listed in 18 U.S.C. 1961(1)).

<sup>3</sup> See 31 U.S.C. 310.

for, or has engaged in transactions with, specified individuals, entities, or organizations. Such information requests shall be for the purpose of conducting analyses to deter and detect terrorist financing activity or money laundering. Adding FinCEN, itself and acting on behalf of other appropriate Treasury components, as a requester of information will increase the value of analytical support to law enforcement.

### III. Administrative Matters

#### A. Executive Order 12866

It has been determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866 because it raises a novel policy issue. However, a regulatory impact analysis is not required.

#### B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by that 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.

#### C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), FinCEN certifies that these proposed regulation revisions will not have a significant economic impact on a substantial number of small entities. The proposed revisions would allow certain other agencies to submit 314(a) requests, but would not change the substance of the search and reporting requirements. Thus, FinCEN estimates that any impact resulting from the proposal will not be significant.

#### D. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of

Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 at the following e-mail address: *oira\_submission@omb.eop.gov*, with a copy to the Financial Crimes Enforcement Network by mail or the Internet at the addresses previously specified. As an alternative, comments may be submitted to OMB by fax to (202) 395-6974. Comments on the collection of information should be received by January 15, 2010. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposal is in 31 CFR 103.100. The information will be used by Federal,<sup>5</sup> State, and local law enforcement agencies, as well as certain foreign law enforcement agencies, and FinCEN and other appropriate components of the Department of Treasury, in the conduct of investigating money laundering and terrorist financing activity. The collection of information is mandatory.

**International Requests:** FinCEN estimates that there would be no more than 60 requests for research submitted to the 314(a) program by foreign law enforcement agencies annually.<sup>6</sup>

**State and Local Requests:** While there are more than 18,000 State and local law enforcement agencies, FinCEN estimates that the number of cases that would meet the stringent 314(a) submission criteria would be relatively low. The majority of significant money laundering and terrorist financing related cases are worked jointly with Federal investigators and are thus already eligible for 314(a) request submission. FinCEN estimates that there would be no more than 50 State and

<sup>5</sup> The requirement in section 103.100(b)(2), concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency, is not a collection of information for purposes of the Paperwork Reduction Act. See 5 CFR 1320.4(a)(2).

<sup>6</sup> These calculations were based on previous requests for information. A review of incoming requests from European Union countries revealed an average of about 350 cases per year from 2006-2008. Of these, approximately 75% (an average of 269) were money laundering and/or terrorism related, however, the majority were not identified as complex cases. Conversations with FinCEN personnel responsible for European Union indicated not more than 10% of the money laundering and/or terrorism related cases would be significant enough to meet 314(a) use criteria, however, it is anticipated that there may be additional requests that would be submitted outside of the normal Financial Intelligence Unit channels.

local cases per annum of 314(a) requests that meet submission criteria.

**FinCEN and appropriate components of the Department of the Treasury Requests:** FinCEN estimates that the 314(a) program would be used by FinCEN and other appropriate Department components in fewer than 10 cases per annum. Taking into consideration the estimated number of potential use cases that would fit recommended internal 314(a) criteria, FinCEN does not believe that this expansion would be a significant strain on existing program resources.

**Description of Recordkeepers:** Covered financial institutions as defined in 31 CFR 103.100.

**Estimated Number of Recordkeepers:** On an annual basis, there are approximately 20,134 covered financial institutions, consisting of 15,106 commercial banks, savings associations, and credit unions, 4,793 securities broker-dealers, 139 future commission merchants, 79 trust companies, and 17 life insurance companies.

**Estimated Average Annual Burden Hours per Recordkeeper:** FinCEN estimates 120 search requests<sup>7</sup> per year associated with the recordkeeping requirement in this proposed rule and 9 subjects (including aliases) per request, resulting in an estimated 1,080 subjects per year. The estimated average burden associated with searching each subject is 4 minutes per subject. FinCEN therefore estimates that each recordkeeper will, on average, spend approximately 4,320 minutes, or roughly 72 hours per year to comply with the recordkeeping requirement in this proposed rule.

**Estimated Total Annual Recordkeeping Burden:** 1,449,648 annual burden hours (20,134 recordkeepers × 72 average annual burden hours per recordkeeper).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

**Request for Comments:** We specifically invite comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, and whether the information shall have practical utility; (b) the accuracy of our

<sup>7</sup> Estimated requests per annum subject to the Paperwork Reduction Act include 10 from FinCEN, 50 from State/local enforcement, and 60 from foreign law enforcement agencies, for a total of 120 requests.

estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

#### Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, FinCEN proposes to amend 31 CFR part 103 as follows:

#### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL 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. 5311–5314 and 5316–5332; title III, sec. 314, Public Law 107–56, 115 Stat. 307.

2. Section 103.90(a) is revised to read as follows:

#### § 103.90 Definitions.

\* \* \* \* \*

(a) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

\* \* \* \* \*

3. Section 103.100 is amended by—
- a. Adding new paragraph (a)(4);
  - b. Revising paragraph (b)(1);
  - c. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5);
  - d. Adding new paragraph (b)(2);
  - e. Revising newly redesignated paragraph (b)(3)(i);
  - f. Revising newly redesignated paragraph (b)(3)(iv)(B)(1);
  - g. Revising newly redesignated paragraph (b)(3)(iv)(B)(2);
  - h. Revising newly redesignated paragraph (b)(3)(iv)(C);
  - i. Revising newly redesignated paragraph (b)(4); and
  - j. Revising newly redesignated paragraph (b)(5).

The revisions read as follows:

#### § 103.100 Information sharing between government agencies and financial institutions.

(a) \* \* \*

(4) *Law enforcement agency* means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides for, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtainable under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering*—(1) *In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: State that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and Social Security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this

section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and Social Security number that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

(3) *Obligations of a financial institution receiving an information request*—(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

\* \* \* \* \*

(iv) \* \* \*

(B)(1) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(2) Notwithstanding paragraph (b)(3)(iv)(B)(1) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual,

entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

\* \* \* \* \*

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

Dated: November 9, 2009.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E9-27447 Filed 11-13-09; 8:45 am]

BILLING CODE 4810-02-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0840]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Port of Coos Bay Railroad Bridge, Coos Bay, North Bend, OR

AGENCY: Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the drawbridge operation regulation for the Port of Coos Bay Railroad Bridge, Coos Bay, mile 9.0, at North Bend, Oregon by deleting the requirement for special sound signals used in foggy weather and to change the name of the owner. This rule is necessary to make the sound signals used at the bridge consistent with other bridges in the area and to eliminate the unnecessary special sound signals.

**DATES:** Comments and related material must reach the Coast Guard on or before January 15, 2010.

**ADDRESSES:** You may submit comments identified by the Coast Guard docket number USCG-2009-0840 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District, telephone 206-220-7282, e-mail address [william.a.pratt@uscg.mil](mailto:william.a.pratt@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this

rulemaking USCG-2009-0840, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver or mail your comment, it will be considered received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2009-0840" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule in view of them.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0840" and click "Search". Click the "Open Docket Folder" in the "Actions" column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of all comments received into any