(A) An estimate of the biologic variability in the availability of the substance in humans and in the relationship between the amount of the substance ingested and the rate of absorption (i.e., dose-response);

(B) A statement of the relevance, and limit to relevance to the human, of any animal model used to estimate human digestion and absorption of the substance; and

(C) For any clinical studies that are relied on to demonstrate reduced absorption or digestion, information on the characteristics of the subjects studied and the manner in which they are representative of the population for whom the substance is intended. For example:

(*1*) An accounting of subjects enrolled in the study including those who did not complete the study, reasons for any noncompletion, and an assessment of the effect that noncompletion of subjects had on the results of the study; and

(*2*) A description of any adverse events that occurred during the study, and a comparison of the frequency and type of effects as a function of the feeding of the substance;

(ii) Information about foods or diets that may affect the digestibility coefficient, such as:

(A) Interactions of the substance with other components of foods or the diet that could significantly affect the digestibility coefficient;

(B) Steps in processing of the types of foods expected to contain the fat substitute that could affect the digestibility coefficient;

(C) The amount of the substance used in feeding studies, the relationship of that amount to expected levels of intake, and the dose-response relationship between the amount of the substance and the digestibility coefficient; and

(D) The duration of feeding studies and changes in the digestibility coefficient with continued exposure;

(6) A certification that all data of which the firm is aware that pertain to the digestibility of the fat substitute have been submitted, and that any new data will be promptly submitted as it becomes available for as long as the ingredient is marketed; and

(7) Such notification shall be submitted to the Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St., SW., Washington, DC 20204.

(d) *FDA review.* Upon receipt, FDA will notify the submitting firm that it has received the notification and will commence its review. If firms do not receive written objections from FDA within 120 days of FDA's receipt of the notification, nutrient content claims based on the digestibility coefficient submitted may be used.

(e) *Nutrition labeling.* When a claim is made for fat or saturated fat under this section, the nutrition label shall declare the amount of available fat or saturated fat in accordance with § 101.9(d)(15).

(f) *Misbranding.* Any food product containing ingredients that are covered under paragraph (a) of this section that bears a claim based on available levels of fat for which supporting data have not been provided to FDA in accordance with this section or to which FDA has objected in response to the notification filed in accordance with paragraph (c) of this section will be deemed to be misbranded under section 403(a) and (r)(1)(A) of the Federal Food, Drug, and Cosmetic Act.

Dated: December 11, 1996.

William B. Schultz,

*Deputy Commissioner for Policy*

[FR Doc. 96–32124 Filed 12–19–96; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–209672–93]**

**RIN 1545–AS16**

## Credit for Employer Social Security Taxes Paid on Employee Tips

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws the notice of proposed rulemaking relating to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The proposed regulations were published in the Federal Register on December 23, 1993. Changes to the law made by the Small Business Job Protection Act of 1996 have made these proposed regulations obsolete.

**FOR FURTHER INFORMATION CONTACT:** Jean M. Casey at (202) 622–6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

On December 23, 1993, the IRS issued proposed regulations (EE–71–93) (58 FR 68091) under section 45B of the Internal Revenue Code relating to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. Amendments made by section 1112(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188) render the proposed regulations obsolete. Therefore, proposed regulation § 1.45B–1 is being withdrawn.

On December 23, 1993, the IRS also published temporary regulations (TD 8503) (58 FR 68033) under section 45B of the Code. These temporary regulations are being removed in a separate document.

List of Subjects in 26 CFR Part 1

Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the Federal Register on December 23, 1993 (58 FR 68091) is withdrawn.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

[FR Doc. 96–32250 Filed 12–19–96; 8:45 am]

BILLING CODE 4830–01–P

## Financial Crimes Enforcement Network Proposed Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping by Card Clubs

### 31 CFR Part 103

**RIN 1506–AA18**

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to include certain gaming establishments, commonly called ''card clubs,'' ''card rooms,'' ''gaming clubs,'' or ''gaming rooms'' within the definition of financial institution subject to those regulations.

