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Part II

Department of the Treasury

31 CFR Part 103

Amendments to the Bank Secrecy Act;
Regulations Regarding Tribal Gaming;
Final Rule and application to Tribal
Gaming; Final Rule and Application to
Tribal Casinos; Notice

DEPARTMENT OF THE TREASURY**31 CFR PART 103**

RIN 1506-AA07

Amendments to the Bank Secrecy Act; Regulations Regarding Tribal Gaming**AGENCY:** Financial Crimes Enforcement Network, Treasury.**ACTION:** Final rule.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is amending the regulations implementing the Bank Secrecy Act to include casinos operated by or on behalf of Indian tribes within the definition of financial institution set forth in those regulations. The amendments extend the reporting and recordkeeping requirements and anti-money laundering safeguards of the Bank Secrecy Act to tribal casinos.

EFFECTIVE DATE: The final rule is effective August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Senior Financial Enforcement Officer, Office of Regulatory Policy and Enforcement, FinCEN, (703) 905-3931, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905-3590.

SUPPLEMENTARY INFORMATION: Background

This final rule amends the regulations implementing the statute popularly known as 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. The final rule: (i) amends the definition of "casino" in 31 CFR 103.11(n)(7)(i) to include explicitly casinos operating on Indian lands; (ii) amends the regulatory definitions of "person" and "United States" in 31 CFR 103.11(z) and 103.11(nn), respectively; (iii) adds definitions of the terms "Indian Gaming Regulatory Act," "State," and "Territories and Insular Possessions" in 31 CFR 103.11(rr), 103.11(ss), and 103.11(tt), respectively; and (iv) makes a conforming change to the recordkeeping and retention requirements of 31 CFR 103.36(b)(7) to reflect the regulatory system contemplated by the Indian Gaming Regulatory Act (IGRA). The amendments reflect the terms of section 409 of the Money Laundering Suppression Act of 1994 (the "MLSA"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325.

FinCEN published a notice of proposed rulemaking (the "Notice") in the Federal Register on August 3, 1995

(60 FR 39665) proposing the amendments to the Bank Secrecy Act regulations that are the subject of this final rule. Only four comments were submitted in response to the Notice. These comments were submitted, respectively, by a staff attorney at the National Indian Gaming Commission, by the governments of two states within which tribal lands are located, and by one tribal casino.

The only substantive change made to the rule is the postponement of the rule's effective date until August 1, 1996. FinCEN believes that the delayed effective date will provide tribes and tribal casino management companies with a reasonable amount of time to implement operating and staff training programs for Bank Secrecy Act compliance. In this connection, FinCEN is publishing in today's Federal Register a notice of a tribal casino Bank Secrecy Act compliance conference to be held in April of this year.

Explanation of Provisions

A. Definition of "Casino"

The definition of casino is amended to include explicitly casinos operating on Indian lands. Under this amendment, the term "casino" now includes any casino duly licensed or authorized to do business under the IGRA or other federal, state, or tribal law or arrangement affecting Indian lands.

The general need for and appropriateness of treatment of casinos as financial institutions for purposes of the Bank Secrecy Act have been accepted since the mid-1980s. The Department of the Treasury has made clear the need to prevent casinos, which offer to their customers a variety of financial services such as deposit or credit accounts, check cashing and currency exchange services, from being used as a vehicle for money laundering. The potential risk of money laundering in casinos on Indian lands is not any less than the risk of money laundering in state-licensed casinos. Thus, this final rule makes casinos operating on Indian lands subject to the full set of reporting and recordkeeping provisions, and anti-money laundering safeguards, of the Bank Secrecy Act to which other casinos in the United States are subject.

The amendments make it clear that the term "casino", as applied to tribal lands, includes not only tribal casinos created in conformity with IGRA. The term also includes casinos operating on Indian lands under a view that compliance with the Indian Gaming Regulatory Act is unnecessary or inconsistent with inherent tribal rights; such non-IGRA sanctioned tribal casinos are not exempted from the terms

of the Bank Secrecy Act. In its comments, the State of California specifically noted its approval of this language in the amendments, and cited the fact that a significant number of casinos on Indian lands within its borders were operating Class III gaming without the tribal-state compact required by IGRA.

The other changes in the definition of casino are designed simply to list explicitly the three classes of government authorities that can authorize or license casinos subject to the Bank Secrecy Act. The changes are intended neither to expand nor contract the coverage of the Bank Secrecy Act to casinos operating under state authority or under the authority of various United States territories or possessions.

Recognizing the need to proceed thoughtfully in adopting the rules of the Bank Secrecy Act to the realities of the operation of casinos on Indian lands, the Notice specifically sought comment about whether any part of the Bank Secrecy Act applicable to casinos generally did not accurately reflect the way tribal casinos operate. Few comments were received on this issue; the comments that were received indicated that tribal casinos operate similarly to non-tribal casinos, and that both tribal and non-tribal casinos should be treated uniformly under the Bank Secrecy Act.

