



Seneca Cayuga Tribe of Oklahoma  
Gaming Commission  
23701 S. 655 Rd  
Grove, OK 74344  
918-787-9703

April 27, 2012

Ms. Tracie L. Stevens, Chairwoman  
National Indian Gaming Commission  
1441 L St. NW, Suite 9100  
Washington, DC 20005

Re: Discussion Draft of 25 C.F.R. Part 543: Class II Minimum Internal Control Standards

Dear Chairwoman Stevens:

I am pleased to submit the following comments on behalf of the Seneca-Cayuga Gaming Commission (SCGC) regarding the National Indian Gaming Commission's (NIGC) Discussion Draft of the Minimum Internal Control Standards (MICS) for Class II gaming. The SCGC commends the NIGC for engaging with tribes during this initial drafting phase of the rulemaking process. We continue to be encouraged by the NIGC's efforts to reach out to tribal governments and solicit tribal input during this regulatory review process, and hope that our comments will assist the NIGC in its further deliberations.

As a general matter, the SCGC is concerned that this discussion draft takes a very narrow and restrictive approach to regulation that conflicts with the role of tribes as the primary regulators of their gaming activities. Rather than establishing "minimum" internal controls standards, the discussion draft defines in great detail the exact procedures that the tribe must follow to comply with the Class II MICS. The Discussion Draft mandates the particular department or position responsible for performing specified tasks, as well as the exact procedural steps that the employee(s) must take in carrying out such tasks. There is little to no room for tribes to exercise any flexibility or discretion in developing the operational procedures necessary to implement the Class II MICS requirements. Tribes are thus precluded from considering more cost-effective and efficient alternatives to achieving compliance, even if such alternative will result in the same desired regulatory outcome.

The SCGC believes that the regulatory approach reflected in the discussion draft is incompatible with the regulation of Class II gaming and will only result in increased compliance



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costs for tribes and unnecessary rigidity within the Class II regulatory framework. As the NIGC is well aware, the size and nature of tribal gaming operations vary widely across Indian Country, as does the level of resources and technology available to a particular tribal operation. This means that the most efficient and effective procedure for achieving compliance can vary across gaming operations depending on factors such as the operation's size, scope of gaming activities, gaming floor layout, and organizational structure. By imposing a one-size-fits-all framework on *all* tribal gaming operations without regard to any of these factors, the Discussion Draft fails to provide tribes the necessary flexibility to develop and adjust their internal controls and processes based on their available resources and any changes in circumstances.

Regulatory flexibility is particularly important in the tribal gaming context where industry best practices and technology are constantly evolving, changing the nature of regulated gaming activities as well as the tools available to operators and regulators. The Class II MICS should be flexible enough to accommodate new technologies that improve processes and capture inefficiencies; otherwise, the inability of tribes to integrate new technology and management improvements will be a competitive disadvantage that ultimately hurts the tribe's bottom line.

As an alternative to the Discussion Draft's rigid and inflexible regulations, we propose for the NIGC's consideration a more performance-based approach that promotes flexibility and innovation without compromising the level of control necessary to protect the integrity and security of Class II gaming. Under the performance-based approach, agencies incorporate the goal of their regulation into the language of their rule, specify the level of performance they are looking for, and allow regulated entities to decide for themselves how to achieve that level of performance. In this way, the regulated entity has discretion in determining the specific means by which it will achieve a required outcome. The potential benefits of a performance-based approach are many and include, among other things, greater effectiveness in reaching specific regulatory objectives, more flexibility with respect to the means of adhering to the regulation, increased incentives for innovation, and reduced costs of compliance for tribes.

In the Class II MICS context, moving towards a performance-based regulatory approach would necessitate the removal of any detailed procedural requirements from the Discussion Draft so that the regulation sets forth only those baseline or minimum standards for compliance. By removing the procedure-heavy requirements from the regulation, tribes would have the much-needed flexibility to develop their own operational procedures and organizational structures in accordance with their available resources and any changes in circumstances or technology. Rather than requiring by regulation the step-by-step procedures for meeting a certain standard,



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the NIGC could utilize non-binding guidance documents to set forth the NIGC's view of best practices and recommended procedures. The SCGC strongly believes that a performance-based regulatory approach and the use of non-binding guidance documents represents a more balanced approach that supports the role of tribes as primary regulators of their gaming activities without compromising the integrity and security of Class II games.

