

Draft Guidance on the Class III Minimum Internal Control Standards

Proposed Action:

In 2015, the Commission consulted about the Class III MICS. The Commission recognizes the importance of Class III MICS to a large section of the Tribal gaming industry. The agency proposes to suspend 25 C.F.R. Part 542, which will preserve the text of the regulation in the Code of Federal Regulations, but clarify that the regulation is not enforceable by the NIGC. In addition, the Commission will be proposing draft voluntary guidance for Class III internal controls for your comment.

Background:

The NIGC's Class III Minimum Internal Controls Standards (MICS) were promulgated in 1999 and last substantively revised in 2005. In 2006, the D.C. Circuit Court of Appeals¹ held that NIGC lacked authority to enforce or promulgate such regulations. Since that time, the Class III MICS have remained untouched. Technology has advanced rapidly, making some standards obsolete and introducing new areas of risk not contemplated by the outdated standards. And yet, tribal-state compacts—even those entered into since 2006—continue to adopt NIGC Class III MICS by reference.

Recognizing the industry's need for updated standards the Commission sought comment on whether to draft updated, non-binding guidance for Class III MICS and what to do with the outdated standards still lingering in the regulations. Between February 2015 and 2016, over forty tribes provided comment and overwhelmingly supported the NIGC proposal for non-binding guidance. On the question of what to do with the existing MICS regulations, tribes who commented adamantly opposed withdrawing the 542 regulations.

Several tribes also commented that they would like to see a tribal advisory committee or have some other vehicle to provide meaningful input on the guidance document. Several other tribes were concerned with the cost of developing such guidance. In response, the Commission believes the most cost-effective way to create a guidance document is by creating the first draft in-house and publishing it for public comment. The NIGC has recruited tribal gaming subject matter experts into the agency who are well-versed in operational procedures and the risks associated with them. With this expertise, the Commission is confident that it developed a quality draft guidance document to begin the discussion.

Tribal Input Requested:

The Commission is seeking feedback on its proposal to suspend 25 C.F.R. Part 542, which will preserve the text of the regulation in the Code of Federal Regulations, but clarify that the regulation is not enforceable

¹ *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134 (D.C. Cir. 2006).

by the NIGC. The Commission also seeks comments on a draft voluntary guidance for Class III internal controls which the NIGC will provide at least 30 days prior to the first date of consultation.

Rural Outreach

Proposed Action:

The NIGC seeks the opportunity to discuss information about smaller gaming operations, and hear ideas about how the NIGC can best provide technical assistance and training to smaller, rural operations. In addition, the NIGC seeks feedback on creating an eighth regional office out of NIGC's Rapid City, South Dakota satellite office.

Background:

NIGC outreach to smaller tribal gaming operations in rural areas supports the purpose of the Indian Gaming Regulatory Act to protect tribal self-sufficiency and the integrity of the gaming industry. The Commission would like the opportunity to discuss with tribes current information about smaller operations and to hear ideas about how the NIGC can best provide technical assistance and training to smaller, rural operations. The NIGC considers smaller, rural gaming operations to have remote locations and modest revenue streams.

The NIGC recognizes that smaller rural gaming operations have unique challenges because of geographic location. These operations often lack financial and human resources to achieve a successful operation. Likewise, the remoteness of a tribe's reservation and gaming operation from an urban area often results in less favorable market conditions. It is notable that a majority of tribes (57%) have small gaming operations that generate less than \$25 million per year in gross gaming revenue. Twenty percent of tribal gaming operations produce less than \$3 million per year. Often, these smaller operations provide needed jobs but are not strong economic drivers for the tribes.

By making rural outreach to smaller and more remote tribal gaming operations a priority, the NIGC is committed to supporting economic development in partnership with those tribes. The NIGC recognizes that a one-size-fits-all approach may not work but that some operations may share common challenges. The NIGC seeks to consult with tribes about its initiative to support small rural tribes' needs and obtain any comments and guidance from tribes on this subject.