The State of California commented that the term "casino" should be defined to include Indian gaming establishments engaging in bingo, lotteries, and pari-mutuel wagering. As outlined in the Notice, the retention at this time of the term "casino," rather than substitution in 31 CFR 103.11(n)(7)(i) of the broader authorizing language of 31 U.S.C. 5312(a)(2)(X), is intentional. The Department of the Treasury generally has sought to apply the Bank Secrecy Act to gaming establishments that provide both gaming and an array of financial services for their patrons. Activities such as bingo, lotteries, and pari-mutuel wagering, are not generally offered in casino-like settings and may create different problems for law enforcement, tax compliance, and anti-money laundering programs than do full-scale casino operations. Consequently, although the MLSA grants the Department of the Treasury authority to extend the Bank Secrecy Act to the full range of gaming establishments in the United States, FinCEN intends at this time to concentrate on taking the initial step of extending the existing Bank Secrecy Act structure to true casino-like establishments operating on Indian

lands. (Of course, a full-scale casino that happens to offer, *inter alia*, pari-mutuel wagering, for example, is included within the definition of "casino" with respect to all of its gaming activities.)

FinCEN also sought comment on how compliance by tribal casinos with the requirements of the Bank Secrecy Act could best be examined and enforced. Aside from a suggestion from the one tribal casino commenter that external auditors were best suited to examine for compliance with the Bank Secrecy Act, FinCEN received no other responses to this question. The Internal Revenue Service is generally responsible for auditing the Bank Secrecy Act compliance by casinos and has full authority to audit such compliance by tribal casinos.

FinCEN also received comments seeking: (i) clarification of the terms "gross annual gaming revenue" and "gaming day" in the casino definition; (ii) an increase in the \$1 million threshold in the definition of casino; and (iii) reconsideration of certain casino recordkeeping and verification rules withdrawn on March 12, 1993. Because the scope of these comments goes beyond the scope of the Notice, these comments are not addressed in this final rule.

As outlined in the Notice, the uniform treatment of state-licensed and tribal casinos is a necessary prelude to the consideration of broader issues affecting the application of the BSA to the entire gaming industry. Those issues include whether clarifications should be made in the definition of casino as new types of gaming develop (or whether the term "casino" is sufficiently elastic to encompass such developments¹), whether special rules should be formulated for small casinos, and how best to implement with respect to casinos the suspicious transaction reporting and anti-money laundering program rules authorized in the amendments made to the Bank Secrecy Act by the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development

¹ For example, an 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, could well be a casino under present law. If so, such a "club" would violate the Bank Secrecy Act now (that is, without the need for further regulatory changes) if it failed to report currency transactions in excess of \$10,000, or allowed a customer to deposit funds in a player bank account without requiring customer identifying information.

Act of 1992, Pub. L. 102-550, and by the Money Laundering Suppression Act.

B. Conforming Changes in "Meaning of Terms"

Changes are made to the definition of "person" and "United States" in 31 CFR 103.11 (z) and (nn), and definitions of the terms "Indian Gaming Regulatory Act", "State", and "Territories and Insular Possessions" are added to § 103.11 as new paragraphs (rr), (ss), and (tt), respectively. These definitions are added as required corollaries to the new casino definition.

C. Additions to Record Maintenance Requirements

Conforming language is added to the requirement of 31 CFR 103.36(b)(7) that casinos retain all records, documents, or manuals required to be maintained under state and local laws or regulations. The new language recognizes that a casino on tribal lands will retain certain documents because tribal rules or tribal-state compacts, rather than state regulation, require their retention. The amendment simply conforms the recordkeeping and retention requirements to this fact.

D. Effective Date

Compliance with the reporting and recordkeeping provisions, and anti-money laundering safeguards of the Bank Secrecy Act, will depend in large part on the operating and staff training programs put in place at tribal casinos. The amendments made by the final rule will become effective on August 1, 1996, to allow tribes and their management enterprises a reasonable amount of time to train their staff members and to establish programs designed to comply with the requirements of the Bank Secrecy Act. As noted above, FinCEN also is publishing in today's Federal Register a notice of a tribal casino compliance conference to be held in April of this year.

Special Analyses

It has been determined that this final rule (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 final rule will have an annual effect on the economy of \$100 million or more. Nor will it 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 final rule is neither

inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, the final rule raises no novel legal or policy issues.

Because this final rule affects only Indian gaming establishments with gross annual gaming revenues in excess of \$1 million, it is hereby certified that this final rule is not likely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 31 CFR Part 103

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

Adoption of Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is 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 as amended at 60 FR 228, 60 FR 44144, and 61 FR 4331 effective April 1, 1996, is further amended by revising paragraphs (n)(7)(i), (z), and (nn), and adding paragraphs (rr), (ss), and (tt) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(n) * * *

(7)(i) *Casino*. A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

* * * * *

(z) *Person*. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an

association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

* * * * *

(nn) *United States*. The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

* * * * *

(rr) *Indian Gaming Regulatory Act*. The Indian Gaming Regulatory Act of

1988, codified at 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-68.

(ss) *State*. The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.

(tt) *Territories and Insular Possessions*. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

§ 103.36 [Amended]

3. Section 103.36(b)(7) is amended by adding after the words "state and local

laws or regulations" the words ", regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question".

Dated: February 14, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

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