

2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

June 22, 2017

Via Email to Vannice_Doulou@nigc.gov

Chairman Jonodev Chaudhuri
Vice Chair Kathryn Isom-Clause
Commissioner E. Sequoyah Simermeyer
National Indian Gaming Commission
1849 C St. NW
Mailstop #1621
Washington, DC 20240

Attn: Vannice Doulou

Re: Comments on Draft Class III MICS Guidance

Dear Chairman Chaudhuri, Vice Chair Isom-Clause, and Commissioner Simermeyer:

On behalf of the Seminole Tribe of Florida (the "Tribe"), we offer the following comments in response to the National Indian Gaming Commission's ("NIGC" or "Commission") draft Guidance on *Minimum Internal Control Standards For Class III Games*. The Tribe appreciates the Commission's efforts to make this initiative a collaborative process in which tribes have a number of opportunities to share their concerns and to suggest revisions. However, as discussed below, due to the importance and complexity of the matters addressed in the draft Guidance, the Tribe believes that the NIGC should convene a Tribal Advisory Committee or other tribal advisory body to thoroughly review each standard before finalizing the Guidance document.

Recommended Changes to Draft Class III Minimum Internal Controls Guidance

Substantively, major changes come from using Class II MICS language in the draft Class III MICS Guidance. Tribes utilizing the Guidance who also have Class II gaming at their facility will find the draft Guidance very familiar which will be particularly useful for mixed Class II/Class III facilities and the Tribe supports this structure.

However, the Tribe does not believe it is appropriate to simply cut and paste Class II MICS into the Class III Guidance without a thorough review by the tribal gaming industry. Instead, the Tribe strongly urges the NIGC convene a Tribal Advisory Committee or other advisory body, which would include tribal gaming operators and

regulators, to go over each standard before finalizing the Guidance document – as was done when drafting the Class II MICS in 2011–2012. The importance of this effort cannot be overstated. The Guidance will establish the best practices for Class III gaming, much like model building codes or GAAP, and it may be incorporated into Class III compacts or tribal gaming ordinances.

Additionally, where the language in the Guidance does not include the Class II MICS, it is almost entirely verbatim language from Part 542 without any updated language and without any inclusion of any of the updates made in 2010 by the NIGC TAC.¹ While the tribal gaming community was not supportive of all the 2010 proposed changes due to concerns of NIGC overreach, the proposed changes are much more updated than the current regulations and should be considered when completing the Guidance. In fact, many of the 2010 TAC revisions such as references to server based gaming and computer and software programs were included in Class II MICS which are incorporated into the Guidance. If the intent of the NIGC is to provide updated Guidance to the Class III tribal gaming industry, each standard, including those that were replaced with Class II MICS, needs to be reviewed carefully – for example, in their current form the Guidance standards relating to keno, pari-mutuel wagering, table games, and game machines are outdated.

Overall, the draft Class III MICS Guidance is a much-streamlined approach from the current regulations with several obsolete provisions deleted, consolidation of other provisions, and deletion of references to outdated technology such as "tapes and diskettes." The Tribe appreciates the care taken to delete specific timeframes sprinkled throughout Part 542 in favor of "reasonable timeframes" as determined by the Tribal Gaming Regulatory Agency ("TGRA"). However, the definition section was deleted and no definition sections were included in the draft Guidance. As there are many undefined terms throughout the draft Guidance, the Tribe recommends that a definition section be included either in a separate section or in each individual section as appropriate.

In addition to these general comments, the Tribe has a number of specific suggested edits, which are detailed below. The Tribe likely will have other comments as this process moves forward.

Recommended Changes:

§ 1 What are the minimum internal control standards for keno?

- § 1(b)(2) rephrase sentence: "Concurrently with the generation of the ticket the information on the ticket must be recorded in a manner that restricts access." It is not clear whether the intent is to record the ticket in a manner that prevents changes or another intent.

¹ <https://www.nigc.gov/commission/regulatory-review-2005-2010>.

- Relocate the surveillance requirements of § 1(c)(1)-(2) into the Surveillance section 14(c)(5).
- Delete extra period at end of § 1(c)(6).
- Review TAC 2010 recommended changes, such as the inclusion of MICS for keno contests and/or tournaments, and the deletion of § 1(k)(1)-(3) to be replaced with a subsection that states "Maintenance of the keno equipment may be performed by either authorized keno personnel or outsourced to an appropriate entity approved by the TGRA."

§ 2 What are the minimum internal control standards for pari-mutuel wagering?

- Review TAC 2010 recommendations including controls governing the voiding of a betting ticket and transferring a cash bank from one agent to another at shift change.
- § 2(b)(8)(ii) prohibits the gaming operation from issuing "refunds" but § 2(e)(vii) specifically identifies "Tickets refunded" in the computer report standards, and keno players are permitted to receive a refund on multi-game tickets not drawn or cancelled. This new prohibition is not clear and should be revised.

§ 3 What are the minimum internal control standards for table games?

