



Three Reforms to Streamline Shipping of Gaming Machines

Introduction

By David O. Stewart

In recent years, gaming regulators have begun to address regulatory bottlenecks in the shipping of gaming machines that drive up costs and slow the delivery of state-of-the-art technology to casino floors. By modernizing shipping regulations, jurisdictions can create greater efficiencies for suppliers, casino operators, and their own regulatory efforts. Nonetheless, many of the more than three hundred U.S. gaming jurisdictions — forty states plus tribal entities — still enforce shipping restrictions that date from decades in the past, many of which have proven unnecessary.

By reforming the following three shipping regulations in particular, those jurisdictions can spark great improvements in efficiency and speed-to-market for gaming machines without jeopardizing their responsibilities to strong oversight and integrity:

- Permitting shipments of fully-assembled gaming machines with software installed, without requiring that they be “inoperable” during shipment, so that machines arrive at their destinations in the condition described in the industry as “plug-and-play”
- Allowing gaming machines destined for multiple destinations to be shipped in a single truckload
- Applying a two-tier system of pre-shipment notification requirements:
 - 24 hours in jurisdictions that do not require agents to be present when machines are delivered or where agents are already on-site at casino venues¹
 - Five calendar days’ notice in jurisdictions that require agents to be present at delivery

What follows, after a brief background on the evolution of this paper, is an examination of the benefits and consequences of the three reforms listed above, followed by a section on the 1951 (federal) Johnson Act and its impact on the transportation of gaming machines.

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Background

In a 2013 white paper, the American Gaming Association (AGA) proposed seven reforms to the maze of regulations that vastly complicate the otherwise straightforward act of transporting gaming machines to casino venues.¹ Many of those regulations date from decades ago, when machine technology and gaming regulation were very different.²

This study began with a canvass of gaming machine suppliers and casino operators to identify those reforms in the 2013 report that would create the greatest immediate efficiencies. That canvass identified the three reforms discussed in this report.

The next step involved examining the reform process from the perspective of gaming regulators. We contacted commercial and tribal regulators in eleven leading jurisdictions where one or more of these three reforms is in place. Telephone interviews with regulators explored why they had — or had not — adopted these changes, plus how the reforms worked out in practice.

Shipping Reforms

1. Allow Shipment of Fully-Assembled Gaming Machines with Software Intact: The “Plug and Play” Standard

A common regulatory provision requires that a gaming machine and its associated software be transported in separate shipments and be delivered to a casino venue on two different occasions. When initially imposed, the requirement’s goal was to protect against tampering with machines while they were in transit. Experience has shown, however, that the requirement imposes considerable inefficiencies that have increased with changes in technology, while it targets risks that are negligible. Indeed, ten of the eleven jurisdictions surveyed allow shipment of fully-assembled gaming machines, and regulators in those jurisdictions reported having no problems with such a protocol during their tenure.

Regulations requiring separate shipments of hardware and software date from the era when electronic gaming machines ran on software that resided on stand-alone media that was easily detached from the machine. With advances in game technology, including the introduction of more complex and feature-rich games, machines increasingly have factory-installed games embedded in them. With those machines, technicians cannot simply unplug a flash drive or a floppy disc to remove its software. Rather, changes must be made to systems embedded within the machine’s firmware or central processing unit or video card.

When disabled machines are delivered, re-installation of the game often requires greater expertise with the specific equipment or product line than the local casino technicians or third-party contractors possess. Having less skilled personnel re-install games onsite can degrade the reliability and performance of the games, which disappoints casino patrons and frustrates casino operators. Preventing the delivery of machines in plug-and-play condition raises costs for all participants in the process: regulators, casino operators and suppliers.

Separate-shipment regulations also inhibit innovation. As it becomes increasingly burdensome to “unpack” software from the machines, suppliers may stop using such advanced systems, or may stop selling them into jurisdictions that impose separate-shipment requirements. In either case, the result will be to impede the industry’s technological advance and its ability to compete with other forms of gaming as well as other forms of entertainment.

