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Issued in Renton, Washington, on March 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506-AA84

Proposed Amendments to Bank Secrecy Act Regulations Regarding Casino Recordkeeping and Reporting Requirements

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend the Bank Secrecy Act regulations relating to currency transaction reporting by casinos. Specifically, we are proposing to exclude, as reportable transactions in currency, jackpots from slot machines and video lottery terminals. We are also proposing to exclude certain transactions between casinos and currency dealers or exchangers and casinos and check cashers as reportable transactions in currency. Finally, we are proposing several other amendments that would update or clarify the “cash in” and “cash out” examples of transactions that are set forth in our currency transaction reporting regulations.

DATES: Written comments on all aspects of the proposal are welcome and may be submitted on or before May 22, 2006.

ADDRESSES: You may submit comments identified by Regulatory Information Number (RIN) 1506-AA84, by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Include 1506-AA84 in the submission.
- E-mail: regcomments@fincen.treas.gov. Include 1506-AA84 in the subject line of the message.
- Mail: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include 1506-AA84 in the body of the text.

Instructions: Electronic comments are preferred because paper mail in the

Washington, DC, area may be delayed. Please submit comments by one method only. Any submissions received must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to <http://www.fincen.gov>, including any personal information provided. Comments may be inspected in the Financial Crimes Enforcement Network reading room between 10 a.m. and 4 p.m. in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephone at (202) 354-6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732 (toll-free number) or (202) 354-6400 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act.¹ The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.²

Casinos are cash-intensive businesses that offer a broad array of financial services. These services include customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other financial institutions, and check cashing and currency exchange services. Consequently, these services offered by casinos are similar to and may serve as substitutes for services ordinarily provided by depository institutions and

¹ The statute generally referred to as the “Bank Secrecy Act,” Titles I and II of Public Law 91-508, as amended, is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332.

² Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (“USA PATRIOT”) Act of 2001, Public Law 107-56 (October 26, 2001). In pertinent part, regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103.

certain non-bank financial institutions. As such, casinos are vulnerable to abuse by money launderers, terrorist financiers, and tax evaders.

In general, state-licensed casinos were made subject to the Bank Secrecy Act by regulation in 1985.³ The 1985 rulemaking was based on the authority of the Secretary of the Treasury to designate as financial institutions for Bank Secrecy Act purposes: (i) Businesses that engage in activities that are “similar to, related to, or a substitute for” the activities of covered businesses listed in the Bank Secrecy Act and (ii) other businesses “whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.”⁴ Congress later explicitly added casinos and other gaming establishments to the list of financial institutions regulated pursuant to the Bank Secrecy Act.⁵

Casinos authorized to conduct business under the Indian Gaming Regulatory Act became subject to the Bank Secrecy Act by regulation in 1996,⁶ and card clubs became subject to the Bank Secrecy Act by regulation in 1998.⁷

B. Casino Currency Transaction Reporting Requirements

Regulations under the Bank Secrecy Act define a “transaction in currency” as any transaction “involving the physical transfer of currency from one person to another.”⁸ Casinos must report each transaction in currency involving cash in or cash out of more

³ See 50 FR 5065 (February 6, 1985). Casinos whose gross annual gaming revenue did not exceed \$1 million were, and continue to be, excluded from Bank Secrecy Act requirements otherwise applicable to casinos and card clubs.

⁴ See 31 U.S.C. 5312(a)(2)(Y) and (Z).

⁵ See section 409 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325. The current 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).

⁶ See 61 FR 7054 (February 23, 1996).

⁷ See 63 FR 1919 (January 13, 1998). Card clubs generally are subject to the same rules as casinos, unless a different treatment for card clubs is explicitly stated in 31 CFR part 103. Therefore, for purposes of this Notice of Proposed Rulemaking, and unless the context indicates otherwise, the term “casino” refers to both casinos and to card clubs.

⁸ See 31 CFR 103.11(ii)(2).

than \$10,000,⁹ and are required to aggregate transactions in currency (treat the transactions as a single transaction) if the casino has knowledge that the transactions are conducted by or on behalf of the same person and result in cash in or cash out of more than \$10,000 during any gaming day.¹⁰ The rule requiring casinos to report transactions in currency also lists examples of transactions in currency involving cash in and cash out.¹¹

Casinos must report transactions in currency by filing Currency Transaction Reports on FinCEN Form 103 ("Currency Transaction Report by Casinos"). A casino must record identifying information on the Currency Transaction Report, verify identifying information, and indicate a description of the transaction(s).¹² In addition, a casino must file the completed form within 15 days following the date of the reportable transaction and retain a copy of the Currency Transaction Report for a period of five years from the date of filing.¹³

II. Proposed Amendments to the Bank Secrecy Act Regulations

We are proposing to amend certain regulations under the Bank Secrecy Act that require casinos to report transactions in currency of more than \$10,000. In response to requests from the gaming industry, we are proposing to exclude jackpots from slot machines and video lottery terminals as reportable transactions in currency. We also are proposing to exclude certain transactions between (i) casinos and currency dealers or exchangers and (ii) casinos and check cashers from the requirement to report transactions in currency. Finally, we are proposing other technical and clarifying amendments to the illustrative list of cash in and cash out transactions in the rules.