**DATES:** Written comments must be received on or before March 20, 1997.

**ADDRESSES:** Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, Attention: NPRM—Card Clubs.

**SUBMISSION OF COMMENTS:** Comments on all aspects of the proposed regulation are welcome and will be considered if submitted in writing prior to March 20,

1997. An original and four copies of any comments 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.

**INSPECTION OF COMMENTS:** Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Financial Crimes Enforcement Network (''FinCEN'') reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

**FOR FURTHER INFORMATION CONTACT:** Leonard C. Senia, Senior Financial Enforcement Officer, Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network (703) 905–3931, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, Financial Crimes Enforcement Network, (703) 905–3557.

**SUPPLEMENTARY INFORMATION:**

## Introduction

This document proposes (i) to add a definition of ''card club,'' in a new paragraph (8) of 31 CFR 103.11(n), as a component of the definition of ''financial institution'' for purposes of the Bank Secrecy Act rules, (ii) to provide, by means of a new paragraph (7)(iii) in section 103.11(n), for treatment of card clubs generally in the same manner as casinos under the Bank Secrecy Act, (iii) to renumber paragraphs (8) and (9) of section 103.11(n) as paragraphs (9) and (10), respectively, and (iv) to add a new paragraph (11), applicable only to card clubs, to 31 CFR 103.36(b), to require retention by card clubs of records of a customer's currency transactions, and records of all activity at card club cages or similar facilities, maintained in the ordinary course of a club's business. The proposed changes reflect the authority contained in 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.

## Background

The statute popularly known as the ''Bank Secrecy Act,'' Titles I and II of 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. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The range of financial institutions to which the Bank Secrecy Act applies is not limited to banks and other depository institutions. It also includes securities brokers and dealers, money transmitters, and the other non-bank businesses that offer customers one or more financial services.

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).[1] 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 7054–7056 (February 23, 1996).[2]

In recognition of the importance of application of the Bank Secrecy Act to the gaming industry, section 409 of the Money Laundering Suppression Act 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.[3] 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). Treasury has previously indicated that it is in the process of rethinking the application of the Bank Secrecy Act to gaming establishments. *See* 59 FR 61660–61662 (December 1, 1994) and 61 FR 7054, 7055 (February 23, 1996). This notice of proposed rulemaking is a step in that process.

## Explanation of Provisions

### *A. Overview*

The proposed regulations would expand the range of gaming establishments to which the Bank Secrecy Act applies to include card clubs. Generally card clubs would be subject to the same rules as casinos (a matter on which comment is specifically requested below), unless a specific provision of the rules in 31 CFR Part 103 applicable to casinos explicitly required a different treatment for card clubs.

### *B. Definition of Card Club*

The definition of card club itself is proposed to be added as a component of the definition of ''financial institution'' in a new paragraph 31 CFR 103.11(n)(8).[4] Under the proposed amendment, the term would include, *inter alia*, any establishment of the type commonly referred to as a ''card club,'' ''card room,'' ''gaming club'' or ''gaming room,'' that is duly licensed or authorized to do business either under state law, under the laws of a particular political subdivision within a state, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands. Card clubs licensed by U.S. territories or possessions would also fall within the definition.

The general need for and appropriateness of treatment of casinos as financial institutions for purposes of the Bank Secrecy Act have been accepted, as indicated above, since the mid-1980s. Treasury has made clear the need to prevent casinos, which both deal in cash and cash-equivalent chips

[1] Casinos with gross annual gaming revenue of $1 million or less were, and continue to be, excluded from coverage.

[2] Treasury has issued four sets of rules in all relating to the application of the Bank Secrecy Act to casino gaming establishments. *See*, in addition to the two rules cited in the text, 54 FR 1165–1167 (January 12, 1989), and 59 FR 61660–61662 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538–13550 (March 12, 1993)).