Even in instances where the software and the machine may more easily be segregated for shipment, that process increases costs through the supply chain. Arranging separate shipment of different components introduces complexity in scheduling, requires multiple deliveries, additional loading and unloading, and multiplied pre-delivery notices to regulatory bodies. Each additional step increases the risk that the wrong item may be delivered, or the right item may be delivered at the wrong time or to the wrong place. In addition to the increased costs and risks, separate-shipment regulations waste considerable amounts of time and effort on the part of operators and regulators alike.

In our survey, gaming regulators identified two core concerns with the shipment of electronic gaming equipment. First, regulators need to know what machines are installed and operating, both to control the games and in order to audit public revenues from the games. Second, they need to ensure that the installed games have been approved by independent testing laboratories and/or by the regulatory body.

Allowing shipment of machines in plug-and-play condition does not reduce regulators’ ability to maintain an equipment inventory. They still may check machines and software at delivery, conduct audits of gaming floors, or require inventory reporting by operators. Some have installed electronic systems that provide real-time tracking of the electronic signatures and identities of each game and machine.

Nor do shipments of machines in plug-and-play condition reduce the ability of regulators to ensure that only approved games are offered. Two of the jurisdictions surveyed require that gaming agents be present at time of delivery. Seven other jurisdictions rely on their after-the-fact power to punish any licensee that operates unapproved games. One jurisdiction does not regulate gaming machine installations at all.³

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To ensure the integrity of gaming machines in his state, one regulator stressed his agency’s reliance on a central monitoring system, currently used in several other jurisdictions as well, which “provides a technological security layer” by periodically checking the machines and software in use and disabling any component that is not approved. Another regulator, when asked why his jurisdiction allowed shipments of factory-installed software, or of hardware and software together, said simply, “We couldn’t identify a reason not to.”

Two of the surveyed jurisdictions allow the shipment of fully-assembled gaming machines, but add the requirement that the machine be “inoperable” while in transit.⁴ One rationale for this requirement is that it prevents having the machines from being “improperly powered up and utilized in transit.” In applying this requirement, regulators deem a machine inoperable only if the supplier removes or alters the machine’s software or firmware prior to shipment and then restores those elements upon delivery. That process then triggers all the costs of re-installation identified above.

In short, imposing the inoperability requirement effectively reverses the reform of allowing the shipment of fully-assembled machines and prevents the delivery of machines in plug-and-play condition. Even though software and machine may be shipped in a single truck to those jurisdictions that enforce the inoperability requirement, the regulation still imposes the costs of removing embedded programming and its difficult re-installation.

The inoperability requirement has been rationalized as a protection against two highly implausible risks: 1) that a trucker on a schedule will pull over mid-journey to gain access to a shrink-wrapped and palletized gaming machine, then plug the machine in somewhere to operate it, or 2) that the gaming equipment might be stolen in transit or otherwise diverted into illegal channels.

Regarding the first risk, this survey uncovered no reports or evidence of such a hypothesized scenario involving a compromised truck driver. As far as machines being intercepted in transit, there is no evidence, anecdotal or otherwise, that suggests gaming machines are any more likely to be stolen in transit than any other type of cargo.

Based on the most recent three years of FBI reports on cargo theft (available for approximately 30 states including Nevada), the FBI did not record a single theft of gaming equipment. Rather, the items most often subject to cargo theft are consumable goods, portable electronic devices, personal computers, clothing, and the trucks and trailers themselves. In fact, the FBI reports do not even have a category for theft of gaming equipment.⁵

In any event, a machine sealed in a crate and anchored to a pallet should be considered inoperable as a practical matter. Only by uncrating the machine and hauling it to a power source can a machine be operated. Such a sequence is sufficiently implausible that the machine should be deemed inoperable.

