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August 15, 2012

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

Re: Comments on Proposed Rule of 25 C.F.R. Part 543: Class II Minimum Internal Control Standards

Dear Chairwoman Stevens:

The following comments are submitted to the National Indian Gaming Commission (NIGC) in response to its request for comments on the proposed rule of 25 C.F.R. Part 543, which sets forth the Minimum Internal Control Standards (MICS) for Class II gaming. The QTGA appreciates the opportunity to provide its input and recommendations for improving 25 C.F.R. Part 543 in a manner consistent with the purposes and goals of the Indian Gaming Regulatory Act (IGRA).

As an initial matter, we would like to express our support for the NIGC's use of the MICS Tribal Advisory Committee (MTAC) and the Tribal Gaming Working Group (TGWG) during this important regulatory review process. The Class II MICS deal with a wide range of complex issues that have the potential to affect a variety of different stakeholders. For this reason, a multidisciplinary approach that draws on the subject matter of the affected parties is necessary to ensure that the final rule is fair and balanced. We encourage the NIGC to continue utilizing the technical expertise and knowledge of the MTAC and TGWG as it considers whether additional revisions are necessary in the final rule.

We have organized our comments below such that we begin with our general concerns with the proposed rule followed by our specific comments and recommendations, which we hope you will find to be helpful as you proceed with your deliberations.

GENERAL CONCERNS

As a threshold matter, we have a number of concerns with drafting issues and apparent inconsistencies in the proposed rule. Some of these issues could frustrate the regulation's purpose by making certain requirements confusing and difficult to implement. For instance, the proposed rule contains outdated terminology and inconsistent designations for persons responsible for carrying out the requisite procedures. As an example, the term "cashiers

department” is used in several sections such as proposed § 543.17(g)(1) to describe what is presumably the work area within the gaming operation for cashiers. Thus, the defined terms of “cage” should be used instead of “cashiers department,” the meaning of which is unclear since it is not defined in the proposed rule. Other examples include, but are not limited to, the use of “customer” to refer to the defined term “patron,” and the use of “employee” when referring to the term “agent.” The use of such inconsistent terminology increases the potential for confusion and misinterpretation and thus makes it difficult for tribal governments to understand and apply the Class II MICS requirements.

The proposed rule would also benefit from changes that would make the Class II MICS clearer and easier to understand and apply. For instance, many related controls are scattered throughout the regulation in different sections. As an example, the controls for cash and cash equivalents appear in proposed § 543.8 for bingo, despite the fact that proposed § 543.18 is the designated section on cash and cash equivalents. We believe such controls should be consolidated to ensure that accountability and supervision is centralized and consistent and that tribal governments can easily reference and implement the regulatory standards set forth in the Class II MICS.

In addition to the above drafting issues, we believe the proposed rule suffers from fundamental deficiencies relating to the overly prescriptive and rigid nature of the stated requirements and procedures. In our earlier comments on the discussion draft preceding this proposed rule, we advocated for a less prescriptive approach to the Class II MICS that would allow tribal governments to determine the most appropriate and effective means of achieving compliance. It appears that the proposed rule does not incorporate this alternative regulatory approach, despite the fact that such approach would provide tribal governments an important measure of flexibility in establishing efficient and cost-effective procedures that achieve the specified standards and outcomes in the regulation. We respectfully request the NIGC to revisit this important issue and consider the benefits of an alternative regulatory approach that focuses on regulatory standards rather than detailed procedures.

To clarify, we do not question the importance of enforcing strict internal controls and understand the critical role of such controls in safeguarding the security and integrity of our gaming operations. Rather, our concern is that the proposed rule leaves little to no room for tribal governments to exercise flexibility in carrying out their regulatory responsibilities. For instance, the proposed rule specifies, among other things, the title of the individual or department responsible for performing a specific task and the type of technology that must be used to carry out that task, without accounting for differences that may exist among tribal gaming operations. The most appropriate and effective procedure for achieving compliance, however, can vary across gaming operations depending on the operation’s structure, size, scope, and gaming floor layout. Because tribal gaming operations are diverse and complex and differ in terms of available resources, it is critical that tribes have the flexibility to develop and fine-tune their internal controls and processes based on their available resources and any changes in circumstances.