[3] The 1985 action initially making casinos subject to the Bank Secrecy Act had been based on Treasury's statutory authority to designate as financial institutions (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) (as renumbered by the Money Laundering Suppression Act).

[4] As indicated, no language in the financial institution definition is being deleted; present paragraphs 103.11(n)(8) and (n)(9) would simply become paragraphs (n)(9) and (n)(10), respectively.

and can offer a variety of other financial services to customers, from being used to avoid the effect of the Bank Secrecy Act.[5]

Although application of the Bank Secrecy Act to gaming establishments has heretofore been limited to casinos, that limitation is not a statutory one. As noted, the statutory definition of financial institution includes any establishment licensed as a ''gaming establishment,'' whether the licensing authority is a state, a municipality or other state subdivision, or one of the licensing authorities recognized by the Indian Gaming Regulatory Act. *See* 31 U.S.C. 5311(a)(2)(X)(quoted above).

Card clubs are a fast-growing segment of the gaming industry, primarily in California. Although card club operations differ, the establishments generally offer facilities for gaming by customers who bet against one another, rather than against the establishment. Most large card clubs run the games, but the clubs earn their revenue by receiving a fee from customers (for example a per table charge) rather than from, as in a classic casino, running games *and* effectively ''banking'' the games offered so that customers bet against the house.

While the scope of casinos and card club operations may have differed in the past, they no longer necessarily do so. California and some other states in which card clubs operate do not permit casino gaming (or only permit such gaming in limited forms). But, for example, customers at California card clubs wagered about $8.9 billion in 1995. Against that background, there are two primary reasons that card clubs, like other gaming establishments, require coverage under the Bank Secrecy Act.

First, many card clubs, like casinos, now offer their customers a wide range of financial services. As it indicated when it proposed extension of the Bank Secrecy Act to tribal casinos, the Treasury has generally sought to apply the Bank Secrecy Act to gaming establishments that provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services, 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. The fact that the gaming at card clubs does not directly involve the wagering of house monies in no way alters the fact that vast sums of currency and other funds pass through such establishments, or the fact that card clubs are coming to offer their customers corollary financial services to facilitate the movement of funds.

Second, card clubs are at least as vulnerable as other gaming establishments to use by money launderers and those seeking to commit tax evasion or other financial crimes, both because of their size and because those institutions lack many of the controls found at casinos. Given their growth, their prevalence in the nation's most populous state, and their potential for expansion, there is no basis for distinguishing card clubs from casinos for purposes of the Bank Secrecy Act.[6]

There is also some indication that the line between card clubs and casinos may be blurring in practice. Thus, FinCEN noted in the preamble to the final rule extending the Bank Secrecy Act to tribal casinos that:

> [A]n establishment that claimed to be a gambling ''club'' rather than a casino because it simply offered customers an opportunity to gamble with one another, but that in practice funded certain customers so that other customers were in effect gambling against ''house'' money, and that offered its customers financial services of various kinds, is arguably a casino under present law. Thus, for example, if such a ''club'' failed to file currency transactions reports or allowed a customer to deposit funds in a player bank account in the name of the customer without requiring the customer to provide identifying information, the club would arguably be operating in violation of the Bank Secrecy Act.

61 FR 7055 note 1.

Given the growth of card clubs and their potential for offering a venue for money launderers, the application of the Bank Secrecy Act to such establishments should not depend on whether games are banked or otherwise backed with house funds.[7] Similarly, the fact that some card clubs operating under the terms of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq*, may be Class II rather than Class III establishments for purposes of the regulatory provisions of that legislation (so that card clubs are subject to tribal regulation rather than to regulation pursuant to state-tribal compact), does not provide a relevant distinction for Bank Secrecy Act purposes.[8] (As was the case with tribal casinos, a card club that operates on Indian lands under a view that compliance with the Indian Gaming Regulatory Act is unnecessary or inconsistent with inherent tribal rights would not for that reason be exempted from the terms of the Bank Secrecy Act, to the extent that those terms would otherwise apply to the card club's operations.)

