

COMMENTS OF THE SENECA NATION OF INDIANS
To Proposed Amendments to Bank Secrecy Act Regulations
71 Fed. Reg. 14129 (March 21, 2006)
Regulatory Information Number 1506-AA84

The Seneca Nations of Indians ("SNI"), which currently operates two Class III gaming facilities and three Class II gaming facilities, generally supports the regulatory amendments proposed by the Financial Crimes Enforcement Network (FinCEN) for "Casino Recordkeeping and Reporting Requirements" under the Bank Secrecy Act. The proposed amendments, if adopted, would reduce the compliance burden for casinos while providing adequate information to the government for law enforcement purposes relating to money laundering, terrorist financing, or tax evasion.

The proposed "technical" amendments, however, should be clarified by FinCEN in its final regulations. These comments will address the proposed amendment that SNI requests greater clarity on in its final regulations.

FinCEN should explain the practicable requirements relating to the proposed amendment adding "bills inserted into electronic gaming devices" as a type of cash in transaction. In a letter ruling dated February 7, 2005, FinCEN provided guidance as to the meaning and determination of "knowledge" for

reporting purposes and our interpretation of the proposed amendment published in the Federal Register notice of proposed rule making ("NPR") does not alter that guidance.

C3. *Bills inserted into electronic gaming devices -*
103.22(b) (2) (i) (I)

This amendment would change "cash in" to a casino to include "bills inserted into electronic gaming devices," whether or not the customer actually wagers the currency as part of a game. The rationale behind this amendment is that the insertion of the currency "involves the physical transfer of currency to a casino," similar to token purchase transaction.

Strict interpretation of the proposed amendment could contradict the advice given by FinCEN on this subject in a letter dated February 7, 2005. Currently, slot/player tracking systems do not record cash in activity by patrons at an electronic gaming device. Slot/player tracking systems record gaming activity for players that utilize a patron identification card. Gaming activity is defined by parameters such as type of game played, time played and amount(s) wagered, not currency or other items of values inserted into a slot machine.

Modification to the slot/player tracking system would require an extensive investment of labor and resources and still may not be easily accomplished. Additionally, a modified slot/player tracking system would require Casino Operators to

alter and expand Information Technology systems. Because there is no business reason for a casino to undertake either effort, Casinos do not have the ability to obtain "knowledge".

Patrons are encouraged to enroll in our Player's Club thereby obtaining a patron identification card, however it is not a requirement. Therefore, even if the ability to obtain data relating to the amount of currency inserted into a slot machine existed, a Casino could not reasonably obtain identification materials of the patron unless the patron voluntarily provided the information prior to engaging in the gaming activity.

Patrons routinely forget to remove their player identification cards after ending their gaming activity, in these cases a false CTRC could be filed on a patron. The next patron could insert currency and have it attributed to the previous patron, aggregated, the amounts could exceed the reportable threshold and require a CTRC. The integrity of the data provided on the CTRC reports could be compromised. It is our opinion that law enforcement efforts would not be enhanced by requiring a Casino to file reports that lack integrity.

In these circumstances, the letter concluded, the casino has no duty to file a CTRC because it does not have "knowledge" that the player has inserted the currency in the gaming machine, as required by 31 C.F.R. § 103.22(b)(2).

Our interpretation of the proposed amendment in the NPR would not change this application of the "knowledge" standard to currency accepted into gaming machines through bill validators.

To avoid confusion and prevent misdirected enforcement activity, any final regulation on this matter should provide great clarity and reaffirm the reasoning and guidance provided in FinCEN's letter of February 7, 2005.

Respectfully Submitted,

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President
Seneca Nation of Indians