In view of the weak rationales for banning the shipment of plug-and-play machines, and the high costs associated with the ban, an emerging consensus among regulators is that transportation of machines in plug-and-play condition is safe and the most efficient and cost-effective method.⁶

2. Allow Shipments of Gaming Machines to Multiple Destinations

AGA’s 2013 white paper found that roughly half of all U.S. gaming jurisdictions required that gaming machines be delivered in a sealed truck that has only one destination. Since then, those requirements have been reconsidered by many. All nine commercial jurisdictions in the current survey, plus one of the tribal jurisdictions, either allow trucks carrying gaming machines to have multiple destinations or have waived their requirement of a single destination.⁷

If a truck can carry machines to only a single destination, suppliers must send shippers on multiple roundtrips to different casino destinations in the same geographic area. The result, unavoidably, is much higher shipping costs from more complicated administrative coordination, longer driving times, increased fuel purchases, and heavier truck and trailer utilization.

Multiple shipments also result in slower deliveries and impose negative environmental impacts through higher fuel emissions and resource consumption. The waste mounts as a supplier must repeatedly pay for the movement of trucks that are empty or nearly so. A leading trucking firm counsels customers shipping less than a truckload of material to realize significant cost advantages by using a truck that will visit multiple destinations: By “pool[ing] all the shipments onto a single freight truck ... each shipper pays a fraction of the cost of utilizing the truck or trailer.”⁸

The justification offered for the single-destination requirement is to ensure the security of gaming machines, but the regulation does not serve the goal well. When several machines are carried to different destinations in a single truck, each machine can be crated and sealed separately.

The result [of the single-destination requirement] is much higher shipping costs from more complicated administrative coordination, longer driving times, increased fuel purchases, and heavier truck and trailer utilization.

Given the significant costs and slower deliveries associated with the single-destination requirement, and the negligible security benefits it provides, a growing number of regulators have concluded it should be eliminated.

One state’s regulators, for example, impose this requirement for trucks stopping at multiple destinations, which ensures the integrity of the machines in transit and helps designate each machine for the correct destination.

In addition, every gaming machine that is shipped in the United States has a unique serial number that must be checked when the machine is loaded into the truck and when it is delivered, then entered into databases managed by the casino, by the supplier, and by the regulator. Those tracking mechanisms, which are required by the Johnson Act (as explained below), as well as many other state gaming regulations, provide ample assurance of correct deliveries.

Some jurisdictions require that a truck’s entire cargo hold be closed with a seal that carries a unique registry number. Multiple-destination shipments can accommodate that requirement, with the seal restored after each delivery and the shipping notice amended for the truck’s later destinations.

Indeed, one state gaming commission made this point when it waived its single destination requirement, directing that gaming agents meeting a shipment must “remove the seal upon arrival at each property and . . . reseal the trailer upon departure, except when the trailer is empty.”⁹ Alternatively, a new seal can be applied by regulators at each location with a new registry number that may be provided to later destinations.

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3. Create Uniform Notice-of-Shipment Periods

Currently, most U.S. gaming jurisdictions require that gaming equipment suppliers provide regulators with written notice before gaming machines and software may be shipped. The notice periods, however, vary widely: from 24 hours to five, seven, ten, fourteen or fifteen days plus the notice periods may be measured by either calendar days or business days. This profusion of notice periods causes confusion and errors in shipment as suppliers must juggle nearly a dozen different notice periods.

Three of the jurisdictions covered by our survey require no notice of shipments since their gaming agents need not be present at time of delivery. In those jurisdictions, the supplier and casino licensee keep

records of deliveries, and bear responsibility for ensuring that only approved gaming machines and software are installed. Regulators audit the machines on gaming floors periodically, or use a monitoring system to provide real-time checks.¹⁰

Four more of the surveyed jurisdictions require notice of shipment either 24 hours before delivery or upon shipment. Those regulators do not need longer notice because they either have agents on-site at the destinations or do not require that agents be present at delivery.¹¹

In contrast, regulators responsible for casinos that are distant from each other, without gaming agents onsite, may require longer notice periods. In our survey, those longer notice periods ranged between five and ten days.¹²

Notice requirements for machine shipments serve two regulatory goals: 1) to ensure that regulators have a timely inventory of gaming machines in the jurisdiction; and 2) in jurisdictions that require gaming agents to be present upon delivery at distant casino venues, to allow the scheduling of agent travel to a casino.