Card clubs, like casinos, will only become subject to the Bank Secrecy Act once they generate more than $1 million in ''gross annual gaming revenue.'' Treasury believes that as applied to card clubs the term includes revenue derived from or generated by customer gaming

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[5] The preamble to the final rule bringing casinos within the Bank Secrecy Act stated that

> [i]n recent years Treasury has found that an increasing number of persons are using gambling casinos for money laundering and tax evasion purposes. In a number of instances, narcotics traffickers have used gambling casinos as substitutes for other financial institutions in order to avoid the reporting and recordkeeping requirements of the Bank Secrecy Act.
>
> Inclusion of casinos in the definition of financial institution[s] in 31 CFR Part 103 was among the specific recommendations in the October 1984 report of the President's Commission on Organized Crime, ''The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering.'' The problem was also the subject of hearings in 1984 before the House Judiciary Subcommittee on Crime entitled ''The Use of Casinos to Launder the Proceeds of Drug Trafficking and Organized Crime.''
>
> In order to prevent the use of casinos in this fashion, Treasury is amending the regulations in 31 CFR Part 103 to require gambling casinos to file the same types of reports [and maintain the same types of records] that it requires from financial institutions currently covered by the Bank Secrecy Act.

50 FR 5065, 5066, (February 6, 1985); *see also* 49 FR 32861, 32862 (August 17, 1984) (corresponding language in notice of proposed rulemaking).

[6] Federal and state law enforcement authorities have expressed concern for several years about card clubs as venues for criminal activity. *See, e.g.,* Asian Organized Crime, Part I, S. Rep. 102–346, 101st Cong., 1st Sess. (1991); Asian Organized Crime: the New International Criminal, S. Rep. 102–940, 101st Cong., 2nd. Sess. (1992); Office of the Attorney General of California, ''Status of Cardroom Gambling in California and the Proposed Gambling Control Act'' (Public Document, February 1995); *cf.* Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, Hearings: Asset Forfeiture Program—A Case Study of the Bicycle Club Casino, 104th Cong., 2nd. Sess. (March 19, 1996).

[7] At present, the *receipt* of cash in excess of $10,000 by card clubs in a single transaction (or multiple related transactions) is required to be reported under section 6050I of the Internal Revenue Code. The limited cash transaction reporting rules of section 6050I (which apply to currency received in all non-financial trades or businesses) are not as extensive as the reporting rules of the Bank Secrecy Act (which apply both to receipts and payments of currency and are not matched by recordkeeping, suspicious transaction reporting, and anti-money laundering compliance program rules).

[8] The National Indian Gaming Commission has taken the position that games banked by players, rather than the house, are nonetheless ''banked card games'' whose operation is required to occur in a Class III facility. Thus it appears that some percentage of card clubs on tribal lands will be, or will be operated within, Class III facilities that will generally become subject to the Bank Secrecy Act on August 1, 1996. *See* National Indian Gaming Commission Bulletin 95–1 (April 10, 1995). FinCEN understands that certain Asian card games (whose rules employ a betting formula in which a player does not offer to take on all competitors), may be permitted to be offered in Class II facilities for purposes of the Indian Gaming Regulatory Act.

activity (whether in the form of per-game or per-table fees, fees based on winnings, rentals, or otherwise) and received by an establishment.

*C. Treatment of Card Clubs Under the Bank Secrecy Act*

Under the proposed regulations, card clubs would be treated under the Bank Secrecy Act in the same manner as casinos unless specific provisions of the rules in 31 CFR Part 103 explicitly require a different treatment. Thus, card clubs would become subject not simply to the Bank Secrecy Act's currency transaction reporting rules but to the full set of provisions (described by the Congress as ''a comprehensive currency reporting and detailed recordkeeping system with numerous anti-money laundering safeguards'' [9]) to which casinos in the United States are subject.

