

Shipping Rules Revisited

By Mark Lerner



Today's gaming regulatory systems share many common features. Most require applications, investigations, and licensing as prerequisites to legal operations. Once underway, casino operations and gaming employees are regulated to varying degrees but certainly more strictly than operations and employees in other industries.

Many features of these regulatory systems have express or otherwise clear objectives. Licensing and investigation of operators and their employees guard against the involvement of criminals and criminal enterprises in gaming operations. Operational controls protect the public from being cheated, whether by dishonest games or tax evasion. For one category of rules – shipping regulations – the objectives are less clear.

Most U.S. and other North American jurisdictions regulate shipments of slot machines and other gaming devices into those jurisdictions. The shipping rules are voluminous and non-uniform, with hundreds of variations. A 2013 American Gaming Association (AGA) research white paper cataloged a jumble of notification and shipping specifications.¹ The AGA research found that most North American gaming jurisdictions require advance notification of gaming device shipments. The advance notice periods range from one day to fifteen days and just about every number of days in between. Half the jurisdictions require manufacturers to wait for agency authorization before shipping machines. Most agencies now accept notices by e-mail, but many require manufacturers to send copies to multiple addressees at the same agency. When the AGA's white paper was published, a few agencies required faxes, and one agency required notices by regular mail.² Few jurisdictions have online shipping notification systems like those ubiquitous in other industries that deliver goods to customers. The AGA's press release accompanying its white paper summed it up as follows:

Currently in North America, 365 individual jurisdictions apply different sets of regulations, which fill more than 1,000 pages and create a scenario in which 1.5 million different combinations of regulatory requirements can apply to the shipment of a single gaming machine today. For five of the

larger manufacturers of gaming machines, these regulations generated nearly 61,000 separate filings over a recent 12-month period, requiring the dedication of 29 full-time and 20 part-time workers.³

Those numbers have probably increased in the seven years since the report was published. Even seven years ago, the report likely understated the number of manufacturer employees spending significant time dealing with shipping rules. Salespeople must be aware of the rules in their territories so they can forecast shipping dates for customers. Workers in quality control departments, on loading docks, and in burn rooms – secure areas where media containing approved game code are created – also have responsibilities to ensure that jurisdictional requirements are satisfied. Meanwhile, the full-time shipping compliance departments coordinate with all the other departments, prepare and submit the shipping notifications, and communicate with regulators in hundreds of jurisdictions. Just documenting the notification rules and keeping up with changes are daunting tasks.

The shipments themselves have their own mélange of requirements that vary from jurisdiction-to-jurisdiction. Some jurisdictions do not permit machines to be shipped directly to casino customers but require them to be sent to the regulatory agency instead. Most jurisdictions do not permit machines and software to be shipped together.⁴ They must



be shipped separately, often to different addresses, for reassembly by the regulator or by the operator under the regulator's supervision. Most jurisdictions require that shipments be on dedicated trucks that do not carry anything else for any other destinations. Some jurisdictions require that freight truck doors be secured with security seals to be broken only by the regulatory agency.



The slot machine makers are not the only ones affected by shipping regulations. Casinos also bear responsibility for confirming that the machines they receive have been approved.⁵ Casinos must ensure that their receiving dock personnel, technicians, and installers are trained on the rules so they do not inadvertently violate them. Regulators, of course, also devote substantial resources to processing notifications and amendments, to reuniting software and hardware, and to inspecting devices and components before they are put into operation on casino floors. Much of the burden, though, falls on manufacturers. While each operator and regulatory agency deals with one jurisdiction and one set of rules, manufacturers routinely deal with hundreds.

Despite the difficulties, manufacturers achieve remarkable compliance rates. In one typical year at the manufacturing company where I worked, only 11 out of over 4,000 shipping reports were determined to warrant regulatory attention. This is an error rate of about 0.25 percent or, stated

conversely, a compliance rate of over 99.7 percent. Conversations with other manufacturers suggested they achieve comparable compliance rates.

Furthermore, few of the errors are harmful. Seldom is the violation for shipping a device to a jurisdiction that has not approved it. In my experience, most are reporting violations; the licensee's actions were not wrong, but the licensee did not report them correctly. Some errors occur when the manufacturer accommodates a customer's late order change, or when a technician, trying to be helpful, installs a duplicate replacement chip in a casino machine that is not working properly.⁶ In any other tech sector, these would be unremarkable, everyday occurrences. In the gaming industry, they result in disciplinary actions. Regulators fine manufacturers more for shipping rule violations than for anything else, often without regard to the manufacturer's overall record of compliance or the seriousness of the violation. Regulators have disciplined manufacturers for typographical errors. The company I worked for was once fined because two digits in a long serial number on a notification form were inadvertently transposed.