In addition, we believe the prescriptive approach to the proposed Class II MICS is ill-suited to the gaming industry context in which technologies and industry practices are constantly

changing and evolving. Unless otherwise amended, the technology-specific regulatory requirements in the proposed rule risk becoming obsolete as new technologies and innovations become available. The enforcement of regulations that have become outdated with industry practices can drive up compliance costs and ultimately hurt the tribe's bottom line by diverting tribal resources and time away from investments and innovation.

We urge the NIGC to embrace a less prescriptive regulatory approach that focuses on what outcomes are required rather than on what specific steps must be followed. Rather than instructing tribal governments as to the specific methodology for meeting a particular standard, the Class II MICS should clearly state the regulatory objective of the control standard and the type of procedures that tribal governments should develop and implement in furtherance of that standard. Under such an approach, tribal governments would have the necessary discretion and flexibility to customize their internal control procedures in a manner that reflects their actual management and organizational structure. We note that there are a number of advantages to adopting a more flexible and less prescriptive regulatory approach, which include encouraging tribal governments to develop and implement standards that may enhance the security and integrity of their gaming operations.

In the alternative, the NIGC should consider adding language in the final rule clarifying that the Class II MICS are not intended to require tribal governments to adopt a particular organizational structure or limit the use of alternative terminology, so long as the requisite control standard is met. One of the primary objectives of the Class II MICS is ensuring that the required standards are met with an appropriate segregation of functions and independence. We do not believe the title of the individual or department carrying out the required tasks should be material for compliance purposes so long as the control standard is met. If substantive changes to the regulatory approach taken in the proposed rule are not implemented by the final rule, we are concerned that the Class II MICS may operate to require a particular organizational structure as a matter of compliance.

Our proposed language clarifying that the Class II MICS are not intended to mandate a particular organizational structure or limit the use of alternative terminology would also minimize the need for continual updates of the Class II MICS. As the tribal gaming industry matures and new technologies are introduced, the terminology used in the operation of Class II gaming will likely evolve and change over time. The NIGC should not have to continually update its Class II MICS to account for changing terminology and industry practices. We believe our proposed language will help ensure that the Class II MICS remain relevant and effective despite the inevitable changes in technology and industry practices.

With these general comments in mind, we turn to our specific comments and recommendations concerning this proposed rule.

SPECIFIC CONCERNS

§ 543.2 - What are the definitions for this part?

1. **Define *Cashless transaction*.** *Cashless transactions* referenced in the definition of *Cashless system* and used in § 543.13 should be defined in order to improve clarity.
2. **Define *Complimentary services and items*.** The QTGA believes that the definition of *Complimentary services and items* should be included in § 543.2 rather than § 543.13.
3. **Modify the definition of *Kiosk*.** The definition of *kiosk* should be modified to reflect that kiosks are devices which enable patrons to process transactions without requiring the assistance of a live agent. This broader definition would better reflect how kiosks are used.

§ 543.3 - How do tribal governments comply with this part?

1. **Include a *Severability Clause*.** While “the lack of a severability clause will not compel a court’s finding on the issue,” the presence of a severability clause “may give some indication of an agency’s intent regarding the severability of its regulations.” The QTGA believes that the NIGC should again consider including a severability clause in this regulation because it provides useful information regarding agency intent without any apparent drawbacks.
2. **Address potential *Limitations on Technology*.** Proposed § 543.3(e) should be modified to ensure that the use of the term “computer applications” does not limit the use of new technologies that are developed in the future. Future-proofing provisions such as this will save the NIGC time and expense related to redrafting the MICS every few years.
3. **Recognize the *Primary Regulatory Authority of Tribes*.** The QTGA requests that proposed § 543.3(h)(2) include language consistent with the IGRA, as was included in the prior draft, “[r]ecognizing that tribes are the primary regulator of their gaming operation(s)” The NIGC should not avoid this opportunity to recognize the respective roles of TGRAs and the NIGC under the IGRA.
4. **Commission enforcement action should be based on TICS, not SICS.** Section 543.3(h)(2) states that the NIGC, after informing the tribal government and the TGRA and providing an opportunity to cure, may initiate an enforcement action based on deficiencies in the SICS. The NIGC, however, should limit its enforcement actions to deficiencies in TICS so that TGRAs and tribal governments may continue to tailor their SICS to a higher standard. To tie enforcement actions to SICS would subject tribes who choose to have higher standards to increased NIGC scrutiny than TGRAs that maintain minimal SICS.