Treatment of card clubs on a par with casinos would generally impose on such clubs the Bank Secrecy Act rules that apply to casinos. Thus, each card club would be required to file with the Department of the Treasury a report of each receipt or disbursement of more than $10,000 in currency in its operations during any gaming day; aggregation of multiple currency transactions is required in a number of situations. *See* 31 CFR 103.22(a)(2). The requirement would apply to all receipts or disbursements of currency in connection with gaming activities at the card club, including, but not limited to, transfers of currency for chip purchases or redemptions, exchanges of bills of one denomination for bills of another denomination, exchanges of one currency for another currency, transfers to or from player accounts or deposit facilities, payments or advances on credit, wagers of currency or payments of currency to settle wagers, and transfers intended for conversion to other forms of negotiable instruments or for electronic funds transfer or transmittal out of, or as a result of such transfer or transmittal into, the card club.[10]

It is particularly important to understand that the requirements would apply regardless of where the transfers occur at the card club. Thus no distinction is to be made between, for example, transactions at a cage, cashier, or other central facility, and chip purchases or redemptions from club runners or from dealers or other operators of specific games.

Each card club would also be required, like a casino, to maintain, and to retain, certain records relating to its operation, including records identifying account holders (*see* 31 CFR 103.36(a)), records showing transactions for or through each customer's account (*see, generally,* 31 CFR 103.36(b)), and records of transactions involving persons, accounts or places outside the United States. *See* 31 CFR 103.36(b)(5). Records of transactions of more than $3,000 involving checks or other monetary instruments and records that are prepared or used by a card club to monitor a customer's gaming activity are also among the types of records that would be required to be maintained. *See* 31 CFR 103.36 (b)(8) and (b)(9). (A specific record retention requirement, applicable only to card clubs, is discussed below.) Finally, card clubs would be required to institute training and internal control programs to assure and monitor compliance with the Bank Secrecy Act. *See* 31 CFR 103.36(b)(10) and 103.54(a).[11]

Card clubs within the scope of the proposed rule will in any event remain subject to the filing requirements of section 6050I of the Internal Revenue Code, with respect to their gaming and financial services operations, until the proposals made by this document become effective as a final rule. *See* section 6050I (a) and (c) of the Internal Revenue Code, 26 U.S.C. 6050I(a) and (c), and Treas. Reg. 1.6050I–1(d)(2). Section 6050I of the Code will continue to apply to any non-gaming and non-financial services operations (for example restaurant service), at card clubs that become subject to the Bank Secrecy Act.

*D. Additions to Record Retention Requirements*

The proposed rule contains one new record retention requirement, applicable only to card clubs. A proposed new paragraph (11) of 31 CFR 103.36(b) would require card clubs to retain, for five years, all currency transaction logs, multiple currency transaction logs, and cage control logs that the clubs maintain in their business operations. This requirement is proposed to assure an adequate basis for the audit of compliance or review of compliance by card clubs with the Bank Secrecy Act; the restriction of the requirement to card clubs reflects the absence for such clubs of a state regulatory scheme under whose terms similar records would already be required to be maintained.

*E. Request for Comments on Specific Subjects*

FinCEN recognizes that card club operations are not uniform throughout the United States, and it is keenly aware of the need to proceed thoughtfully in adopting the rules of the Bank Secrecy Act to the realities of those operations. FinCEN specifically seeks comment on the following questions:

1. Are there particular parts of the Bank Secrecy Act regulations applicable to casinos generally that cannot or should not be applied to card clubs?

2. What types of financial services, other than gaming, are offered by card clubs?

3. Do any elements of the operation of card clubs on tribal lands justify different treatment for such clubs than for other card clubs? Are specific rules necessary to take account of situations in which card clubs operate in Class II facilities that offer several different Class II gaming activities?

