

Message received June 1, 2006 5:46 p.m. @ regcomments.

-----Original Message-----

From: Catchpole, Daniel S
Sent: Tuesday, May 23, 2006 11:29 AM
To: Smith, Joe H
Cc: Catchpole, Daniel S
Subject: RE: FinCen Regulations

The proposed FinCEN Title 31 regulation changes are consistent with numerous conversations I have had with M. [redacted]. The only important item that was not included in the proposed change was the requirement of Multiple Transaction Logs (MTL's). As stated by [redacted] this is a contentious issue and hopefully sometime in the future Title 31 will include requirements for MTL's. The following is my write up for public comment:

The Bank Secrecy Act (BSA) regulation 31 CFR part 103 (Title 31) provides Tribal gaming operations much needed internal controls and procedures to combat and protect their facilities from persons or entities wanting to take advantage of the cash intensive casino industry from laundering their illegally received funds. The proposed regulation changes appear consistent with typical casino practices while the deletions will reduce considerable time spent by gaming operations complying with the regulations that essentially provides duplicated information.

Specifically, deletion of the "slot jackpot" from the cash-out requirement is indeed duplication of information from the W-2G reportable winnings form. However, information that could be missed is the amount of currency paid to the winning patrons as W-2G forms report the entire winnings, "Gross winnings", and does not include the amount of currency paid. Users of the Currency Transaction Report (CTR) information will no longer have currency information details that could possibly hinder or slow an investigation.

The second deletion of currency dealers and check cashing companies will also reduce time spent by casinos complying with the BSA Title 31 regulations with little to no perceived benefit. As indicated in the written Proposed Amendments in the Federal Register dated March 21, 2006, transactions between gaming operations and currency dealers/ check cashing companies are routine casino business transactions and therefore appear to provide little to no information in the combat of money laundering. These transactions should be exempt from the reporting requirements and we support the proposed deletion.

The next proposed modification of adding a new currency-in and currency-out definition of "Gaming instruments" is much needed clarification to the regulations. Technology in the casino industry is changing daily and new terminology is a routine occurrence. Including a broad all-inclusive definition of "any casino issued financial product"

as gaming instrument will provide Tribal gaming operations the clarification they need to ensure compliance with the BSA Title 31 regulation now and into the future. In addition, the inclusion of "Money Plays" as an explicit currency in transaction involving bets of currency is also needed clarification.

The proposed addition of "Bills inserted into electronic gaming devices" to currency in transactions is a regulation change that is well overdue. The majority of gaming devices throughout the country accept currency. The omission of reporting currency inserted into a gaming/ slot machine has been a long-standing issue. A person with limited knowledge could easily engage in laundering activities by inserting large amounts of currency into a gaming machine, wager very little or none at all and then cash out their remaining balance. The proposed addition is a positive step in the right direction to combating the perceived defect. However, there would appear to be two potential problems with the modification. The first is the proposed definition change may be too explicit. Numerous gaming operations nationwide employ "Currency Exchange Terminals" that either exchange currency or issue gaming wagering instruments that are then inserted into a gaming machines. The definition could be read as literally only those funds inserted into the gaming/ slot machine. The term "gaming" could cause questions to arise regarding the applicability of the rule. A second problem occurs with identifying the transactions. Since these currency-in transactions will be occurring between a patron and an electronic device, anonymity is possible. The electronic device itself will not be able to independently identify the patron inserting the currency to determine if/ when the transactions are reportable. The only way a casino could demonstrate compliance is with the use of an electronic player tracking system attached to the gaming device. However, a patron with the true intent on laundering illegal proceeds will in all likelihood not want a casino to electronically record their transactions. Therefore, it can be perceived that the majority of CTR transactions reported will be those of a legitimate casino patron.

The proposed modification for wire transfers appears to correct only a technical problem with the regulation. The modification of "Travel and complimentary expenses and gaming incentives" is more associated with typical casino industry practices instead of the existing terminology of "Entertainment". The intent of the regulation appears to be to ensure all currency-out transactions at the dollar amount threshold paid for travel and comp's is reportable.

The last proposed BSA Title 31 addition of tournaments, contests and promotions as currency-out transactions is consistent with casino industry practice. It has been routinely found that currency payments made for bad-beat poker jackpots, tournaments and contests above the \$10,000 threshold have been reported by Tribal gaming operations. Having explicit requirements in the BSA Title 31 regulation will provide the clarification needed.

It is recommended that Multiple Transaction Logs (MTL's) be required. In order to ensure Tribal gaming operations are effectively aggregating currency in and out transactions, a systematic detailed method should be added to the regulation. Requiring a gaming operation to record information on a log pertaining to a patron's multiple currency in/ out transactions gives that operation constructive knowledge when the

reporting threshold is reached. To do otherwise puts the burden for compliance with the BSA Title 31 regulation on individual casino employees and not the gaming operation as a whole. Currently, §103.36(b)(11) of the regulation requires "Card Clubs" to employ MTL's, which the regulation would be better served if all gaming operations would require the same.

Finally, it is our recommendation that consideration be given to the \$3,000 cash for cash prohibition similar to that of the gaming regulations of the State of Nevada. The regulation has proven to be an effective deterrent to money laundering transactions in that jurisdiction.

Joe Smith, Director of Audits

And

Daniel Catchpole, Senior Auditor
National Indian Gaming Commission