

April 7, 2003

Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

**ATTN: ANPRM – Sections 352 and 326 – Vehicle Seller Regulations**

These comments are submitted on behalf of the National Marine Manufacturers Association (NMMA), an association of more than 1400 companies that manufacture every kind of recreational boat and related recreational boating product. 80 percent of all marine products used in North America are produced by NMMA member companies.

**Summary.**

Boat manufacturers should not be subject to money laundering compliance and customer identification regulations. Boat manufacturers sell their products to dealers, who typically finance those purchases through regulated lending institutions. Boat dealers make individual boat sales, the great majority of which also involve financing through established, federally regulated banks and other lending institutions. Both boat dealers and lending institutions must comply with existing Treasury anti-money laundering regulations requiring the reporting of any transaction involving more than \$10,000 in cash or other monetary instruments. NMMA knows of no evidence that boat sales have been used as a method of laundering funds for terrorist organizations, and believes that the profile of boat sales in the U.S. suggests that this is unlikely to change.

**Issues for Comment.**

***1. What is the Potential Money Laundering Risk Posed by Vehicle Sellers?***

NMMA believes there is little risk of money laundering involving boat sales. First, wholesale sales of boats from manufacturers to dealers unfailingly involve established manufacturer to dealer relationships. These trusted, often longstanding relationships discourage the possibility of money laundering. Further, these sales invariably involve established dealer financing that covers the dealer's entire boat inventory. Given the amount of financing typically covered by such financing arrangements, the relationships between these dealers and their lending institutions are also highly trusted ones.

Second, NMMA's research indicates that most individual boat sales also require financing from lending institutions. Here too, the personal identification and credit assurance policies followed by banks and other financial institutions, particularly with regard to requiring Coast Guard registration as a way of securing preferential lender status, require more than ample disclosure to discourage money laundering. In addition, all 50 states and the District of Columbia require boat registration of all powerboats and in many cases sailboats and other watercraft as well. That information is then shared with the Coast Guard. Both Coast Guard and state registration require verification of owner identification and address information.

Third, the great volume of boat sales in the U.S. involves smaller, lower priced boats. NMMA cannot conceptualize circumstances under which terrorists would undertake to launder funds through the sale and resale of small runabouts, canoes or sailboats, given their lower resale value and the regulatory, financing and registration obligations associated with each transaction. In the case of larger, more expensive boats, their sale prices can sometimes reach to the millions of dollars, but these sales invariably require major financing and typically involve long lead times because of custom orders. Resale also requires financing, which in turn leads to Coast Guard documentation and registration. Both kinds of scrutiny, plus existing monetary transaction reporting requirements, should discourage terrorists from choosing boat purchase and resale as a means of money laundering their funds.

Fourth, NMMA research also shows that the average boat purchaser is middle aged, has an established income adequate to secure the necessary financing, and spends an average of 6 months studying various models and options before making a boat purchase, often visiting boat shows as part of that process. This profile does not meet any pattern of terrorist financing of which NMMA is aware. Combined with existing money laundering reporting requirements applicable to boat dealers and lending institutions, it suggests that terrorist groups would be discouraged from attempting to launder funds by means of boat purchase and multiple resale. They would know that they would come under scrutiny in each transaction involving any cash sale, would in the alternative have to satisfy a bank that each transaction was legitimate, would be required to register the boat, and would have to worry that rapid resale of a boat would be highly suspicious because it would be out of character.

***Do Money Laundering Risks Vary by (1) Vehicle Type (e.g., Boat, Airplane, Automobile); (2) Market (Wholesale vs. Retail); or (3) Business Line (International Sales, Sales to Governments)?***

NMMA cannot speak authoritatively with respect to automobile or aircraft sales. With respect to making distinctions between different types of sales or business lines, as indicated above, there is little incentive and considerable risk already associated with attempted terrorist money laundering activity in connection with boat sales. For these reasons, NMMA opposes efforts to impose money laundering reporting requirements for boat sales at either wholesale or retail levels. Because international boat sales are made by manufacturers to overseas dealers just like domestic sales, there is likewise no reason to impose reporting requirements with respect to those sales.

## ***2. Should Vehicle Sellers Be Exempt from Coverage Under Sections 352 and 326 of the Patriot Act?***

Yes. First, as stated above, U.S. boat sales overwhelmingly come under the scrutiny of banks or other lending institutions - the more expensive the boat, the more extensive the financial scrutiny. Both these institutions and boat dealers as well are required to report cash and other currency transactions in excess of \$10,000. Thus boat sales in the U.S. do not present either opportunity or advantage for undetected money laundering.