Jackpots from slot machines and video lottery terminals account for a significant portion of Currency Transaction Reports filed by casinos. Absent fraud or abuse of the slot machine or video lottery terminal, a customer who wins more than \$10,000 in jackpots at a slot machine or video lottery terminal generally will have won those funds solely because of the workings of the random number generator in the slot machine or in a central computer that is networked with the video lottery terminal. Accordingly,

the jackpots are not likely to form part of a scheme to launder funds through the casino. Further, because casinos are required to file federal income tax forms with the Internal Revenue Service on jackpots of \$1,200 or more, jackpots from slot machines and video lottery terminals are not likely to form part of a scheme to evade taxes. We believe that jackpots from slot machines and video lottery terminals do not pose a significant risk for money laundering, terrorist financing, or tax evasion. Consequently, Currency Transaction Reports filed with respect to the jackpots do not have a high degree of usefulness in criminal, tax, and regulatory matters. Therefore, we are proposing to eliminate the requirement that casinos file Currency Transaction Reports for jackpots in excess of \$10,000 from slot machines or video lottery terminals.

In addition, we believe that transactions in currency between casinos and currency dealers or exchangers and check cashers are often routine casino business transactions. To illustrate, a check cashing company may operate on the premises of a casino. The check cashing company may cash checks for customers of the casino. Typically, the check cashing company writes a business check to the casino and in return receives currency from the casino cage to run the check cashing operation. As another illustration, a casino may enter into a contractual agreement with a commercial currency dealer or exchanger to have that business acquire excess foreign currency and foreign coins that a casino has accumulated from exchanges with its customers. In return, a casino generally receives a cashier's check or a business check from the dealer for the currency exchanged minus a commission for the service. At present, both types of transactions qualify as "transactions in currency" such that, if the transactions meet the \$10,000 threshold set forth in the rule, a casino would be required to file one or more Currency Transaction Reports. We believe these business transactions should not be subject to the reporting requirements of 31 CFR 103.22(b)(2). Further, requiring a casino to file Currency Transaction Reports with respect to these transactions would be duplicative of those filed by currency dealers or exchangers, or check cashers, which are themselves subject to the requirements of the Bank Secrecy Act and to the requirement to file Currency Transaction Reports.¹⁴ Duplicate filings with respect to the same transaction do

not provide a high degree of usefulness in criminal, tax or regulatory matters.

III. Section-by-Section Analysis

A. Jackpots From Slot Machines and Video Lottery Terminals— 103.22(b)(2)(ii) and 103.22(b)(2)(iii)

For the reasons described above, we are proposing to amend 31 CFR 103.22(b)(2)(ii)(E) by deleting the reference to slot jackpots from the list of reportable cash out transactions in currency. We also are proposing to add a new paragraph, 31 CFR 103.22(b)(2)(iii)(B), that would explicitly exclude such transactions as "payments on bets" for purposes of casino currency transaction reporting.

B. Currency Dealer or Exchanger, or Check Casher Transactions— 103.22(b)(2)(iii)(A)

We are proposing to amend 31 CFR 103.22(b)(2) to add a new paragraph (iii)(A) that would exclude from the list of reportable cash in or cash out transactions in currency, certain transactions in currency conducted between a casino and currency dealers or exchangers, or check cashers, as defined in 31 CFR 103.11(uu)(1) and (2), respectively. As described above, currently, our regulations require a casino to file a Currency Transaction Report for cash in or cash out transactions in excess of \$10,000 conducted between casinos and currency dealers or exchangers and casinos and check cashers.¹⁵ Also, as discussed above, this proposed amendment would eliminate duplicative filings.¹⁶ We believe that as long as these currency transactions are conducted pursuant to a contractual or other arrangement with a casino covering those services in §§ 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H), these currency transactions should not be subject to currency transaction reporting requirements applicable to casinos.

C. Other Amendments

A summary of other technical amendments follows.

⁹ Since July 1997, there has been an "Exceptions" provision under the "General Instructions" section of the Currency Transaction Report by Casinos form for a casino's transactions with currency dealers or exchangers, or check cashers. This exception provision from such casino reporting on FinCEN Form 103 (Rev. November 2003) would be revised to reflect the language of this amendment once a final rule is issued.