4. How can compliance with the Bank Secrecy Act by tribal card clubs best be examined and enforced?

In seeking guidance on these and other issues raised by this notice of proposed rulemaking, FinCEN is interested in hearing from all parties potentially affected by the proposed rules, including operators of card clubs, officials of jurisdictions in which card clubs are located, and Indian tribes on whose lands card club gaming is conducted.

Treasury is continuing to consider issues affecting the application of the Bank Secrecy Act to the gaming industry generally. Those issues include whether special rules should be applicable to small gaming establishments, and how best to implement with respect to gaming establishments the general provisions added to the Bank Secrecy Act by the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550, and the Money Laundering Suppression Act.

Proposed Effective Date

The amendments to 31 CFR Part 103 proposed in this notice of proposed rulemaking will become effective 90 days following publication in the

[9] *See* H.R. Rep. No. 652, 103rd Cong., 2nd Sess. 193 (1994).

[10] Legislation recently enacted in California adds gaming clubs to the list of financial institutions in that state that are required to report transactions in currency of more than $10,000 to the California Department of Justice. See Assembly Bill 3183 (signed September 28, 1996), amending Cal. Penal Code 14161. The new reporting requirement becomes effective on January 1, 1997. It is anticipated that the California and Bank Secrecy Act currency transaction reporting requirements will be coordinated (as is done in other situations in which Bank Secrecy Act and state reporting rules overlap) to reduce regulatory burden and costs of compliance.

[11] In addition, Treasury intends to issue regulations to require classes of non-bank financial institutions, including gaming establishments, to file reports of suspicious transactions. *See* 31 U.S.C. 5318(g)(1).

Federal Register of the final rule to which this notice of proposed rulemaking relates.

Special Analyses

It has been determined that this notice of proposed rulemaking (i) is not subject to the ''budgetary impact statement'' requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this proposed rule, if adopted as a final rule, will have an annual effect on the economy of $100 million or more. Nor will it, if so adopted, 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. The proposed rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues.

A ''description of the reasons why action by the agency is being considered'' and a ''succinct statement of the objectives of, and legal basis for, the proposed rule''—all as required by 5 U.S.C. 553(b)—are found elsewhere in this preamble.

Paperwork Reduction Act

The proposed rule would add a new paragraph (b)(11) to section 103.36 to require card clubs to retain records, created in the ordinary course of business, (i) of currency transactions (for example, currency transaction logs and multiple currency transaction logs) and (ii) of all activity at card club cages or similar facilities, including, without limitation, cage control logs. FinCEN believes that, as a matter of usual and customary business practice, card clubs collect and maintain information about currency and cage transactions conducted by their customers; proposed paragraph (b)(11) would require simply that such records be retained for at least five years (the generally applicable Bank Secrecy Act record retention period). FinCEN thus believes that the retention requirement of proposed 103.36(b)(11), the only new retention requirement in the proposed rule, would impose a minimal additional burden on the card club industry. Nevertheless, because proposed 103.36(b)(11) is a recordkeeping obligation not presently found in 31 CFR Part 103, FinCEN hereby presents the following information concerning the retention of information on currency and cage transactions, in accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, to assist those persons wishing to comment on the proposed information retention requirement.

Proposed Collection Retention Requirement

*Description of Respondents:* All card clubs conducting transactions in currency and cage transactions with their customers and creating records of such transactions in the ordinary course of business.

*Frequency:* Each time a currency or cage transaction is recorded.

*Estimated Number of Currency and Cage Transactions:* Unknown.

*Estimate of Total Annual Burden on Card Clubs:* Recordkeeping burden estimate = approximately 686 hours per year.

*Estimate of Total Annual Cost to Card Clubs for Hour Burdens:* Based on $20 per hour, the total cost of compliance with the proposed recordkeeping rule is estimated to be approximately $14,000.

*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 retention of information. 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 retention of the information covered by the requirement.