- Review TAC 2010 recommendations, which include separating "fill" from "credit" standards, provide a distinction between manual and computer issued slips, and provide updates to game statistical fluctuation results and market and rim credit standards.
- § 3(b) – Include "boxperson" or "pit supervisor" as authorized to deposit fill slip or credit slip in drop box.
- § 3(b)(12) – Clarify that this section requires a 3-part slip.
- § 3(b)(12)(i) – Recommend revising as follows to reflect best practice of cage review before putting the slip into the drop box:

"Two parts of the credit slip must be transported by the runner to the pit. After signatures of the runner, dealer, and pit supervisor are obtained, one copy must be placed next to the drop box on the table in plain view. The original must accompany transport of the chips, tokens, markers, or cash equivalents from the pit to the cage for verification and signature of the cashier. The runner will bring the original credit slip back to the table. Then both parts of the slip must be deposited in the table game drop box."

- § 3(e)(3)(i) – "This standard must not apply where playing cards or dice..." Replace "must not" with "does not".

- § 3 (h)(1)(ii) – Define or provide examples of an appropriate "independent source" when referring to determining a player's credit limit.
- § 3(h)(1)(xii) – Include "pit supervisor" as authorized to remove Lammer buttons.
- § 3(h)(1)(viii) – Recommend revising as follows to clarify that all documentation in the record, and not just the name of the person receiving the credit under § 3(h)(1)(viii)(B), must be legible: "A legible record must be maintained that details the following..."
- § 3(h)(1)(viii)(D)-(E) – Distinguish between "extension" and "issuance" of credit.

§ 4 What are the minimum internal control standards for gaming machines?

- Correct formatting error – draft includes two § 4(f) sections instead of a § 4(g). The labelling of §§ 4(g)–(m) will need to be updated accordingly.
- Review TAC 2010 recommendations, which include updated sections on computerized casino accounting systems, and wagering account and reconciliation – these could also be placed in the patron account and cashless system standard, but wherever placed they should be incorporated in the Guidance to reflect current practice.
- Section 4 should also address wireless/mobile gaming.
- Review use of term "jackpot", "prize" and "fill system" throughout.
- Review use of term "cash" throughout standard.
- § 4(c) – Insert the word "Jackpot" before "Prize payout" in the title, which appears to be the intent of this section. Similarly, insert the word "Jackpot" before "Payout forms" in § 4(c)(4), and substitute for the word "cash" in § 4(c)(5)(iii). Conforming changes should be made throughout the rest of the section.
- § 4(c)(6) – Review and revise to ensure the computerized system for automated payouts both records and verifies the win.
- § 4(c)(6)(i) – Clarify whether "For payouts," refers to all payouts, manual payouts, and/or automated payouts. Because § 4(c)(6)(ii) specifically refers to "automated payouts," while § 4(c)(6)(i) does not, the intended scope of the standard is not clear.
- § 4(c)(7)(ii) – Unclear if "manual" means that the system is not recording the jackpot. If it is not, then the thresholds should be much lower.
- § 4(c)(8)(iv) – Insert the following at the end of this provision: "unless an automated gaming system is substituted for one authorization as per (7) (iv) of this section."
- § 4(d) – Insert the following after "controls": "for gaming machine booths and change banks."
- § 4(e)(1) – Clarify definition of "gaming machine system components" and make sure that terminology is consistent (for example, "gaming machine components" versus "gaming machine system components").

- § 4(e)(4) – Clarify definition of "system" as it relates to software. For example, does it include SDS software?
- § 4(e)(8) – Clarify whether this means each individual machine needs to be approved before being placed on the floor. Recommend changing to: "TGRA shall approve all gaming machine vendors and shall develop standards for putting machines on the gaming floor."
- § 4(f)(2) – Recommend revising standard to allow operations ability to remove components and repurpose or bring back onto floor at TGRA's discretion. Components are often removed temporarily for maintenance or other purposes, and retiring or removing such components rather than repurposing them would be unduly burdensome.
- § 4(f)(2)(ii) – Replace term "purge" with "uninstall" and clarify that this requirement does not apply if the software is owned by the Tribe.
- § 4(g) – The TAC draft updates the standards for evaluating theoretical and actual hold percentages while the draft Guidance simply uses the current Part 542 language. This section should be reviewed and updated.
- § 4(i)(2) – Either delete last phrase "directly from the gaming machine" or define term "paid" or use a different term or phrase. As drafted, it is not clear whether "paid" refers to added credit or actual payout in the traditional sense.

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

- § 5(a) – Eliminate the references to a supervisory agent for player tracking and promotions, as a specific agent is not necessary to supervise these functions.
- § 5(c)(1) & (2) – Change to the following in order to clarify that this is referring to modifications to the general playing tracking system and individual player tracking accounts. If referring to the computer system itself, those changes would be done by the IT department:
 - (1) Changes to the automated player tracking systems, promotion, and external bonusing system parameters – which control features such as the awarding of bonuses, the issuance of cashable credits, non-cashable credits, coupons, and vouchers – must be documented and performed under the authority of management personnel and by a department independent of the department requesting the change.
 - (2) Changes to individual player tracking accounts other than through an automated process related to actual play must be sufficiently documented (including substantiation of reasons for increases) and authorized or performed by supervisory personnel. An addition, deletion, or change to individual player tracking accounts must be authorized by supervisory personnel and documented and randomly

verified by accounting or audit personnel on a quarterly basis.