§ 543.8 – What are the minimum internal control standards for bingo?

1. **Ensure that *Server Based Bingo Card Sales* provision is consistent with Class II Technical Standards.** The QTGA requests that the NIGC examine proposed § 543.8(c)(4) to ensure that it does not inadvertently impose additional technical standards on Class II gaming system bingo. Specifically, the QTGA is concerned that references to

the need to “record, track and reconcile sales” should explicitly apply only to manual bingo since Class II gaming system bingo does not generally involve inventory tracking of this nature.

2. **Refine consolidation of bingo *Draw* provisions to apply to all forms of bingo.** The QTGA believes that the § 543.8(d)(2)-(4) Draw provisions should be refined to apply equally to Class II gaming system and manual bingo. The only regulatory distinction between the two forms of bingo is that Class II gaming systems are subject to 25 C.F.R. Part 547 Technical Standards. To that point, proposed § 543.8(d) should reflect that certification in accordance with 25 C.F.R. Part 547 is acceptable for meeting the control standards for bingo draw rather than inserting the new concept of “verifying the randomness of the draw.”
3. **Refine *Manual Prize Payouts* provision to account for small payout amounts.** The QTGA requests that proposed § 543.8(e)(5)(i) be refined to trigger only when the amount of a manual prize payout exceeds a certain threshold approved by the TGRA. Requiring two agents to witness very small manual payouts prompted by equipment glitches, paper jams, etc. could be overly burdensome to smaller gaming operations.
4. **Refine *Overrides* provision to clarify agent responsible for reconciliation.** The QTGA is concerned that proposed § 543.8(e)(6)(iv)(D) could be read to require that the agent responsible for making manual payments must also be responsible for accessing the accounting system to reconcile potential differences with the player interface. While the QTGA agrees that the player interface amount and accounting system amount must be reconciled by an authorized agent in order to determine if an override is necessary, this function may be performed by a different agent than the one making the manual payment.
5. **Refine *Shipping and Receiving* provision to prevent unnecessary interference with TGRA operating procedures.** The QTGA believes that the overly procedural requirements of proposed § 543.8(g)(1) may unnecessarily interfere with the QTGA’s ability to establish shipping and receiving procedures. Specifically, the requirement that certification in accordance with 25 C.F.R. Part 547 occur *prior* to shipment restricts the QTGA’s ability to perform testing and certification pursuant to its own procedures. The provision should be amended to state only that notification of pending shipments must be provided to the TGRA in accordance with the TGRA’s procedures and requirements.
6. **Refine *Testing* provision to ensure consistency with Class II Technical Standards.** Proposed § 543.8(g)(5), which requires that certain testing “be completed during the installation process to verify that the player interface has been properly installed,” appears to inadvertently require additional testing of player interfaces that is not already required in the Class II Technical Standards. The QTGA therefore requests that the testing requirements set out in proposed § 543.8(g)(5)(i)(A)-(K) be removed from the proposed rule and that proposed § 543.8(g)(5)(i) be conformed to that revision.
7. **Remove overly procedural requirements of *Operations* provision which interfere with operational decisions.** The QTGA believes that proposed § 543.8(h) specifies in excessive detail how the gaming operator must respond to equipment malfunctions and

removal. The NIGC should limit this provision to requiring procedures be in place that ensure that all malfunctions are investigated, documented, and resolved. Similarly, for equipment removal, these provisions should specify only that procedures require the following: final accounting information, verification and recording of unique identifiers and descriptions of removed/retired components, and documentation of the disposition of removed/retired Class II gaming system components.