Furthermore, the NIGC is also considering creating an eighth region and expanding the Rapid City satellite office to serve it. Presently the NIGC's regional offices serve seven administrative regions. The NIGC's St. Paul regional office currently covers 9 states, 59 tribes, and 144 gaming operations and is the largest administrative region. In 2003, the Rapid City satellite office was added in the St. Paul region to aid the region in reaching the tribal gaming operations in North Dakota, South Dakota, Wyoming, and Montana. With this proposed change the St. Paul regional office would cover only 5 states (Minnesota, Iowa, Wisconsin, Michigan and Nebraska), 37 tribes, and 95 tribal gaming operations and the new Rapid City regional office would cover 4 states (Montana, Wyoming, North Dakota and South Dakota), 22 tribes, and 45 tribal gaming operations. This

change is intended to provide better services by reducing the service area covered by one regional office and creating the ability to respond quicker to tribal needs covered in this geographical area.

Tribal Input Requested:

The NIGC would like the opportunity to hear your ideas about how NIGC can best provide technical assistance and training to smaller rural operations and feedback on the proposed administrative change of splitting the St. Paul regional office into two distinct administrative regions.

Developing a Strong Tribal Workforce through Training

Proposed Action:

One of NIGC's initiatives is maintaining a strong workforce both within NIGC and among our Tribal regulatory partners. The Tribal gaming workforce has a significant part to play in supporting Tribal self-sufficiency and protecting the Tribe's gaming revenues. To help foster that strong Tribal workforce, the NIGC is seeking feedback to assist in the development of its external training for Tribal leadership, tribal gaming commissioners, regulators and operators so that regulatory compliance is maintained.

Background:

In 2016, the NIGC has performed 341 hours of training for Regional Training Conferences and Regulating Gaming Technology Conferences, and provided 80 hours of training for site specific trainings.

The NIGC offers two primary training programs for tribes: 1) Regional Training Conferences; and 2) Site Specific Training. Regional Training Conferences provide courses designed for the region where they are being held. Site Specific Trainings are trainings requested by a tribe to meet the individual needs of its gaming commission, regulators and operators. Information on how to request training can be found at <http://www.nigc.gov/training/>.

Current dates (subject to change) for Regional Training Conferences are as follows:

January 10-12, 2017 Sacramento RTC (1), Indio, CA

February 14-16, 2017, OKC RTC, Shawnee, OK

March 21-23, 2016, Phoenix RTC, Tucson, AZ

April 18-20, 2018, ST Paul RTC (1), Billings, MT

May 16-18, 2017, Sacramento RTC (2), Jackson, CA

June 6-8, 2017, Portland RTC, Grande Ronde, OR

July 18-20, 2017, Tulsa RTC, Tulsa, OK

August 22-24, 2017, ST Paul RTC (2), Kasheni, WI

September 12-14, 2017, Washington DC RTC, Verona, NY

The NIGC Training Program seeks to improve the content and style of its training courses and is currently revising all of its training materials. For 2017, the NIGC Training Program has developed a two-day workshop for Internal Audit and TIC/SICS development. Additionally, the NIGC has developed training to support the Commission's initiative "to protect against gamesmanship on the backs of tribes." The NIGC's new classes are designed to provide "how to," hands-on learning with real-life scenarios, exercises and examples. Ideally, tribal leadership, tribal regulators and operators will not only understand the regulations but will have the tools necessary to effectively measure and maintain compliance in their operations in any reasonable way, including facilitating dialogue within the regulatory community on shared best practices.

The NIGC is also in the early stages of developing a Learning Management System, which will provide on-line training courses and webinar type training to tribal leadership, gaming commissioners, regulators and operators. The NIGC is also working towards a system that would allow on-line training on-demand.

In 2016, the NIGC instituted knowledge reviews in certain audit related classes. The knowledge reviews seek to test the student on how well they have learned the material. The testing is done after the class is completed, and then repeated ninety days later. The knowledge reviews assist the NIGC to determine the efficacy of its training, and assist in determining how training effects compliance. For 2017 the NIGC is looking to expand the knowledge reviews to include all of the classes offered in the Regional Training Conferences and in Site Specific Trainings.