Compliance with shipping rules requires exacting execution of complicated processes by many people. It is a lot of work for everyone involved, with many opportunities for mistakes. Furthermore, notifications, approvals, and separate shipments all add time and cost. Casinos

in jurisdictions that require such procedures take longer and pay more to get the same product than casinos in jurisdictions that do not.



Are the shipping regulations worth the work and expense? To answer that, we need to know the regulations' purposes and evaluate how well they fulfill those purposes. I have not come across any express statements of policy specifically for shipping statutes or regulations. We can infer some possible objectives.

Tracking slot machines. One purpose of shipping notifications may be to keep track of the hands through which slot machines pass so their source can be ascertained if they are later found some place they shouldn't be, like in an illegal operation. But federal law already provides a mechanism for this. The federal Johnson Act⁷ generally prohibits the shipment of slot machines in interstate commerce, but makes an exception for shipments to locations where the machines are legal, even if they pass through jurisdictions where their possession and use would not be legal.⁸ Other provisions require manufacturers and distributors of slot machines, casinos that operate them, companies that maintain and repair them, and just about everyone else who has anything to do with slot machines to register with the U.S. Department of Justice annually.⁹ Each such



company must also maintain a log of every machine in inventory, including make, serial number, and date of acquisition.¹⁰ If the company sells or otherwise transfers a machine, the company must record the details of the transfer, including "the name and address of the buyer . . . and the name and address of the carrier."¹¹ The records must be retained for at least five years.¹² The machines themselves must be permanently labeled with the name of the manufacturer, the serial number, and the date of manufacture.¹³

The records required under the Johnson Act can be used to track machines. If a machine is found in an illegal operation, its manufacturer, armed with serial numbers and other identifiers, can determine from its Johnson Act records to which casino the manufacturer sold it.

The casino can determine from its records where the machine went from there, and so on, until the full path is determined or the chain breaks because someone broke the law by not keeping the required records. Thus, additional shipping rules are not needed to track machines. If shipping rules are meant to permit tracking, they are redundant.

Keeping unapproved devices out of the jurisdiction. Since casinos may only operate devices that have been approved by the regulators, it is natural to think that the shipping rules might help ensure that this happens. But giving notice that an approved device is being shipped is no guarantee that an approved device is actually on the truck. Furthermore, the shipment isn't really the problem. Under the Johnson Act, machines en route to states where they are legal are permitted

to travel through states where they are not. Slot machines are not inherently dangerous objects, any more than computers or televisions, which is basically what modern slot machines are. Thus, trucks and other conveyances containing slot machines traversing the jurisdiction's highways are not cause for regulatory concern. Only shipments destined for a jurisdiction's casinos are



subject to the shipping rules. Shipments to competing casinos in the next state move without notice or restriction.

The requirement, in some jurisdictions, that game software be shipped to the regulator separately may prevent unapproved games from being operated. But then it also holds up *approved* games pending inspection and it is the inspection that catches any unapproved devices, not the separate shipment. Pre-operational inspection can be performed without the complication and expense of separate shipments of software, as it is in the many jurisdictions that permit hardware and software to be shipped together.

Pre-announcing shipments into the jurisdiction. While shipping notification rules do not prevent unapproved devices from entering the jurisdiction, they do let the regulators know when a shipment is on its way. In jurisdictions where regulators inspect machines before they are put into operation, notice facilitates inspection scheduling. Often, though, as with any business, shipping schedules



change. Customers revise orders or change installation plans, trucks break down, and weather closes roads. If an order or shipping schedule changes after notice of the shipment has been given, the process and the notice period restart unless the manufacturer requests and the regulator grants a waiver of the normal notice period. My experience was that as many as 20 percent of all reports were modifications of prior reports. The longer the notice period, the greater the chance that the delivery date will move, requiring either a new notification and a rescheduled inspection appointment or a request for and grant of a waiver. Either way, the results are more work for both the manufacturer and the regulator and more opportunities for mistakes.

If the goal is to facilitate inspection scheduling, there are easier ways to make appointments. Inspections take place at the casino and usually involve just the operator and the regulator. Manufacturers do not participate in the inspections, so requiring them to support the load for providing information used for scheduling is an unnecessary complication. An operator will usually be given a few days notice before a shipment of slot machines actually arrives at its loading dock. In most cases, this should be enough time to schedule any required inspections without inconveniencing either the operator or the regulator.



Securing devices in transit. Guarding the integrity of gaming devices is a rationale for sealing trucks and dedicated shipments. Such measures appear to be intended to detect or prevent tampering with machines en route. There are several problems with this, foremost of which is that, in my experience, it just doesn't happen and it doesn't seem likely to happen. A criminal would have to break into a truck and spend some time in it without the driver knowing

about it. Not impossible, but it seems just as likely that the driver would be a co-conspirator. Any tampering is most likely to involve a specific model of slot machine that has been reverse engineered somehow. This would require the additional involvement of a programming engineer with a lot of training, experience, equipment, and time, not to mention possession of the machine in question, and, probably, more accomplices. This growing criminal conspiracy would have to learn when one of those specific models was on a truck and where it was going, which would require someone at the manufacturer or the casino to be in on the scheme. Finally, the most likely gain from this complicated, risky felony¹⁴ would be a few thousand dollars. Mega-jackpot machines are not good targets. The machines are closely surveilled and big jackpots are carefully authenticated, so gaffs would be detected quickly. The



conspirators might win small jackpots a few times on gaffed machines, but they would not last long before casino management got wise. High risk for low reward is not a good criminal opportunity. It is not surprising, then, that in nearly two decades working for a manufacturer, I never heard of a slot machine shipment being tampered with anywhere, even in jurisdictions without shipping rules.

But even if tampering was rampant, shipping rules would not stop it. Notifications and dedicated truck requirements do not prevent trucks from being hijacked or the slot machines they carry from being accessed. Again, the intrigue needed to pull off the scheme and the likely reward from it make tampering an unrealistic concern, as evidenced by the absence of any history of shipments being compromised, even in

jurisdictions that do not require dedicated trucks or separate shipments.

Preventing slot machines from being used in illegal operations. Requiring that game software be shipped separately from game hardware may be intended to prevent unapproved devices from being put into illegal operations rather than to prevent tampering in transit. The theft of one – software or hardware – without the other would not give the thief an operable device. Again, practicalities intrude. Someone who wants slot machines for illegal operations can buy them from dealers in used machines or even directly from the manufacturers. And if shipments of complete slot machines as permitted in dozens of jurisdictions were a frequent target of thieves bent on putting them into illegal operations, we would have heard about it. The loss of a shipment would immediately come to the attention of dozens of people working for the manufacturer (shipping department, sales, risk management), the shipper (scheduler, dispatcher, driver), the casino (loading dock, slot department, purchasing, security), not to mention all their insurance companies. The loss of a shipment would not escape notice of the people in that chain or their tracking systems.



Public safety. One mission of government is providing for the public safety. However, this important function does not apply to shipments of slot machines, certainly not in any heightened way. Slot machines these days are technologically little more than PCs with good monitors and entertaining graphics. They are not inherently more dangerous than shipments from Dell and Apple.

Public confident and trust. One express statement of policy relative to gaming devices asserts that “[p]ublic confidence and trust can only be maintained by strict regulation of all . . . activities related to . . . the manufacture, sale or distribution of gaming devices”¹⁵ This statement doesn’t suggest what specific regulations might be useful or how they might inspire public confidence in the gaming industry in general or in slot machines in particular. It is my experience that, while many people are generally aware that casinos are regulated, fewer people know that slot machine makers are regulated and even fewer know the magnitude of that regulation.¹⁶ Arcane shipping rules would be even less known beyond gaming industry insiders, so it is doubtful that the rules add much to the level of public confidence in gaming manufacturers and their products.



Gaming is not supposed to be easy. This is an argument that, regardless of the salutary effect of regulations, they serve a purpose just by being there, forcing gaming licensees to be scrupulous about compliance. This is regulation for regulation’s sake, akin to no brown M&Ms in a band’s dressing room.¹⁷ Gaming is already difficult with licensing, investigations, operational controls, technical standards, and many other barriers to entry, plus intensive regulatory oversight not found in other industries.¹⁸ Furthermore, resources spent on things that do not matter are resources that might have been spent on things that do.

One benefit of having a variety of regulatory systems is that they furnish a real-world laboratory in which to compare different schemes. If jurisdictions with

shipping regulations show a reduction in regulatory problems compared with jurisdictions without those shipping regulations, then perhaps the other jurisdictions should consider adopting them. On the other hand, if jurisdictions without shipping regulations have suffered no apparent regulatory harm as a result, then perhaps those regulations are not needed.

There are, in fact, major jurisdictions that do not have shipping rules. “Indeed, leading gaming jurisdictions such as Nevada, the United Kingdom, Italy, and France impose no shipping rules.”¹⁹ Nevada, the jurisdiction with by far more slot machines than any other, does not control the shipment of machines into or within the state.²⁰ Despite this lack of regulation, no harm has been reported. That is not to say that Nevada manufacturers and casinos are not regulated. They are investigated and licensed. They are subject to continuing stringent regulatory controls. Their slot



machines and their premises and just about anything else are subject to inspection at any time. This is over and above the normal business impulses manufacturers and casinos both have to ensure that equipment functions properly and is legal to possess and operate. As the AGA said, “Gaming licensees have every incentive to ensure that shipments of gaming machines are efficient and secure.”²¹ These factors are present regardless of the jurisdiction, applying commercial pressure to ensure that slot machine shipments are not compromised.

If the example of jurisdictions without shipping rules is too extreme, perhaps we might at least consider aligning regulation with risk. The primary risk identified above is that unapproved slot machines will be put into operation.²² That risk does not arise while the machines are still at the manufacturer's premises or, as we have seen, while the machines are on a truck or other conveyance on their way to the casino. The risk manifests itself only when the operator plugs the machine in and starts operating it. The critical point for regulatory focus, then, is when the machine arrives at the casino. In that case, a different possible system would be for the casino to notify the regulator when the shipment is on the way, and for the casino and regulator then to schedule any required inspection or reassembly. When the machine arrives, the casino or the regulator or both could check the machine against the order and the approval documentation the manufacturer ships with it to verify that the machine is what was ordered and is approved in the jurisdiction. The casino would then add the machine to inventory, plug it in, and start operating it.

that go with it. Casinos would still know delivery schedules days in advance, which would be ample time to contact regulators and schedule inspections. Casinos could make late changes to orders without affecting delivery or installation schedules, shipping costs would be reduced, and installers and technicians could be scheduled more efficiently. Regulators would retain as much control as they desire over the placement of approved machines and the discipline of manufacturers who ship unapproved ones. Eliminating unproductive shipment restrictions – dedicated trucks, sealed trucks, separate shipments of hardware and software – would lower costs and improve efficiency even more, without compromising regulatory integrity.



This process does not require manufacturers, casinos, or regulators to do anything they are not already doing. Manufacturers routinely notify their customers of shipping schedules and include approval documentation with the shipments. Casinos and regulators schedule inspections and verify that machines are approved. Casinos maintain inventory records as required under the Johnson Act.

What would change is the requirement that manufacturers give notices long before machines are delivered or even shipped. That requirement would be eliminated, along with the costs, delays, and restarts

This is not the first time that changes like this have been proposed. The 2013 AGA white paper recommended, among other things, allowing shipment of complete machines direct to customers, establishing a uniform notice period of five days or less, eliminating prior approval requirements for shipments, and permitting electronic notices to a single address within each jurisdiction.²³ It may be that an updated study would show that jurisdictions have modified their rules in response to the AGA's white paper and its recommendations. But I'm told that little has changed and that few jurisdictions have adopted any of these modest recommendations for reform. This is unfortunate. Shipping regulations create a burden not placed on any other consumer technologies. What is routine and easy in other areas of commerce – shipping products to customers – is needlessly difficult in the gaming industry.



Mark Lerner's career as a lawyer includes positions in government, private practice, and in-house. As a Nevada deputy attorney general, he represented the Nevada Gaming Control Board and the Nevada Gaming Commission, the two state agencies charged with regulating Nevada's premier industry. As a partner at Jones Jones Close & Brown (now Fennemore Craig), he advised gaming licensees and applicants and their companies and compliance committees. During seventeen years at Bally Technologies, including thirteen years as general counsel, Mr. Lerner was responsible for corporate governance, regulatory compliance, and other legal affairs of an international, publicly-traded gaming supplier, oversaw more than a dozen merger and acquisition transactions and personally was issued gaming licenses in hundreds of jurisdictions around the world. He helped found and served as an officer of the Association of Gaming Equipment Manufacturers. Mark also served as chairman of the state bar committee on ethics and professional responsibility. Mr. Lerner is a member of the adjunct faculties at UNLV's Boyd School of Law and American University's Washington College of Law and has been a regular speaker and writer on gaming law and practice subjects.

