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Part III

Department of the Treasury

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31 CFR Part 103

Regulations Regarding Reporting and Recordkeeping Requirements by Casinos; Bank Secrecy Act Amendments; Final Rule
DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: The Bank Secrecy Act authorizes the Secretary of the Treasury to require financial institutions to file reports and keep records that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement anti-money laundering programs and compliance procedures and report potentially suspicious transactions to the federal government. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network. As a result of a review of Treasury's anti-money laundering requirements, this final rule substantially modifies changes to the Bank Secrecy Act reporting and recordkeeping requirements for casinos that were contained in a Final Rule published on March 12, 1993, and withdraws a number of provisions contained in that Rule. The withdrawn provisions include the requirements that casinos record and verify the identification of any customer whose transactions in currency on a gaming day have reached $3,000; maintain a list of customers who are known by aliases; obtain

missing customer information with respect to multiple transactions which, when aggregated, exceed $10,000 in currency; and establish a chronological imprest system. The withdrawn provisions were scheduled to become effective on December 1, 1994.

DATES: Effective Date: The Final Rule is effective December 1, 1994.
Compliance Date: Mandatory compliance is required by June 1, 1995.

ADDRESSES: Peter G. Djinis, Office of Financial Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, room 3210 Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

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SUPPLEMENTARY INFORMATION: Casinos are designated generally as ``financial institutions'' for purposes of the Bank Secrecy Act (``Act''). Under the Act's implementing regulations, casinos are subject to particular reporting and recordkeeping requirements, see, e.g., 31 CFR sections 103.11(i)(7), 103.22(a)(2) and 103.36.

On March 12, 1993, Treasury published in the Federal Register, 58 FR 13538-13550, a Final Rule (the ``March 12, 1993 Rule'') involving nineteen amendments to the Bank Secrecy Act regulations affecting casinos. The purpose of the amendments was to enhance compliance with Bank Secrecy Act requirements, Public Law 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5329), and to provide Bank Secrecy Act examiners with ``audit trails'' to determine the adequacy of compliance.

The original effective date of the March 12, 1993 Rule was September 8, 1993. On August 27, 1993, Treasury delayed the effective date of the March 12, 1993 Rule until March 1, 1994, to give affected casinos an additional six months to comply with the rule (see 58 FR 45263). On February 25, 1994, Treasury announced a second delay of the effective date of the March 12, 1993 Rule, from March 1, 1994, to December 1, 1994 (see 59 FR 9088). The second delay permitted Treasury to consider the treatment of casinos in the course of an ongoing comprehensive review of Treasury's anti-money laundering enforcement policies and programs. That review was initiated to set the course for implementation of the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Public Law 102-550, 106 Stat. 3672, 4044 (1992), codified as amended in scattered sections of Titles 12, 18, 22, 28, 31, and 53, U.S.C.) and the legislation that ultimately became the Money Laundering Suppression Act of 1994 (Public Law 103-325). Two of the key objectives of the Treasury review were the need to balance accurately costs and benefits in framing compliance rules and the extent to which emphasis in administration of the Bank Secrecy Act should be placed on anti-money laundering programs and the reporting of suspicious transactions by financial institutions.

Treasury has determined that it should modify the March 12, 1993 Rule in light of its intention to promulgate regulations requiring financial institutions, including casinos, to report suspicious transactions and establish anti-money laundering measures including ``know your customer'' policies and programs. The modifications should reduce the regulatory burden that would otherwise have been imposed on the **casino** industry without unduly diminishing the value of the information that casinos are required to maintain or report, and, more

importantly, without reducing the level of Bank Secrecy Act compliance by casinos.

The modifications should not be misinterpreted. Treasury remains concerned about the potential use of casinos to further the commission of financial crime and as an avenue for transmission of funds generated by such crimes. The **casino** industry is vulnerable to such use because casinos engage in a fast-paced cash intensive business and can provide their customers with financial services nearly identical to those generally provided by depository institutions. Federal law enforcement organizations have documented the use of casinos as surrogate ``banks'' for individuals. They have also documented instances of misuse of **casino** facilities to avoid proper identification of customers, for example, through submission of false identification by individuals who, for a fee, are cashing out **casino** chips for anonymous ``high rollers''. The Internal Revenue Service continues to believe that a high volume of untaxed currency passes through casinos.

A number of the provisions of the March 12, 1993 Rule will become effective on December 1, 1994. Equally important, Treasury intends in the near future to propose comprehensive ``know your customer'' and suspicious transaction reporting requirements that will apply to all financial institutions, including casinos. The provisions of the March 12, 1993 Rule that will become effective on December 1, 1994 include the requirement that each **casino** develop and implement a compliance program; the details of that program have been refined to include terms that anticipate Treasury's adoption of suspicious transaction reporting requirements.

The compliance program provisions also reflect the already-existing protection for financial institutions against liability for ``a disclosure of any possible violation of law or regulation'' contained in 31 U.S.C. section 5318, as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992. Banks and other sectors of the financial community have already taken steps voluntarily to identify and report such transactions, and Treasury would be interested in observing what steps the **casino** industry could take, even in advance of the suspicious transaction reporting regulations, to do the same, that is, to identify and report unusual or suspicious transactions that involve possible violations of law or regulation.