The first goal is served by 24 hours' notice, which ensures that the regulator's records of installed gaming machines and software will be current, and also allows the regulator to confirm that the machines and software have been approved for that jurisdiction.¹³

The second goal — allowing time for gaming agents to attend equipment delivery at distant casino venues — can be satisfied with a notice period of five calendar days. In all but the most exigent circumstances, five calendar days should provide sufficient flexibility to make necessary arrangements.

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The Federal Johnson Act

Several regulators expressed uncertainty about how shipping regulations interact with the Johnson Act, a 1951 federal statute (amended in 1962), which addresses the transportation of gaming machines. In truth, nothing in the Johnson Act imposes any duty on state gaming regulators. The Johnson Act imposes specific, quite basic requirements:

- It is illegal to ship a gaming machine in interstate commerce, except to a jurisdiction that has legalized its use.
- Manufacturers and distributors must register with the Attorney General of the United States.
- Manufacturers and distributors must affix a unique serial number to each gaming machine.
- Manufacturers and distributors must keep records of all gaming machine transactions.
- The FBI has power to investigate violations.¹⁴

This point is illustrated by the U.S. Justice Department memorandum explaining the law. That memorandum does not mention the methods by which gaming machines are shipped, or any of the subjects covered by the three reforms addressed in this paper. Nothing in the Johnson Act mentions whether gaming machines can or cannot be shipped with software installed, or whether they must be inoperable during shipment. Neither does the federal statute mention whether a truck may deliver machines to multiple destinations, or what the notice period to state and tribal regulators should be.

Indeed, one regulator emphasized that his jurisdiction does not intrude on the shipment process regulated by the Johnson Act, adding, “Our interest begins at the moment the truck arrives at the loading dock of the casino or warehouse.”¹⁵

Conclusion

The three reforms addressed in this paper can reduce costs, simplify the shipping process for both suppliers and regulators, and improve speed to market without compromising the integrity and security of gaming equipment. States and tribal jurisdictions should regulate gaming like other industries — in a way that manages risk, instead of presuming harm. Those that do will be able to meet the fast pace of consumer demand, compete with an ever-wider panoply of entertainment offerings, and be the greatest beneficiaries of jobs, economic development and tax revenues.

Endnotes

¹AGA, “Streamlining Shipping: Recommendations for Regulatory Reform,” (2013), p. 3.

²During this study, one regulator explained that new jurisdictions sometimes retain consulting firms who replicate the regulations of existing gaming jurisdictions, largely verbatim; regulators in new jurisdictions are often too unfamiliar with the industry to critique the purposes behind individual requirements. Years later, when external events prompt a review, certain rules may receive serious re-examination.

³Colorado Regulations, 47.1-1202; Mich. Reg. 432.11402; Pokagon Band Gaming Commission Regulations, § 5.02; Maryland Reg. § 36.03.12.03; Pennsylvania Reg. § 463a.2; Ohio Admin. Code, 3772-9-05; Indiana Gaming Commission, “Shipment of Certain EPROMS Inside EGDs and Dedicated Truck Policy,” March 16, 2016; Oneida Indian Nation Gaming Commission, “Shipping Requirements for Electronic Gaming Devices, Gaming Hardware and Gaming Software,” Oct. 10, 2017; New Jersey Regulations, § 13:69E-1.23. One jurisdiction in our survey retains, in some instances, the separate shipment requirement. 11 CSR 45-5.237, incorporating 11 CSR 1.090.

⁴Ohio Admin. Code, 3772-9-05; Indiana Gaming Commission, “Shipment of Certain EPROMS Inside EGDs and Dedicated Truck Policy,” March 16, 2016.