¹⁶ This proposed amendment does not relieve a currency dealer or exchanger, or a check casher, from complying with the reporting of currency transactions in excess of \$10,000 conducted with a casino. See 31 CFR 103.22(b)(1).

⁹ See 31 CFR 103.22(b)(2).

¹⁰ See 31 CFR 103.22(c)(3).

¹¹ See 31 CFR 103.22(b)(2)(i) and (ii).

¹² See 31 CFR 103.27(d) and 103.28.

¹³ See 31 CFR 103.27(a)(1) and (3).

¹⁴ See 31 CFR 103.22(b)(1).

1. *Gaming instruments*—103.22(b)(2)(i)(A). We are proposing to amend 31 CFR 103.22(b)(2)(i)(A) by deleting the term “plaques” and substituting the phrase “other gaming instruments” for cash in transactions. The term “plaque” only applies to a high value chip. In contrast, a gaming instrument would include any casino-issued financial product that is used to facilitate a gaming transaction (e.g., high dollar denomination plaques used in playing baccarat games, and stored value cards containing funds or monetary value), including those associated with a particular customer.

2. *Money plays as bets of currency*—103.22(b)(2)(i)(E). We are proposing to amend 31 CFR 103.22(b)(2)(i)(E) to include money plays as “bets of currency” and thus reportable cash in transactions for purposes of our currency reporting requirements for casinos. Under 31 CFR 103.11(ii)(2), a “transaction in currency” includes any transaction involving the physical transfer of currency to a casino. A “bet of currency” is listed as an example of a transaction in currency involving cash in.¹⁷ Therefore, a wager of currency on table game play represents a “bet of currency”—and a transaction in currency involving cash in—regardless of whether the customer wins or loses the wager.

3. Bills inserted into electronic gaming devices—103.22(b)(2)(i)(I). We are proposing to add a new paragraph, 31 CFR 103.22(b)(2)(i)(I), to include “bills inserted into electronic gaming devices” as a type of cash in transaction. The insertion of currency into a slot machine or a video lottery terminal (which are electronic gaming devices), regardless of whether a customer wagers the currency, involves the physical transfer of currency to a casino.¹⁸

In the absence of a wager, the transaction is analogous to the purchase of a token or chip with currency, as the customer exchanges currency for a: (i) Token to wager at a slot machine or video lottery terminal, or (ii) chip to wager at a table game. The purchase of a token (or chip) with currency is a transaction in currency involving cash in.¹⁹ Likewise, the insertion of currency into a slot machine or video lottery terminal is a transaction in currency, even in the absence of a wager.²⁰

4. *Tickets and other gaming instruments*—103.22(b)(2)(ii)(A). We are proposing to amend 31 CFR 103.22(b)(2)(ii)(A) to delete the phrase

“and plaques” and insert the phrase “tickets, and other gaming instruments” for cash out transactions. The proposed amendment replaces the term “plaque,” which only applies to a high value chip, with terminology that is more current and commonly used with respect to the latest gaming technology. A ticket is a document issued by a slot machine, video lottery terminal, or a pari-mutuel clerk to a customer as a record of the wagering transaction and/or substitute for currency.²¹ A customer can use a ticket at a machine or terminal that accepts tickets or cash a ticket out at a cage, slot booth, a redemption kiosk, or a pari-mutuel window at the gaming establishment. As described previously, a gaming instrument would encompass any casino-issued financial product that is used to facilitate a gaming transaction (e.g., high dollar denomination plaques used in playing baccarat games, and stored value cards containing funds or monetary value).

5. *Payments based on receipt of funds through wire transfers*—

103.22(b)(2)(ii)(F). We are proposing to amend 31 CFR 103.22(b)(2)(ii)(F) pertaining to payments in currency by a casino to a customer based on receipt of funds through a wire transfer to delete the reference to credit to a customer. Some casinos have been confused by the reference to credit for this type of cash out transaction. Since this reference is unnecessary, it will be removed.

6. *Travel and complimentary expenses and gaming incentives*—103.22(b)(2)(ii)(I). We are proposing to amend 31 CFR 103.22(b)(2)(ii)(I) to clarify the types of reportable cash out transactions under this provision. Specifically, we are proposing to replace the word “entertainment” with the term “complimentary”²² for expenses, and to add the phrase “gaming incentives” which would mean that travel and complimentary expenses and gaming incentives would be reportable as currency transactions.