In the event that casinos are unable to establish effective ``know your customer'' and suspicious transaction reporting programs, Treasury will re-evaluate the need for additional **casino**-specific recordkeeping practices, possibly including requirements withdrawn from the March 12, 1993 Rule at this time.

A summary of Treasury's determinations with respect to the March 12, 1993 Rule follows.

(1) Definition of **Casino**. The definition of **casino** remains unchanged. Treasury intends to propose rules in the near future which would (i) raise the ``gross annual gaming revenue'' threshold to a level as high as $15,000,000 for subjecting a **casino** to the reporting and recordkeeping requirements of the Bank Secrecy Act and (ii) designate Indian gaming operations as financial institutions subject, as are other casinos, to the Bank Secrecy Act under authority granted to Treasury by the Money Laundering Suppression Act. It is contemplated that such an increase in the threshold would relieve or eliminate many Bank Secrecy Act requirements for casinos falling under the threshold. Such relief may be reasonable since small **casino** establishments typically have limited stakes gaming or cater to customers who wager in such small amounts that very few currency transaction reports are filed

with the Internal Revenue Service. However, Treasury intends to require in a future regulation that these casinos--as well as those above the threshold--be required to report suspicious transactions. Also, those casinos falling below the threshold would then become subject to Section 6050I of the Internal Revenue Code, which mandates the reporting of cash in (i.e., cash received) transactions exceeding $10,000. Those casinos falling below the threshold would remain subject to other appropriate provisions of the Bank Secrecy Act.

(2) General Currency Reporting Requirements. The provisions of 31 CFR section 103.22(a)(2) as amended by the March 12, 1993 Rule are modified in two ways. First, the de minimis rule of section 103.22(a)(2)(iv) (which provided a safe harbor, in certain instances, from aggregating **casino** transactions involving less than $500 in currency) is removed since it is no longer needed in light of other changes made in this Final Rule. Second, Treasury modified the knowledge requirement for filing a currency transaction report based upon multiple transactions by the same customer. Language clarifying the pre-existing requirement that ``cash in'' and ``cash out'' transactions be separately aggregated, together with examples of such ``cash in'' and ``cash out'' transactions, remains. (Amendment #2).

(3) Additional Recordkeeping Requirements. Treasury has decided to withdraw the requirements added by amendatory instructions 4, 5, 6, 7, 11, 12, 13, 16, 17, and 18 of the March 12, 1993 Rule. Those requirements, to a large part, dealt with a number of additional recordkeeping procedures for casinos. The withdrawn procedures include the requirements that casinos (i) record and verify the identification of any customer whose transactions in currency on a gaming day have reached $3,000, (ii) maintain a list of customers who are known by aliases, (iii) obtain missing customer information with respect to multiple transactions which, when aggregated, exceed $10,000 in currency, and (iv) establish a chronological imprest system. As indicated above, Treasury does not believe it is appropriate or necessary, in light of its intention to require the establishment of comprehensive ``know your customer'' programs and suspicious transaction reporting requirements to impose these additional recordkeeping procedures for casinos at this time. (Amendment #3).

(4) Obtaining and Verifying Customer Identification. The provisions of 31 CFR 103.36(a) are unchanged, except for a citation change. Those provisions require casinos to obtain and verify customer identification when a customer deposits funds or opens an account or establishes a line of credit. (Amendment #4.)

(5) Recording Monetary Instruments. The changes to the March 12, 1993 Rule necessitate redesignating the requirement that casinos record transactions of $3,000 or more involving monetary instruments as Section 103.36(b)(9). This record will provide an effective means of determining whether or not large transactions have been accounted for as currency transactions. (Amendment #5).

(6) Bank Secrecy Act Compliance Programs for Casinos. The requirement that casinos establish Bank Secrecy Act compliance programs generally remains unchanged. However, the specific requirement that such programs determine the point at which multiple currency transactions will be treated as a single transaction (contained in sub-sub paragraph (B) of 31 CFR 103.54(a)(2)(v)) is removed, and replaced by a requirement relating to the occurrence of unusual or suspicious transactions. Also, Treasury modified the training requirement to include such transactions. The requirement that casinos make and retain a copy of their compliance program of the March 12, 1993 Rule, remains,

but is redesignated as Section 103.36(b)(10). (Amendments #5, #6 and #7).

As discussed in the preamble to the March 12, 1993 Rule, the required compliance programs must provide for (i) internal controls to assure ongoing compliance with the provisions of the Bank Secrecy Act and its implementing regulations, (ii) independent testing for compliance, (iii) training of **casino** personnel in Bank Secrecy Act rules and compliance, and (iv) the designation of specific personnel responsible for day-to-day compliance. Similar programs have been required of banks since 1987. See, e.g., 12 C.F.R. 21.21 and 208.14 and Treasury's authority in 31 U.S.C. 5318(h) to require anti-money laundering compliance programs generally.