Second, at the wholesale level, there is no justification for the imposition of reporting requirements. Individual customer sales are handled by brokers. In addition, Congress never intended that boat wholesalers should be required to "look through" to identify and report on retail customers of their products in connection with anti-money laundering schemes.

Sec. 326 of the USA PATRIOT Act (Patriot Act), which establishes customer identification requirements for financial institutions, is virtually identical to Sec. 123 of H. R. 3004, the Financial Anti-Terrorism Act of 2001, which passed the House of Representatives days before the Patriot Act. Although there is no House or Senate report accompanying the Patriot Act, the record makes clear that the Patriot Act did incorporate the provisions of H.R. 3004. Thus Sec. 123 of H.R. 3004 became Sec. 326 of the Patriot Act.

The report accompanying H.R. 3004 addresses the question of when financial institutions acting like wholesalers should be required to "look through" to retail sales in reporting about potential money laundering by customers. In explaining Sec.123, the report states

"By referencing 'customers' in this section, the Committee intends that the regulations prescribed by the Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the functional regulators defined 'customers' and 'customer relationship' for purposes of the financial privacy rules. Under this approach, for example, where a mutual fund sells its shares to the public through a broker-dealer's name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to 'look through' the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan and not its participants, would be the fund's customers. Thus, the fund would not be required to 'look through' the plan to identify its participants." H. R. Rep. No. 107-250, pt. 1, at 62 (2001)

If Congress did not intend that mutual funds be required to report on customers of a broker-dealer that sold fund shares to individual investors, it surely did not intend to require boat wholesalers, who sell their products to dealers that actually make individual boat sales, to "look through" to the dealer's sales for anti-money laundering reporting purposes.

Third, because boat wholesalers and dealers do not make customer loans, open or service financial accounts, or otherwise resemble financial institutions, they act in no way as financial

institutions. Genuine financial institutions are deeply involved in boat sales, however, and it is their obligation under current law and regulations to report financial transactions that may involve attempted money laundering.

**3. *If Vehicle Sellers, or Some Subset in the Industry, Should Be Subject to the Anti-Money Laundering Program Requirements, How Should the Program Be Structured?***

NMMA opposes the imposition of anti-money laundering reporting requirements on either wholesale or retail sales of boats.

**4. *How Should a Vehicle Seller Be Defined? Should There Be a Minimum Threshold Value in the Definition? Should it Include Wholesale and Retail Sellers? Should Sellers of Used Vehicles Be Included?***

For the reasons indicated above, NMMA opposes the imposition of anti-money laundering reporting requirements on either wholesale or retail sales of boats. Also, in drafting the Patriot Act, Congress did not intend that wholesalers be covered by such regulations.

NMMA believes that, as the value of a boat increases, so too do the disincentives to terrorist money laundering because of the increased scrutiny from lending institutions, documentation required by the states and the Coast Guard, and reporting to the Treasury Department. In the case of the sale of lower priced boats, the prevalence of financing, and with it bank and government scrutiny, continue to make such boat sales an unattractive means of laundering money for terrorist operations.

NMMA believes that the resale of boats offers no greater opportunity to launder money than new sales. Conditions of price, financing, currency transaction reporting, and documentation are the same.

**5. *Do Vehicle Sellers Maintain "Accounts" for Their Customers?***

No. As explained above, boat manufacturers/wholesalers make arms length sales directly to dealers, who obtain commercial financing from lending institutions. The accounts involved are those opened by lending institutions for the dealers. A similar arms length pattern applies in the case of boat dealer sales to individual customers. The customers obtain financing from lending institutions. Any accounts would be those maintained by those lending institutions, not by the boat dealers.

Congress understood that opening and servicing accounts offered money laundering opportunities. During Senate consideration of the Patriot Act, Sen. Sarbanes, then Chairman of the Senate Banking, Housing and Urban Affairs Committee, discussed the money laundering provisions of Title III. With respect to Sec. 326, he said,

"It is the intent of section 326 that regulations pursuant to that section do not place obligations solely on the shoulders of the Nation's financial institutions, without placing

any obligations on their customers. The contemplated regulations should therefore include provisions relating to the obligations of individuals to provide accurate information in connection with account-opening procedures, so that in appropriate cases penalties may apply under the Bank Secrecy Act to customers who willfully mislead bank officials about matters of customer identity.” Cong. Rec. of Oct. 25, 2001 at S11041 (Statement of Sen. Sarbanes)

Sen. Sarbanes clearly had in mind that opening an account with a financial institution would provide key information relevant to anti-money laundering efforts and that the burden of any reporting should be shared by the financial institution and the person opening an account. This type of information continues to be generated by both financial institutions and customers purchasing boats, not by dealers and wholesalers. NMMA believes it is therefore appropriate to continue to collect this information from financial institutions and customers, not boat manufacturers and dealers.

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