The information collection in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. Comments on the proposed collection may be directed to the Office of Information and Regulatory Affairs of OMB, attention: Desk Officer for the Treasury Department. Responses to this request for comments from FinCEN will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Drafting Information

This notice of proposed rulemaking was prepared in FinCEN's Office of Legal Counsel, with the participation of staff members of FinCEN's Office of Regulatory Policy and Enforcement.

List of Subjects in 31 CFR Part 103

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

Proposed Amendments to the Regulations

Accordingly, 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 is amended by redesignating paragraphs (n)(8) and (n)(9) as paragraphs (n)(9) and (n)(10), respectively, and by adding new paragraphs (n)(7)(iii) and (n)(8) to read as follows:

**§ 103.11 Meaning of terms.**

* * * * *

(n) * * *

(7) * * *

(iii) Any reference in this Part, other than in this paragraph (n)(7) and in paragraph (n)(8), 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.

(8)(i) *Card club.* A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for

operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of $1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term ''casino,'' as used in this Part shall include a reference to ''card club'' to the extent provided in paragraph (n)(7)(iii).

(ii) For purposes of this paragraph (n)(8), ''gross annual gaming revenue'' means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment's previous business year or its current business year. A card club that is a financial institution for purposes of this Part solely because its gross annual revenue exceeds $1,000,000 during its current business year, shall not be considered a financial institution for purposes of this Part prior to the time in its current business year when its gross annual revenue exceeds $1,000,000.

3. Section 103.36 is amended by adding a new paragraph (b)(11) to read as follows:

**§ 103.36 Additional records to be made and retained by casinos.**

* * * * *

(b) * * *

(11) In the case of card clubs only, records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency transaction logs, and records of all activity at cages or similar facilities, including, without limitation, cage control logs.

* * * * *

Dated: December 16, 1996.

Stanley E. Morris,

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 96–32396 Filed 12–19–96; 8:45 am]

BILLING CODE 4820–03–P

## DEPARTMENT OF DEFENSE

## Department of the Army, Corps of Engineers

## 33 CFR Part 334

## Danger Zones and Restricted Areas

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Corps proposes to amend most of the regulations promulgated in 33 CFR Part 334, which establish danger zones and restricted areas in waters of the United States. This minor editorial amendment to the regulations clarifies that persons, as well as vessels or other listed watercraft, are subject to the restrictions placed on the use of and entry into the areas established by the danger zone and restricted area regulations. This clarification does not affect the size, location or further restrict the public's use of the areas. The danger zones and restricted areas continue to be essential to the safety and security of Government facilities, vessels and personnel and protect the public from the hazards associated with the operations at the Government facilities.

**DATES:** Comments should be received on or before February 18, 1997.

**ADDRESS:** Send comments to: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend danger zone and restricted area regulations in 33 CFR Part 334, by inserting the word ''person'', or similar verbiage that clarifies, as appropriate, that the regulations affect persons in a vessel, as well as persons outside of vessels in the water, engaged in activities such as, swimming, diving, floating, waterskiing, and snorkeling. The addition of the word ''person'' to existing danger zone/restricted area regulations is necessary due to a recent lawsuit which involved a person trespassing (swimming) into a restricted area where the existing regulations prohibited entry by vessels or other craft but did not specifically prohibit entry by persons. We are taking this opportunity to change all danger zone and restricted area regulations in 33 CFR Part 334, which have a stated restriction or prohibition on vessels, watercraft and the like, but do not specifically address entry into the area(s) by persons swimming, floating, waterskiing, diving, or by any means allowing them entry into the area by water. Clearly, since the intent of the regulations when promulgated was to restrict the public's use of a designated water area, the changes proposed today will have no additional effect on the public.

Procedural Requirements

*a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the changes to the danger zones would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal is adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

We have concluded, based on the minor nature of the editorial changes that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required.

*d. Unfunded Mandates Act*

This rule, if established, does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.

For the reasons set out in the preamble, we propose to amend 33 CFR Part 334, as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.10 is amended by revising the first sentence of paragraph (b)(5), to read as follows: