interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which the partnership made the distribution, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(2) are illustrated by the following example:

Example. (i) A, B, and corporation C form partnership PRS. A and B each contribute $10,000 and C contributes $20,000 in exchange for a partnership interest. PRS has no liabilities. PRS purchases stock in corporation C for $10,000, which appreciates in value to $70,000. PRS distributes $25,000 to A in complete liquidation of A's interest in PRS in a year for which an election under section 754 is not in effect. PRS later sells the C stock for $70,000. PRS realizes a gain of $60,000 on the sale of the C stock. C's share of the gain is $40,000. Under section 1032, C does not recognize its share of the gain.

(ii) Normally, C would be entitled to a $40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the C stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which PRS made the distribution to A, PRS would have been entitled to adjust the basis of partnership property under section 734(b)(1)(A) by $15,000 (the amount of gain recognized by A with respect to the distribution to A under section 731(a)(1)). See § 1.734–1(b). Under § 1.755–1(c)(1)(ii), the basis adjustment under section 734(b) would have been allocated to the C stock, increasing its basis to $25,000. (where there is a distribution resulting in an adjustment under section 734(b)(1)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property.)

(iii) If a section 754 election had been in effect for the year in which PRS made the distribution to A, the amount of gain that PRS would have recognized upon PRS's disposition of C stock would be $45,000 ($70,000 minus $25,000 basis in the C stock), and the amount of gain C would have recognized upon PRS's disposition of the C stock (absent the application of section 1032) would be $30,000 (C's share of PRS's gain of $45,000 from the stock sale). Accordingly, upon PRS's sale of the C stock, the increase in the basis of C's interest in PRS is $30,000.

* * * * *

(c)(1) * * * Similarly, if a corporation owns an indirect interest in its own stock through a chain of two or more partnerships, and a partnership in the chain distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, then upon any subsequent sale or exchange of the stock, the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

* * * * *

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) * * * , except that the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–7650 Filed 3–28–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 58 and 72

RIN 1219–AB24

Measuring and Controlling Asbestos Exposure

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking; notice of public meetings; notice of close of record.

SUMMARY: We, the Mine Safety and Health Administration (MSHA), are requesting information from the public concerning ways to increase protection to miners when they are working in environments where asbestos is present. We are concerned that miners may be exposed to asbestos at mining operations with the ore bodies containing asbestos. There is also a potential exposure at mine facilities with installed asbestos-containing material which may be disturbed. Miners who are exposed may also bring the substance home on their persons and clothes, and in their automobiles.

Exposure to asbestos can cause asbestosis, mesothelioma, lung cancer, and cancers of the digestive system. A recent report by the U.S. Department of Labor's Office of the Inspector General (OIG) recommended that MSHA lower its existing Permissible Exposure Limit (PEL) for asbestos to a more protective level and address take-home contamination from asbestos. The report also recommended that MSHA use Transmission Electron Microscopy (TEM) instead of Phase Contrast Microscopy (PCM) to analyze fiber samples that may contain asbestos. We intend to use the submitted information to help determine how we should proceed to address these issues.

We are also announcing in this document our intent to hold six (6) public meetings to allow early participation in the rulemaking by interested parties.

DATES: Comments on the advance notice of proposed rulemaking (ANPRM) must be received on or before June 27, 2002.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

You do not have to submit a written request to speak. There will be a sign-up sheet at each of the meeting locations. Speakers will speak in the order that they sign in. Speakers may also present information to the MSHA panel for inclusion in the rulemaking record.

The rulemaking record will close June 27, 2002.

ADDRESSES: Comments on the ANPRM may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as pertaining to this ANPRM and sent to: *comments@msha.gov.* Comments by fax must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Comments by mail must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

This notice is available on our Web page at *http://www.msha.gov,* under Statutory and Regulatory Information. We intend to place the public comments on our website within five (5) working days after we receive them.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Mr. Nichols can be reached at *Nichols-Marvin@msha.gov* (e-mail), (703) 235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Public Meetings

The public meetings will be held on the following dates and locations:

Date	Location	Phone
April 30th	Holiday Inn 1901 Emmet Street Charlottesville, VA 22901	(434) 977–7700
May 2nd	Ramada Inn 164 Fort Couch Road Pittsburgh, PA 15241	(412) 833–5300
May 14th	Days Inn 4212 W Sunset Blvd Spokane, WA 99224	(509) 747–2021
May 16th	Hampton Inn & Suites 800 Mason Street Vacaville, CA 95687	(707) 469–6200
May 29th	Best Western 90 E Main Street Canton, NY 13617	(315) 386–8522
June 12th	Days Inn 701 Hattrick Ave Virginia, MN 55734	(218) 744–2703

The public meetings will begin at 9:00 a.m. and end after the last speaker appears; and in any event, not later than 5:00 p.m. each day.

II. Background

Regulatory History

Our asbestos regulations date to 1967 and are based on the former U.S. Bureau of Mines standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed and finalized a 2 mppcf and 12 fibers/ml (milliliter) standard. In 1970, the Bureau proposed to lower the limit to 5 fibers/ml, which was promulgated in 1974. We issued our current standard of 2 fibers/cc (cubic centimeter) in 1976 for coal mining and 2 fiber/ml in 1978 for metal and nonmetal mining. In 1989, we proposed as part of our Air Quality rulemaking to lower the PEL for asbestos to 0.2 fibers/cc (cubic centimeter), in line with then-current levels promulgated by the Occupational Safety and Health Administration (OSHA) in its Air Contaminants rulemaking. However, an appeals court decision invalidated OSHA's generic rulemaking approach, which had grouped categories of substances with similar properties under a single rulemaking. The Court ruled that the PEL for each substance must be supported by substantial scientific evidence of significant risk of material impairment of health, as if each substance were the subject of a separate substance-specific rule. Since we used an approach similar to OSHA's in our Air Quality proposed rule, we believed our rule would be subject to similar legal scrutiny. For this and other reasons, the air contaminants portion of the Air Quality proposed rule has not been finalized.

In 1994, OSHA promulgated a revised substance-specific asbestos standard that lowered the PEL and the short-term exposure limit to an eight (8) hour time-weighted average limit of 0.1 f/cc of air and to 1.0 f/cc as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected scientific evidence of increased asbestos-related disease risk to asbestos-exposed workers.

MSHA's existing rules at 30 CFR 56.5001(b) and 57.5001(b) states:

> The 8-hour time-weighted average airborne concentration of asbestos dust to which employees are exposed shall not exceed 2 fibers per milliliter greater than 5 microns in length, as determined by the membrane filter method at 400–450 magnification (4 millimeter objective) phase contrast illumination. No employees shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers longer than 5 micrometers, per milliliter of air, as determined by the membrane filter method over a minimum sampling time of 15 minutes. ''Asbestos'' is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, the term ''asbestos'' as used herein is limited to the following minerals: chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Asbestos is also covered in an existing coal rule for surface coal mines and surface work areas of underground coal mines under 30 CFR 71.702. The rule states:

> (a) The 8-hour average airborne concentration of asbestos dust to which miners are exposed shall not exceed two fibers per cubic centimeter of air. Exposure to a concentration greater than two fibers per cubic centimeter of air, but not to exceed 10 fibers per cubic centimeter of air, may be permitted for a total of 1 hour each 8-hour day. As used in this subpart, the term asbestos means chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos but does not include nonfibrous or nonasbestiform minerals. (b) The determination of fiber concentration shall be made by counting all fibers longer than 5 micrometers in length and with a length-to-width ratio of at least 3 to 1 in at least 20 randomly selected fields using phase contrast microscopy at 400–450 magnification.

Events Leading up to the Inspector General's Recommendations

In 1980, we requested that the National Institute for Occupational Safety and Health (NIOSH) investigate health problems at vermiculite operations, including one in Libby, Montana. The results of the NIOSH study were published in 1986 and indicated very high occupational exposure prior to 1974 at the Libby operation. The highest exposures were in the mill. In 1974, the mine began to use a wet process to concentrate vermiculite in the mill, and exposures dropped markedly. The study also pointed out an increased risk of lung cancer among the miners.

In November 1999, a Seattle newspaper published a series of articles on the unusually high incidence of asbestos-related illnesses and fatalities among individuals who had lived in Libby, Montana. The miners employed at the vermiculite mine in Libby, which produced approximately 89 percent of the world's supply of vermiculite from 1924 until 1991, were exposed to asbestos through the processing of ore and inadvertently carried the dust home on their clothes and in their personal vehicles, thereby continuing to expose themselves and family members. Because MSHA had jurisdiction over the mine, the OIG undertook an evaluation of our role in the Libby situation.

OIG Findings and Recommendations

The findings and recommendations of the OIG were published in a report dated March 22, 2001. The OIG found that MSHA had conducted regular inspections and personal exposure sampling at the Libby mine. The OIG concluded: ''we do not believe that more inspections or sampling would have prevented the current situation in Libby.'' The report made several recommendations to MSHA, three of which would require rulemaking. The OIG recommended that MSHA: (1) Lower the existing PEL to a more protective level; (2) use a more sensitive method, Transmission Electron Microscopy (TEM), to quantify fibers in our samples, rather than the Phase Contrast Microscopy (PCM) method currently used; and (3) address take-home contamination from asbestos.

Reducing the PEL

A finding of OSHA's 1984 risk assessment was that lowering the TWA PEL from 2 f/cc to 0.2 f/cc reduced the asbestos cancer mortality risk from lifetime exposure from 64 to 6.7 deaths per 1,000 exposed workers, respectively. OSHA estimated that the incidence of asbestosis would be 5 cases per 1,000 workers exposed for a working lifetime under the TWA PEL of 0.2 f/cc. In 1994, OSHA promulgated a revised substance-specific standard that lowered the asbestos PEL to an eight (8) hour time-weighted average limit of 0.1 f/cc of air. It also lowered the short-term exposure limit to 1.0 f/cc as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected scientific evidence of significant, asbestos-related disease risk at existing exposure levels. OSHA's risk assessment also showed that reducing exposure to 0.1 f/cc would further reduce, but not eliminate, significant risk. The excess cancer risk at that level would be reduced to a lifetime risk of 3.4 per 1,000 workers. These data indicate that if we adopt OSHA's asbestos PEL, the level of risk of asbestos-related diseases would be reduced substantially.

Analytical Method

At least two methods are generally used to analyze asbestos in air samples: Phase Contrast Microscopy (PCM) and Transmission Electron Microscopy (TEM). MSHA uses the PCM method. A difference between the two methods is the level of magnification available to identify and count fibers. The PCM method magnifies fibers between 400 and 450 fold whereas the TEM method magnifies fibers 20,000 fold or greater. This increased magnification allows for the mineralogical identification of the fiber and allows a more accurate count of asbestos fibers for purposes of evaluating compliance with the PEL. OSHA uses PCM in their method ID–160 to measure asbestos in air. The NIOSH Manual of Analytical Methods (NMAM) includes asbestos methods 7400 and 7402. Method 7400 is a PCM procedure, equivalent to the OSHA methods. Method 7402 uses TEM to identify fibers. The OIG recommended that MSHA use TEM to analyze asbestos samples.

Take-Home Contamination

Workers can carry hazardous substances home from work on their clothes, bodies, tools, and other items. They can unknowingly expose themselves and their families to these substances, causing various health effects. In our 1989 Air Quality proposed rule, we addressed take-home contamination. As proposed, miners would have been required to wear protective clothing and other personal protective equipment before entering areas containing asbestos. They would have also been required to remove their protective clothing and store them in adequate containers to be disposed of or decontaminated by the operator. This is a common practice when workers are exposed to particularly hazardous materials, such as carcinogens, in carrying out their regular job duties. The OIG recommended that similar requirements be incorporated into a new asbestos rule. OSHA, NIOSH, MSHA, and the Department of Labor OIG have addressed the issue of take-home contamination.

OSHA

The OSHA asbestos standards address protective work clothing and equipment (*i.e.,* provision and use; removal and storage; cleaning and replacement) and hygiene facilities and practices (*i.e.,* change rooms; showers; lunchrooms) to prevent take-home contamination [OSHA: 29 CFR 1910.1001 and 29 CFR 1926.58].