¹ David O. Stewart, "Streamlining Shipping: Recommendations for Regulatory Reform," <https://www.americangaming.org/new/aga-calls-for-streamlined-shipping-rules/> (American Gaming Association 2013) [*hereinafter* AGA White Paper].

² See generally *id.* Appendices A–F.

³ "AGA Calls for Streamlined Shipping Rules," <https://www.americangaming.org/new/aga-calls-for-streamlined-shipping-rules/> (Aug. 21, 2013).

⁴ AGA White Paper at 3:
Roughly three-fourths of North American jurisdictions do not allow the shipment of complete gaming machines. Instead, individual components must be shipped separately into those jurisdictions and assembled either at some intermediate location, or at the venue of the end user. This requirement has the unintended effect of creating greater risk of errors in the shipment and installation of the gaming machines. . . . Nearly 90 North American jurisdictions allow the shipment of complete gaming machines."

⁵ See, e.g., Nev. Gaming Comm'n Reg. § 14.030(1): "A . . . licensee shall not offer a gaming device for play unless it has been approved by the Commission"

⁶ The replacement software is, of course, also approved. Indeed, it is identical; otherwise, it wouldn't be a "replacement." In this circumstance, there is absolutely no harm to anyone. On the contrary, it is beneficial to all because it may help put an approved but inoperable machine back into operation. The only transgression is that the regulator was not notified in advance. If advance notice gains us nothing, then perhaps replacing approved software with the same software could be an exception to the prior notice requirement.

⁷ 15 U.S.C. §§ 1171–1178, entitled the Gambling Devices Act of 1962, Pub. L. No. 87-840, 76 Stat. 1075 (Oct. 18, 1962), and commonly referred to as the Johnson Act.

⁸ 15 U.S.C. § 1172(a).

⁹ 15 U.S.C. § 1173.

¹⁰ 15 U.S.C. § 1173(c).

¹¹ *Id.*

¹² 15 U.S.C. § 1173(d).

¹³ 15 U.S.C. § 1173(b).

¹⁴ See, e.g., Nev. Rev. Stat. §§ 465.085(2), .088(1) (modification of a gaming device to cheat is a felony punishable by not less than one year and not more than six years in prison, a fine of up to \$10,000, or both).

¹⁵ Nev. Rev. Stat. § 463.0129(1)(c).

¹⁶ This conclusion is drawn in part from informal, unscientific surveys of students, including many long-time Nevadans, over several years in gaming law classes at Boyd School of Law.

¹⁷ "The Truth About Van Halen and Those Brown M&Ms," *The Record: Music News* from NPR, <https://www.npr.org/sections/therecord/2012/02/14/146880432/the-truth-about-van-halen-and-those-brown-m-ms> (Feb. 14, 2012).

¹⁸ The regulatory burden on manufacturers is exponentially greater than that on casinos, if for no other reason than that, while a casino is regulated by (usually) one jurisdiction and one set of agencies and rules, manufacturers operating around the country and the world are regulated by hundreds.

¹⁹ AGA White Paper at 2.

²⁰ Nevada does, however, have a rule that controls slot machine shipments that leave the state. Nev. Gaming Comm'n Reg. 14.180. This unusual, if not unique, regulation may have arisen from the presence of so many manufacturers based in Nevada. This regulation may also be a throwback to the 1970s and 1980s and the state's reaction to the rise of competing establishments in other jurisdictions. The reports originally required by the regulation have since been reduced or replaced with record-keeping functions in most cases. This, plus the fact that no other jurisdiction, including any with manufacturers based there, has such an elaborate mechanism for reporting shipment of machines leaving the jurisdiction, suggests that Nevada's anachronistic regulation could also be eliminated without harm to regulatory concerns. As I have noted elsewhere, Nevada's regulation also imposes a burden on Nevada-based companies—requiring them to report machine shipments to other jurisdictions—that is not imposed on manufacturers licensed in Nevada but based elsewhere. Mark Lerner, "When Less is More: Correcting Asymmetries in Gaming Regulation," *NEVADA GAMING LAWYER* 50 (Sept. 2018), <https://www.nvbar.org/wp-content/uploads/14-Correcting-Asymmetries-in-Gaming-Regulation.pdf>.

²¹ AGA White Paper at 3.

²² It should be noted that the actual risks posed by unapproved machines are negligible. Any unapproved machine that finds its way to a casino floor by mistake was almost certainly approved by some other jurisdiction (probably by several others) using similar if not identical standards. Thus, a fugitive machine is not likely to adversely affect players, taxes, or other regulatory concerns before being discovered.

²³ AGA White Paper at 3–5.