⁵“Cargo Theft, 2016,” FBI, *Crime in the United States*, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/additional-publications/cargo-theft/cargo-theft.pdf>; “Cargo Theft, 2015,” FBI, *Crime in the United States*, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/additional-reports/cargo-theft/cargotheft-report_2015_final-1.pdf; “Cargo Theft, 2014,” FBI, *Crime in the United States*, <https://ucr.fbi.gov/cargo-theft-2014>. Although the FBI reports incomplete data — approximately thirty states submit information on cargo theft — cargo theft for those states averaged less than \$30 million per year. In 2015, according to the U.S. Department of Transportation, U.S. trucking delivered nearly \$11 trillion of goods domestically. U.S. Department of Transportation, “Freight Facts and Figures, 2017,” p. 2-2. Reported cargo theft thus is an infinitesimal portion of that total. In any event, as shown by the spread of illegal gambling sites like Internet sweepstakes cafes, illegal gambling businesses need not go to the trouble and expense of stealing sophisticated electronic gambling machines. Low-end personal computers may be programmed to offer simple gambling games at dramatically lower cost and much less risk. AGA, “Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood” (2014), pp. 3-4.

⁶Some regulators have their agents present when a machine is delivered in order to break the seal on the vehicle’s cargo area or on the packaging of the equipment. That practice would certainly prevent any tampering en route, however implausible such tampering might be.

⁷Only the Oneida Nation in New York State requires that each gaming machine shipment have a single destination, although the Oneida Nation allows peripheral hardware, maintenance hardware, and software to travel on trucks with multiple destinations. Oneida Nation Gaming Commission, “Shipping Requirements for Electronic Gaming Devices, Gaming Hardware and Gaming Software,” Oct. 10, 2017, pp. 2-3. Indiana retains a single-destination requirement in its regulations, but announced in March 2016 that it was waiving that requirement. Indiana Gaming Commission Memorandum, “Shipment of Certain EPROMs Inside EGDS and Dedicated Truck Policy,” March 16, 2016.

⁸“4 Benefits to Shipping via Less than Truckload Freight,” <http://cerasis.com/2013/11/13/less-than-truckload/>

⁹March 16, 2016 Memorandum.

¹⁰The three jurisdictions are Colorado, South Dakota and Michigan. Michigan’s regulations require five days’ notice, R.432.11402(1), but that requirement was waived in 2009.

¹¹Oneida Indian Nation Gaming Commission, “Shipping Requirements for Electronic Gaming Devices, Gaming Hardware and Gaming Software” (Oct. 10, 2017); N.J.A.C. § 13:69E-1.23; Maryland Reg. § 36.03.12.03; Pennsylvania Reg. § 463a.2(a).

¹²11 CSR 45-5.237(1); Ohio Admin. Code, 3772-9-05(D); 68 IAC 17-1-2(a); Pokagon Band Gaming Commission Regulations, § 5.02(a). Missouri bars shipment until the supplier receives an approval from the gaming commission.

¹³In Colorado, equipment suppliers enter shipment notices directly into a regulatory data base within three days after installation. Our survey also determined that third-parties — including GLI and the Gaming Standards Association — may be developing programs to provide this capability broadly across additional segments of the industry.

¹⁴15 U.S.C. §§ 1171-1178.

¹⁵U.S. Department of Justice, Criminal Division, “Information Regarding the Gambling Devices Act of 1962 [Amending the Johnson Act],” (May 2015 revision), <https://www.justice.gov/sites/default/files/criminal-oeo/legacy/2014/06/06/gamblingdvc-1962.pdf>. Because state and tribal regulators review the suitability of gaming licensees, they will want to know if a licensee fails to meet its Johnson Act duties of registering with the Attorney General, or operates a machine without serial number, or fails to keep proper records. But those statutory duties are neither supported nor undermined by the state and tribal regulations addressed in this paper.



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