NIOSH

The Workers' Family Protection Act of 1992 (Public Law 102–522, 29 U.S.C. 671a) directed NIOSH to study contamination of workers' homes by hazardous substances (including asbestos) transported from the workplace [NIOSH: ''Protect Your Family: Reduce Contamination at Home.'' DHHS (NIOSH) Publication No. 97–125. NIOSH, Cincinnati, OH (1997)]. The NIOSH study documented cases of home contamination from 28 countries and 36 states in the United States. Reported cases covered a wide variety of materials (including asbestos), industries, and occupations.

NIOSH discussed the prevention of take-home contamination from asbestos [NIOSH (1997)]. The means by which hazardous substances (including asbestos) have reached workers' homes and families include the following: work clothing; tools and equipment; other items taken home from work; the worker's body; cottage industries (*i.e.,* work performed at home); and family visits to the workplace. Asbestos reaching workers' homes has occurred worldwide, resulting in all forms of asbestos disease among workers' family members, including over 100 identified deaths from mesothelioma in the United States.

MSHA

Our 1989 proposed rule on air quality delineated provisions for the use of protective clothing and equipment and hygiene facilities and practices to minimize take-home contamination from asbestos [54 FR 35760, August 29, 1989]. Due to the long-term health risks, carcinogens like asbestos warrant special safety requirements. Under the proposed rule, miners would have had to wear full-body protective clothing (*e.g.,* smocks, coveralls, or long-sleeved shirts and pants and other personal protective equipment) before entering an area in which asbestos-containing ore or material were processed or handled. Upon exiting such areas, miners would also have been required to remove their protective clothing and equipment and have them stored in impervious (*i.e.,* air-tight) containers, which would either be disposed of or decontaminated by the employer. Finally, miners would have had to thoroughly cleanse themselves and shower upon leaving at the end of the workday. NIOSH stated that these measures are effective in reducing or eliminating take-home contamination [1].

Department of Labor Office of the Inspector General

The Department of Labor OIG supported the development and implementation of special safety requirements (*e.g.,* availability, training, and proper use of personal protective clothing and equipment; appropriate storage, disposal, and decontamination of personal protective clothing and equipment; suitable hygiene facilities and practices) for asbestos and vermiculite mining and milling [USDOL: Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana. Report No. 2E–06–620–0002, March 22, 2001. USDOL, Office of the Inspector General, Office of Analysis, Complaints and Evaluations, Washington, DC (2001).]

MSHA's Asbestos Field Sampling and Awareness of Asbestos Hazards

Recently, we adopted new sampling techniques and have increased the scope of sampling for airborne asbestos fibers at mines in an attempt to better determine miners' exposure levels to asbestos. Our efforts have included taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is

[1] NIOSH: Report to Congress on Workers' Home Contamination Study Conducted Under The Workers' Family Protection Act (29 U.S.C. 671a). DHHS (NIOSH) Publication No. 95–123. NIOSH, Cincinnati, OH (September 1995).

present and at what levels. Since the Spring of 2000, we have taken almost 900 samples at more than 40 operations employing more than 4,000 miners. A preliminary review and analysis by the Agency indicate few exposures above the OSHA 8-hr TWA of 0.1 f/cc occurred during the sampling period. A final report on the sampling results will be made public as soon as it is available by placing it on our Web site at *http://www.msha.gov,* under the link to Special Initiatives, Asbestos, a single source page. Also, the report will be made part of this rulemaking record.

During those sampling events, we discussed with miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. We are encouraging mine operators to comply with the OSHA asbestos PEL of 0.1 f/cc. Our current 8 hour PEL is 20-fold higher than OSHA's. Our intent in using this approach is to educate operators to recognize that a ''standard of care'' based on lower exposure will reduce the potential for illness and liability.

Impact of the Rule

We are assessing both the costs and benefits of intended regulations in accordance with Executive Order 12866. Under the Executive Order, we are to base decisions on the best reasonably obtainable scientific, technical, economic, and other data and information concerning the need for and the consequences of the regulations. We are seeking information and comment on the benefits and costs related to the issues addressed in this ANPRM.

III. Issues

We are seeking any supporting information or data that would help us evaluate whether to lower our asbestos PEL, to revise existing PCM or TEM methods and criteria specifically for the mining industry, to implement safeguards to limit take-home exposures, and the likely impact on benefits and costs of such rulemaking actions. In particular, we encourage the public to respond to the questions posed below.