§ 543.10(g) - What are the minimum internal control standards for card games?

- **Limit § 543.10(g) to Promotional Progressive Pots and/or Pools.** The QTGA requests that the phrase “and any other promotion, including related drawings and giveaway programs” be removed from this section to avoid ambiguity regarding the applicability of this section to activities other than promotional progressive pots and/or pools as defined in § 543.2.

§ 543.12 – What are the minimum internal control standards for gaming promotions and player tracking systems?

- **Reconsider specifying MICS for gaming promotions.** To the extent that gaming promotions are non-gaming activities, they are more properly within the purview of tribal governments. Thus, rather than defining “Gaming Promotion” as an activity or award that requires “game play” as a condition of eligibility, the QTGA suggests including language clarifying that “Gaming Promotions” are those promotions that involve the three basic elements of gambling: chance, reward, and consideration, so that all other gaming promotions will remain exempt from the regulation.

§ 543.17 – What are the minimum internal control standards for drop and count?

1. **Reconsider use of terms “drop box” and “financial instrument storage component” in order to avoid confusion.** Drop boxes are universally understood to be containers within which cash or cash equivalents are stored, regardless of whether the drop box is associated with a player interface, card game, kiosk, or ATM. The QTGA suggests that the NIGC modify proposed § 543.17 to use “drop box” as a universal term and consolidate provisions distinguishing “drop boxes” from “financial instrument storage components.”
2. **Clarify *Currency Counter Interfaces* “direct communications line or computer storage media” provision.** The QTGA is concerned that 534.17(g)(7)(ii) unnecessarily defines the manner in which currency counter interfaces are used to transmit information to the accounting department. If the intent is to require that such information be transmitted in a secure manner, the provision should directly reflect that requirement rather than reference potentially obsolete “computer storage media” or potentially confusing “*direct* communications lines.” Whether electronic communications are direct and/or secure is determined by the relevant technologies in use at the time.

§ 543.18 – What are the minimum internal control standards for the cage, vault, kiosk, cash and cash equivalents?

- **Clarify § 543.18(f) so that it does not apply to patron deposited funds solely for safekeeping.** If the patron deposited funds are not to be transferred to a gaming area for wagering purposes, the provisions of § 543.18(f) should not apply. The QTGA is concerned that as presently drafted, the language of this provision does not adequately differentiate between funds deposited for wagering purposes and funds deposited solely for safekeeping.

§ 543.20 – What are the minimum internal control standards for information technology and information technology data?

- **Reconsider inclusion of provisions more appropriately placed in the Class II Technical Standards.** The QTGA believes that provisions such as § 543.20(m) are more appropriate for inclusion under Class II Technical Standards. The verification requirement in that provision should not be included under § 543.20.

§ 543.24 – What are the minimum internal control standards for revenue audit?

- **Reconsider the title of this section to avoid confusion with responsibilities of the revenue audit *department*.** Section 543.24 lists various audit requirements, not all of which are typically performed by the revenue audit department. The QTGA suggests that the title of this section reference “operational audits” rather than “revenue audit” so that TGRAs are assured that the NIGC understands that agents from other departments may perform these functions so long as they are independent of the transactions being audited.

CONCLUSION

The QTGA understands the critical importance of adopting and enforcing strict control standards that protect the integrity of gaming activities and the revenues they produce. We hope that the final rule strikes the right balance between achieving the regulatory goal of safeguarding the integrity and security of the Class II gaming industry and giving tribal gaming regulatory agencies the necessary flexibility to develop internal controls and procedures in accordance with their particular circumstances. To forego revisions that will help achieve this balance would constitute a missed opportunity to promulgate a more reasonable and fairer regulation.

We thank you for this opportunity to provide comments and respectfully seek your favorable consideration to the recommendations we have outlined in this comment letter.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Kyser-Collier". The signature is written in a cursive style with a large initial 'B' and a long, sweeping underline.

Barbara Kyser-Collier
Director, QTGA