Tribal Input Requested:

The NIGC strives to ensure that tribes receive substantive and valuable training to ensure the integrity of their gaming operations. During the consultation sessions, the NIGC would like to share with you what is in the agency's plans for future training, how to facilitate dialogue to include industry best practices in training development and discuss how NIGC can continue to improve its training program for Tribal leaders, tribal gaming commissions, regulators, and operators to support a strong Tribal workforce.

Management Contract Regulations and Procedures

Proposed Action:

While the agency has always strived to make its management contract approval processes as efficient as possible, there has been a significant increase in management agreement submissions. The Commission is seeking feedback on any recommended changes to the management contract and background investigation regulations. See C.F.R. Parts 531, 533, 535 and 537. Specifically, the NIGC seeks any input that may improve NIGC's efficiency in processing management agreements and background investigations.

Background:

According to the Indian Gaming Regulatory Act, Indian tribes may enter into a management contract for the operation and management of its gaming activity subject to the approval of the NIGC Chair. The agency's regulations at 25 C.F.R. Parts 531, 533, 535, and 537 concern the review and approval of management contracts, including background investigations of entities and individuals with an interest in the management contract. The purpose of these regulations is to ensure that the tribe is the primary beneficiary of its gaming operation.

NIGC staff reviews the contents of the management contract and other related agreements, conducts background investigations on persons or entities with a financial interest in, or having management responsibility for, the management contract, and provides an analysis of this information to the Chair. The Chair then approves or disapproves the management contract, amendment or contract modifications submitted by tribes and management contractors. Unapproved management contracts are void.

The Chair's determination includes:

- Review of the management contract and related agreements to ensure that the submission and terms comply with the intent of IGRA and 25 C.F.R. Parts 531, 533 and 535; and
- Background investigations conducted under 25 C.F.R. Part 537 for the NIGC Chair to determine suitability of the manager for new management contract submissions, amendments and/or changes to previously approved manager personnel or entities. The level of investigation will vary depending on the complexity of the manager's organization and whether the management contract is for Class II or Class III gaming. The manager is required to pay for the cost of the NIGC background investigation.

The NIGC provides management contract checklists as a guide to assist tribes and management contractors with management contract submissions and background investigation processes. The checklists identify items that are required in management contracts and that should be provided as part of any background investigation. The NIGC web site – <http://www.nigc.gov/finance/management-contracts> – provides links to management contracts approved by the NIGC Chair (confidential terms redacted), checklists for management contract approval, and helpful resources.

Tribal Input Requested:

The Commission is seeking feedback on any recommended changes to the management contract and background investigation regulations and technical assistance.

Technical Standards for Mobile Gaming Devices

Proposed Action:

The National Indian Gaming Commission is considering draft language to amend 25 C.F.R. § 457.18, which would add technical standards for wireless gaming systems and communications between mobile communication devices and mobile gaming systems. This draft language is based on input from and collaboration with our tribal partners.

Background:

Handheld gaming devices are electronic devices that allow casino patrons to play anywhere within the casino or within tribal lands (as defined by the Indian Gaming Regulatory Act), such as restaurants, hotels or other amenities. Portable handheld gaming devices have been around for many years and are authorized in many state jurisdictions. Although Part 547 applies to all technology used in the play of Class II games, the NIGC is considering implementing regulations to more specifically address mobile gaming devices.

The draft technical standards for mobile gaming devices will not authorize internet gaming. These draft technical standards only address handheld mobile devices within tribal lands.

Tribal Input Requested:

The draft technical standards will be provided at least 30 days prior to the first consultation date. These draft technical standards are proposed for tribal review, comment and consultation.

Fees

Proposed Action:

Under the current requirements of NIGC's fee regulations, at 25 C.F.R. Part 514, the Commission adopts a preliminary fee rate by March 1 and a final fee rate by June 1 of every year. In addition, the NIGC annually reviews the costs involved in processing fingerprint cards and adopts a preliminary rate by March 1 and a final rate by June 1. The NIGC seeks comments on proposed changes to the time period these fee rates are published.