Please be as specific as possible in your responses to the questions and in suggesting alternatives. When you comment, we request that you include the rationale for the comment rather than a short ''yes'' or ''no'' answer. Please also include specific examples and impact estimates where possible to support your rationale. This will help us to effectively evaluate and analyze your comments.

1. Asbestos PEL

We are considering rulemaking to lower both the eight (8) hour time-weighted average and the short-term exposure limits, and request comments on the most appropriate fiber concentrations to designate in light of their health risk and their technological and economic feasibility.

We seek information, data, and comments on the following:

a. What exposure limit would provide the appropriate level of protection to exposed miners? Would adopting the OSHA limits afford sufficient protection to miners?

b. MSHA's recent field sampling data show that none of the samples collected exceed OSHA's 8 hour time weighted average of 0.1 f/cc when analyzed using the TEM method. Considering the low fiber levels observed, what would be an appropriate agency action?

2. Analytical Method

We are considering the use of TEM rather than PCM to analyze fiber samples that may contain asbestos. We seek information, data, and comment on the following:

c. What is the advantage for MSHA to use TEM to initially analyze airborne fibers collected on all filters?

d. What is the availability and cost of commercial TEM analysis services?

e. Should we measure PEL compliance using TEM?

f. Are there studies which correlate asbestos exposure determined by TEM with incidence of asbestos disease?

g. Are there data comparing PCM to TEM fiber counts from the same filter for the mine environment?

h. What method is most appropriate for MSHA to use (*e.g.,* EPA, ASTM, OSHA, or NIOSH) to analyze bulk samples for asbestos in the mining industry?

3. Take-Home Contamination

We are also considering methods of reducing take-home contamination from asbestos. We specifically request information, data, and comments on the following:

i. How and/or should MSHA require operators to address take-home contamination from asbestos?

j. How should MSHA asbestos regulations provide for any special needs of small mine operators?

k. What technical assistance (*e.g.,* step-by-step instructions, model programs, certification of private programs) should we provide to mine operators when they develop a program to reduce take-home contamination from asbestos?

l. What types of protective clothing are miners currently using when working in areas where asbestos is present?

m. What types of preventive measures (*e.g.,* appropriate disposal of contaminated clothing; hand and face washing; showering) are currently in use when miners leave areas where asbestos may be present?

4. Sampling and Awareness of Asbestos Hazards

We are reviewing the adequacy of our field sampling methods for asbestos and how sampling results are being used, by both MSHA and operators, to protect miners. We specifically request information, data, and comments on the following:

n. How can mineral dust interference be most accurately removed from the samples?

o. Does our current field sampling meet the needs of the mining community?

p. How should mine operators ensure that miners are aware of potential asbestos hazards at the mine site and provide adequate protection?

q. What educational and technical assistance (e.g., step-by-step instructions, model programs) should we provide to mine operators when we develop a program to sample and analyze for asbestos?

r. What other factors, circumstances, or measures should MSHA consider when engineering controls can not reduce asbestos exposure below the PEL?

5. Impact

We anticipate that the benefits of a rulemaking addressing measurement and control of asbestos would be the reduction or elimination of asbestos-related diseases (cancers and asbestosis) arising from exposure to asbestos. We anticipate there will be operator and agency costs associated with lowering our asbestos PEL, reducing take-home contamination, and using TEM to analyze fiber samples.

We request information, data, and comments on the following:

s. How many miners are currently being exposed to asbestos?

t. What engineering controls and personal protective equipment are currently being used to protect miners from exposure to asbestos and to prevent take-home contamination? What are the costs of these engineering controls and personal protective equipment?

u. What would be the benefits of a rule that would reduce exposure to asbestos?

v. What would be the costs of such a rule?

Dated: March 22, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–7467 Filed 3–26–02; 12:05 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA22

Amendments to the Bank Secrecy Act Regulations; Requirement That Casinos and Card Clubs Report Suspicious Transactions; Request for Additional Comments

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

ACTION: Proposed regulations: Reopening of comment period and request for additional comments.

SUMMARY: FinCEN is soliciting additional comments concerning the proposed standard for the reporting by casinos and card clubs of suspicious activity. To allow the submission of such comments, it is re-opening for 60 additional days the comment period for the relevant notice of proposed rulemaking.