*Definition of Agent.* The Discussion Draft defines an *agent* as “a person authorized by the gaming operation . . . to make decisions or perform assigned tasks or actions on behalf of the gaming operation.” (Emphasis added). The Draft's narrow of an *agent* does not anticipate the use of a computer system in carrying out the functions of an agent. We are concerned that such a narrowly defined term will discourage innovation and prevent tribes from taking advantage of technology to reduce compliance costs and increase efficiencies. We therefore ask that the NIGC amend this definition to support the use of computer systems in performing the functions of an agent.

*Definition of Gaming Promotion.* The term *gaming promotion* should be amended to specify that the term will *only* apply to Class II gaming, not all gaming activities.

*Primary Regulatory Authority of Tribal Gaming Regulatory Agencies.* The Discussion Draft at § 543.3(a) states that “TGRAs *also* regulate Class II gaming” and “may establish and implement additional controls that do not conflict with those set out in this part.” (Emphasis added). The logical interpretation of this statement is that the TGRA's regulatory authority is not exclusive and that it is shared with another entity. This interpretation, however, conflicts with the explicit statement in the IGRA that tribes have “the exclusive right to regulate gaming activity on Indian lands.” The IGRA thus clearly recognizes that tribes are the primary regulators of their gaming activities, subject only to certain provisions in IGRA delegating important oversight responsibilities to the NIGC. Moreover, § 543.3(h)(2) of the Discussion Draft recognizes that “TGRAs are the *primary* regulator of their gaming operation(s).” (Emphasis added). To ensure consistency throughout the regulation, we ask that any mistaken references to the TGRAs' regulatory authority be amended to reflect the language in § 543.3(h)(2) of the Discussion Draft.

*Alternate Control Standards.* This section sets out the procedures for adopting alternate control standards without providing any guidance on the types of changes that will constitute an *alternate control standard* for purposes of this section. If the NIGC decides to draft a regulatory



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definition of an *alternate control standard*, we ask that the definition cover only those changes that significantly alter the intent and coverage of the existing control standard being replaced.

*Gaming System and Manual Bingo.* The Discussion Draft's distinction between *gaming system* and *manual bingo* is unprecedented and unwarranted. It is well-settled that "bingo is bingo," regardless of whether technology is being used to assist in the conduct of the game. We are unaware of any circumstances that may have prompted the need to establish a new classification scheme for bingo. Moreover, it is unclear how subjecting bingo to two separate sets of controls will result in any regulatory benefits for tribes or the NIGC. To the contrary, this new classification scheme only causes confusion and increases the risk of duplicative or erroneous regulations.

Among other problems, this new distinction will make it difficult for operators to determine which set of controls will apply to which bingo games. Since neither *manual bingo* nor *gaming system bingo* is defined in the Discussion Draft, the Draft fails to provide any guidance on how the games will be distinguished. To add to the confusion, certain provisions that are more relevant to *gaming system bingo* have been included in the *manual bingo* section. For instance, § 543.8(e)(3)(iv)(B), which governs *manual bingo*, requires payout records to include a description of the event, including any *player interface malfunction*, despite the fact that player interfaces apply to *gaming system*, not *manual bingo*.

Under IGRA, a full range of technological aids can be used in the conduct of bingo. For instance, a "manual" game can be played as traditional "paper bingo," or rely on an electronic ball draw or electronic cards – the point being, that IGRA anticipates all types of bingo gaming activities. Accordingly, all bingo gaming activities should be subject to one set of controls, regardless of whether a technological aid is being used. We therefore urge the NIGC to abandon this proposed distinction and revert to the classic "bingo is bingo" approach to regulation.

*Gaming Promotions.* The SCGC is concerned by the NIGC's proposal to establish a set of controls on the conduct of promotional activities. Gaming promotions are not considered gaming activities because they do not require any consideration. To the extent that such promotions are considered non-gaming activities, we believe that the regulation of gaming promotions falls more appropriately within the purview of tribal governments.

The foregoing comments are intended to illustrate some of the remaining issues in the Discussion Draft that warrant additional clarification or tribal input. We hope that the NIGC



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finds them both useful and helpful in its deliberations. We thank you again for this opportunity to share our views and concerns and look forward to reviewing future drafts of this important regulation.

Sincerely,

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Richard Wood  
Gaming Commissioner  
Seneca-Cayuga Gaming Commission