Background:

The Commission is considering amending the language to 25 C.F.R. Part 514 to (1) remove the requirement to adopt a preliminary fee rate on March 1, and (2) change the announcement date for the final fee rate from June 1 to November 1 of every year. These changes are intended to improve the fee rate analysis and publication process to coincide with the completion of the Commission budget for the fiscal year (established by September 30 of each year) and also the annual release of the industry's Gross Gaming Revenue (collected and released in July each year). Additionally it is anticipated that this amendment would reduce the margin of error for fee calculations as the rate would only be set once within a fiscal year.

The proposed changes on the fee rate publication dates will also apply to the fingerprint processing fee rate if implemented. Pursuant to 25 C.F.R. Part 514, the Commission annually reviews the cost of processing fingerprint cards and sets a fee based on the amount charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe. If amended the fingerprint processing final fee rate will also be adopted by November 1 of every year.

Tribal Input Requested:

The NIGC requests your comments and feedback on this proposal and will provide draft regulatory changes at least 30 days prior to the first consultation date.

25 C.F.R. Part 547 Grandfathered Class II Gaming Systems

Proposed Action:

The Commission initially implemented the Part 547 Class II technical standards in 2008 to mitigate certain risks it believed existed in the ever-advancing Class II gaming system technology. Recognizing that the standards were new, though, it allowed for non-compliant games developed before November 10, 2008, to be fully compliant within a set amount of time. The Commission extended that “grandfathering period” in 2012 and, pursuant to the current regulation, all Class II gaming systems must meet the minimum technical standards by November 10, 2018. The Commission is interested in any information related to the steps Tribes have taken to comply with the grandfathering provision and any difficulties in implementing those provisions, as well as what risks, if any, the grandfathered games may pose to a gaming operation or the gaming public and how those risks may be mitigated by means other than Part 547.

Background:

Development of Class II minimum technical standards (Technical Standards) began in 2004 as a collaborative effort between the National Indian Gaming Commission, tribes, and manufactures to mitigate certain risks believed to exist in the ever-advancing Class II gaming system technology. The NIGC initially implemented the Technical Standards in 2008. The Technical Standards require that before a Class II gaming system may be placed on the floor offered to the public for pay, it must be submitted to an independent gaming laboratory which would test the system against the Technical Standards.

It was recognized by tribes, the industry, and NIGC that implementation of the Technical Standards would come at a financial cost to the gaming industry and to Tribes. Of particular concern however, was the potential financial burden on bringing gaming systems that had already been manufactured and/or put into play – and “compliant” with applicable law in the absence of the Technical Standards – into compliance with the new 2008 rule. Thus, to reduce that cost, the NIGC provided that gaming systems manufactured prior to issuance of the standards in 2008 could be certified to an alternate minimum standard “Grandfathered” systems. To be offered for play as a Grandfathered system, the tribal gaming regulatory authority was required to submit the system to a testing laboratory for certification as such within a 120 day window after the 2008 would be required to meet the full Technical Standards.

Grandfathered systems were permitted to continue being offered for play during a five year “grandfather period.” By 2013, all Grandfathered systems would be required to be removed from operation. It was thought at the time that natural market forces would cause new, fully compliant systems to replace the old Grandfathered systems and that the looming sunset of the grandfather period would otherwise incentivize the industry’s transition to fully compliant systems. The Technical Standards further provided that Grandfathered systems could be modified to become fully compliant with those Standards and thus would be removed from Grandfathered status and continue to operate after 2013.

By 2012 however, it was clear that the industry would be unable to bring all Class II gaming systems into full compliance with the Technical Standards. Through consultation with its tribal partners the NIGC extended the grandfather period an additional 5 years to November 10, 2018. With this date fast approaching there is renewed interest in Grandfathered Systems. For the Final 2012 Minimum Technical Standards for

Class II Gaming Systems and Equipment federal register notice, see <https://www.gpo.gov/fdsys/pkg/FR-2012-09-21/pdf/2012-23161.pdf>.

Tribal Input Requested:

The Commission is interested in consulting on this topic, including but not limited to, obtaining (1) any information related to the steps tribes have taken to comply with the grandfathering provision and any difficulties in implementing those provisions; (2) what risks, if any, the grandfathered games may pose to a gaming operation or the gaming public; (3) how those risks may be mitigated by means other than Part 547; and (4) what impacts, if any will the November 10, 2018 deadline have on your operation?