DATES: Additional written comments about the reporting standard must be received on or before May 28, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, Attention: NPRM—Casino SAR Rule. (Comments may also be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text ''Attention: NPRM—Casino SAR Rule.'') For additional instructions and terms for the submission of comments, see Supplementary Information under the heading ''IV. Submission of Comments'' in the notice of proposed rulemaking, published on May 18, 1998, about casino reporting of suspicious transactions. 63 FR 27230, 27237 (May 18, 1998).

FOR FURTHER INFORMATION CONTACT: Peter G. Djinis, Executive Assistant Director (Regulatory Policy), FinCEN, (703) 905–3930; Judith Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION: On May 18, 1998, FinCEN issued a notice of proposed rulemaking, 63 FR 27230 (the ''Notice''), under the terms of the Bank Secrecy Act,[1] concerning the reporting by casinos [2] of suspicious transactions.[3] The comment period for the Notice ended on September 15, 1998.

FinCEN received 18 comment letters on the Notice. In addition, FinCEN held four public meetings on the Notice during the comment period. The meetings were held in New Orleans, Louisiana on July 14, 1998; Chicago, Illinois on July 23, 1998; Scottsdale, Arizona on August 6, 1998; and New York City, New York on September 9, 1998.

One of the primary issues raised in the written comments and public meetings was the nature of the proposed standard for reporting of suspicious transactions. As explained more fully below, FinCEN has determined to reopen the comment period with respect to that issue.

I. The Proposed Reporting Standard.

The rule proposed in the Notice would require a casino to report a transaction to the Treasury Department, if that transaction is:

conducted or attempted by, at, or through a casino, and involves or aggregates at least $3,000 in funds or other assets, *and the casino knows, suspects, or has reason to suspect* that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or any other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.[4] (Emphasis added.)

The proposed reporting standard (except for differing dollar thresholds) is the same as that adopted by the Treasury Department for suspicious transaction reporting by depository institutions, money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks. *See* 31 CFR 103.18(a)(2), relating to suspicious activity reporting by banks, and 31 CFR 103.20(a)(2), relating to suspicious activity reporting by certain money services businesses.[5] It is also the same reporting standard that the Treasury Department proposed in a Notice of Proposed Rulemaking relating to extension of the requirement to report suspicious activity to brokers and dealers in securities.[6]

Commenters on the Notice have argued strongly, however, that requiring reporting if a casino ''has reason to suspect'' that a transaction falls into one of the three categories of reportable transaction,[7] is inappropriate, because the ''fast-paced, entertainment-filled environment'' at casinos is vastly different from the environment of most other financial institutions. They assert that customers in a casino cannot be relied upon to act in ways consistent with any particular norm of financial transaction, but may be motivated in the way they transfer and wager funds by factors such as gambling strategies, intuition, or gambling superstitions. The wider range of motivations reflected in

[1] Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–59, and 31 U.S.C. 5311–5330. The Bank Secrecy Act 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, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. 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) Act of 2001, P.L. 107–56.

[2] In this document, the term ''casino'' when used alone, includes a reference both to casinos and to card clubs, as the latter term is defined in 31 CFR 103.11(n)(8), unless the context clearly indicates otherwise. See 31 CFR 103.11(n)(7)(iii).

[3] The Notice also proposed related changes to the provisions of 31 CFR 103.54 (subsequently re-numbered as 103.64) relating to casino compliance programs.

[4] *See* proposed 31 CFR 103.21(a)(2)(i)–(iii), 63 FR at 27239 (May 18, 1998).

[5] Banks have been required to file suspicious activity reports since April 1, 1996. The suspicious transaction reporting rules for depository institutions were renumbered as part of the rulemaking relating to the reporting of suspicious transactions by certain money services businesses. *See* 65 FR 13683 (March 14, 2000). The suspicious transaction reporting rules for the categories of money services businesses described in the text took effect on January 1, 2002.

[6] See 66 FR 67670 (December 31, 2001).

[7] Because the standard requires reporting when a financial institution has ''reason to suspect'' that a transaction is suspicious, the standard is referred to in the comments and in this document as an ''objective reporting standard.''