The provisions relating to Bank Secrecy Act compliance programs also make it clear that casinos must ensure use of all available information to assemble and verify required customer identifications, and to make and retain records required by the Act. In addition, casinos which have automated data processing systems shall provide for their use to aid in assuring Bank Secrecy Act compliance.

Casinos need to ensure that their compliance programs address the full range of currency transactions cited in 31 CFR 103.22(a)(2) (i) and (ii). For example, **casino** compliance procedures should, as one matter, assure that all available information is used to distinguish accurately between cash and chips transactions. Treasury is aware that casinos do not always distinguish between chip transactions and currency transactions at the cage, because chips and currency transactions are interchangeable in casinos. As a result, casinos do not always create records of certain currency transactions (e.g., chip redemptions and currency exchanges), making it easy to misrepresent or accidently misidentify recordable or reportable currency transactions as non-reportable chip transactions. In addition, **casino** compliance procedures should assure that all available information is used in any existing system that identifies currency transactions, including information on such records as player rating cards, multiple currency transaction logs, etc. Lastly, Treasury expects that casinos will use inexpensive and compatible procedures that could improve greatly their compliance efforts, such as the recording of the amount of the cash buy-in on player rating cards. Treasury will ask its Bank Secrecy Act compliance examiners to ascertain whether casinos have established effective compliance programs.

(7) Transactional Imprest System. Treasury has decided to withdraw the imprest system requirement reflected in 31 CFR 103.54(b). The additional burdens such a system would impose on the **casino** industry are unnecessary at this time in light of the hoped for satisfaction of law enforcement needs by other means in this and pending regulations. (Amendment #8).

(8) Special **Casino** Terms. Other changes necessitate redesignating section 103.54(c) as 103.54(b) pertaining to special **casino** terms contained in the March 12, 1993 Rule. Also, Treasury decided to withdraw Section 103.54(d), pertaining to ongoing identification requirements, as a consequence of the other changes made to the March 12, 1993 Rule. (Amendment #8).

Administrative Procedure Act

Because this document merely removes previously published regulatory requirements, notice and public comment are unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B).

Executive Order 12866

This Final Rule reduces regulatory burdens as contemplated by Executive Order 12866 and is not a ``significant'' rule for purposes of that Executive Order. It withdraws the transactional imprest system and many recordkeeping requirements to which casinos would have been subject had the applicable provisions of the March 12, 1993 Rule gone into effect. This Final Rule is not anticipated to have an annual effect on the economy of $100 million or more and will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. It is not inconsistent with, nor does it interfere with actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues. A cost and benefit analysis, therefore, is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply.

Paperwork Reduction Act

The collection of information requirements contained in this Final Rule has been reviewed and approved previously by the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (under OMB control number 1505-0063).

Drafting Information

The principal author of this document is the Financial Crimes Enforcement Network's Office of Financial Enforcement.

List of Subjects in 31 CFR Part 103

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

Amendment

For the reasons set forth above in the preamble, the Final Rule published in the Federal Register of March 12, 1993 (58 FR 13538-13550), amending 31 CFR Part 103, is further amended, effective December 1, 1994, as set forth below:

PART 103--FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. No. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951-1959); 31 U.S.C. 5311-5329.

2. Section 103.22 is amended by removing paragraph (a)(2)(iv) and revising paragraph (a)(2)(iii) to read as follows:

Sec. 103.22 Reports of currency transactions.

* * * * *

(a) * * *

(2) * * *

(iii) Multiple currency transactions shall be treated as a single transaction if the **casino** has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any gaming day. For purposes of this paragraph (a)(2), a **casino** shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the **casino**, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the **casino** maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

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3. Amendatory Instructions 4, 5, 6, 7, 11, 12, 13, 16, 17, and 18 are withdrawn.

Sec. 103.36 [Amended]

4. Section 103.36(a) is amended by removing ``103.28(a)'' which appears twice in the fourth sentence and adding ``103.28'' in both places.

5. Section 103.36, paragraphs (b)(11) and (b)(12) are redesignated as paragraphs (b)(9) and (b)(10).

6. Section 103.54 is amended by revising paragraph (a)(2)(iii) to read as follows:

Sec. 103.54 Special rules for casinos.

* * * * *

(a) * * *

(2) * * *

(iii) Training of **casino** personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is hereafter required by this part, by other applicable law or regulation, or by the **casino**'s own administrative and compliance policies;

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7. Section 103.54 is further amended by revising paragraph (a)(2)(v)(B) to read as follows:

Sec. 103.54 Special rules for casinos.

* * * * *

(a) * * *

(2) * * *

(v) * * *

(B) When required by this part, the occurrence of usual or suspicious transactions; and

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8. Section 103.54 is further amended by removing paragraphs (b) and (d) and redesignating paragraph (c) as paragraph (b).

Dated: November 28, 1994.

Stanley E. Morris,
Director, Financial Crimes Enforcement Network.

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