7. *Tournaments, contests or promotions*—103.22(b)(2)(ii)(J). We are proposing to add a new paragraph, 31 CFR 103.22(b)(2)(ii)(J), to add payments for tournament, contest, or other

²¹ Tickets are voucher slips printed with the name and the address of the gaming establishment, the stated monetary value of the ticket, date and time, machine number (e.g., asset or location), an 18-digit ticket number, and a unique bar code. Tickets are a casino bearer “IOU” instrument. Slot machines or video lottery terminals that print tickets are commonly known as “ticket in/ticket out” or “TITO” machines.

²² Although, complimentary (also referred to as “comps”) items typically are goods or services that a casino gives to a customer, at reduced or no cost, based on significant play, they can also be in the form of currency.

promotions as types of cash out transactions.

IV. Submission of Comments

We invite comments on all aspects of this notice of proposed rulemaking, and specifically invite comments on what impact a casino exemption from currency transaction reporting for jackpots from slot machines or video lottery terminals reported would have for law enforcement. 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. Executive Order 12866

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

VI. Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities since the regulatory reporting threshold excludes casinos whose gross annual gaming revenues do not exceed \$1 million. For larger casinos, the requirements of the proposed amendments to 31 CFR 103.22(b)(2)(i)(E) and 103.22(b)(2)(i)(I) may be satisfied, in large part, by using existing business practices and records. For example, many casinos already obtain a great deal of data about their customers’ transactions from information routinely collected from casino-established player rating and slot club accounts. This existing data can assist casinos in making decisions about whether a transaction is reportable as a currency transaction.

VII. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in any 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. We have determined that we are not required to prepare a written statement

¹⁷ See 31 CFR 103.22(b)(2)(i)(E).

¹⁸ See 31 CFR 103.11(ii)(2).

¹⁹ See 31 CFR 103.22(b)(2)(i)(A).

²⁰ See 31 CFR 103.22(b)(2)(i)(E).

under section 202, and have concluded that, on balance, this proposed rule provides the most cost-effective and least burdensome alternative to achieve the stated objectives associated with the same.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Gambling, Indian gaming, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of Title 31 of the Code of Federal Regulations is proposed to be amended 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, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

Section 103.22 is amended by:

- A. Revising paragraphs (b)(2)(i)(A), (E), (G), and (H), and adding a new paragraph (b)(2)(i)(I);
B. Revising paragraphs (b)(2)(ii)(A), (E), (F), (H), and (I), and adding a new paragraph (b)(2)(ii)(J); and
C. Adding a new paragraph (b)(2)(iii).

The revisions and additions read as follows:

§ 103.22 Reports of transactions in currency.

* * * * *

- (b) * * *
(2) * * *
(i) * * *

(A) Purchases of chips, tokens, and other gaming instruments;

* * * * *

(E) Bets of currency, including money plays;

* * * * *

(G) Purchases of a casino's check;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Bills inserted into electronic gaming devices.

- (ii) * * *

(A) Redemptions of chips, tokens, tickets, and other gaming instruments;

* * * * *

(E) Payments on bets;

(F) Payments by a casino to a customer based on receipt of funds through wire transfers;

* * * * *

(H) Exchanges of currency for currency, including foreign currency;

(I) Travel and complementary expenses and gaming incentives; and

(J) Payment for tournament, contests and other promotions.

(iii) Other provisions of this part notwithstanding, a transaction in currency or currency transaction for purposes of §§ 102.22(b)(2) and (c)(3) shall not include:

(A) Transactions between a casino and a currency dealer or exchanger, or between a casino and a check cashier, as those terms are defined in § 103.11(uu), so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in §§ 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H); and

(B) Jackpots from slot machines or video lottery terminals.

* * * * *

Dated: March 14, 2006.

Robert W. Werner,

Director, Financial Crimes Enforcement Network.

[FR Doc. E6-4072 Filed 3-20-06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13-06-007]

RIN 1625-AA08

Special Local Regulation: Annual Dragon Boat Races, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for the Dragon Boat Races held annually the second Saturday and Sunday of June on the waters of the Willamette River, Portland, Oregon. These special local regulations limit the movement of non-participating vessels in the regulated race area. This proposed rule is needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before April 20, 2006.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard

Sector Portland, 6767 N. Basin Ave, Portland, Oregon 97217. Waterways Management maintains the public docket [CGD13-06-007] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Sector Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST1 Charity Keuter, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217-3992, phone (503) 240-9311.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13-06-007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know if your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Sector Portland at the address under ADDRESSES explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Background and Purpose

This event may result in a number of recreational vessels congregating near the boat races. The regulated area is needed to protect event participants. Dragon Boats have very little freeboard and are susceptible to swamping. Accordingly, regulatory action is needed in order to provide for the safety of spectators and participants during the event.

Discussion of Proposed Rule

This rule would control vessel movements from entering the race event