§ 6 What are the minimum internal control standards for complimentary services or items?

- § 6(a) Revise this section to read: "Each TGRA shall approve and maintain procedures for the authorization of all complimentary programs and services that shall include appropriate levels of supervision and authority."

§ 7 What are the minimum internal control standards for patron deposit accounts and cashless systems?

- The Guidance should address wireless gaming and cashless systems including encryption and authentication requirements and a standard regarding patron deposit account reconciliation.
- § 7(c)(3) – Include language requiring documentation of identity of agent who performed the patron deposit, withdrawal, and/or adjustment as part of the transaction record for greater accountability.
- § 7(c)(5) – Clarify that patron deposit account transaction records may be available either electronically or as a hard copy.

§ 8 What are the minimum internal control standards for lines of credit?

- The standards should address how and when lines of credit may be applied to patron accounts in a cashless system.
- § 8(a) – After "Supervision must be provided as needed for" insert "the authorization, extension, or modification of".
- § 8(b)(1)(viii)(B) – Include payments made in person. If the intent of the Guidance is to prevent the misappropriation of funds by a gaming operation to receive and maintain "payments made by mail" in separate departments, then the independent department requirement should also apply in other instances where forms of payment are physically handled by a department, such as in person payments by cash/check.

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

- The Guidance on § 9 should also address patron accounts and cashless systems.
- § 9(d)(2) – Include language requiring documentation of identity of agent who filled cassette. Include language clarifying that the cassette must be "verified independently by at least one agent who was not involved in the initial count and fill of the currency cassette,".

- § 9(g) – Include a standard for program where a patron exchanges coupons or vouchers for chips, tokens, or value in another external coupon program.

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

- These standards should be reviewed for technological changes; require the use of multi-factor authentication; provide distinction between "agent", "authorized agent", and "independent agent"; and define "gaming system" and "gaming system components".
- §10 (f)(1) – Insert "computer or automated" before "systems".
- § 10 (j)(1)(i) – Define "critical information technology systems".
- § 10 (j)(4) – Insert "Data" before "recovery".

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

- Change references to "player interface" to "gaming machine"; and language for each subsection should be identical to similar subsections throughout.
- § 11(d)(6) – Include "or a gaming operation may elect to utilize a single shift for a gaming day and a single drop box for the gaming day".
- § 11(f)(5) – Insert "at a minimum," before "before the first count begins,".
- § 11(f)(8) – Add "In the event the rejected currency cannot be assigned to a table, it shall be posted to the first available table with a notation".
- § 11(f)(9) – Insert the following:
 - (a) Orders for fill/credit, if applicable, shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.
 - (b) Pit marker issue and payment slips, if applicable, removed from the table game drop boxes shall either be:
 - (i) Traced to or recorded on the count sheet by the count team; or
 - (ii) Totaled by shift and traced to the totals documented by the computerized system.
 - (c) Accounting personnel shall verify the issue/payment slip for each table is accurate.
 - (d) The opening/closing table inventory forms, if applicable, shall either be:
 - (i) Examined and traced to or recorded on the count sheet; or
 - (ii) If a computerized system is used, accounting personnel can trace the opening/closing table inventory forms to the count sheet. Discrepancies shall be investigated with the

findings documented and maintained for inspection.

- § 11(f)(15) – Add "All documentation shall be retained for a period of time to be determined by the TGRA."
- § 11(h) – Insert "In the event that a gaming operation elects to count the currency cassettes and/or financial instruments storage components from a kiosk in the count room," before the second sentence.

§ 12 What are the minimum internal control standards for auditing revenue?

- Include a standard for the cage.
- Review TAC 2010 recommended changes in their proposed Part 542.50 updating language regarding keno, pari-mutuel, table games, and gaming machines, deleting obsolete terms such as "deskman," and addressing server based and non-server based games.²
- § 12(d)(3)(c) – Include the following subsections:
 - (1) All table games documents, including voids, shall be traced by gaming day and serial number to the system generated Table Game Reports and be reviewed for accurate completion of all data/information and for proprietary signature.
 - (2) All table games documents traced by gaming day must reflect the total fills, credits, markers, and repayments as recorded by the cage and reconciled by comparison of the cage copies and traced to the cage accountability sheets.
- § 12(d)(1) – The Guidance adds new "daily" and "weekly" requirements for the keno audit. The requirements seem arbitrary and unnecessary. Recommend deleting the new timeframes and deferring to the TGRA to set reasonable timeframes. Such a change would be consistent with the Commission's removal of other specific timeframes in Part 542 in favor of deferring to the TGRA.

§13 What are the minimum internal control standards for audit and accounting?

No comments.

§ 14 What are the minimum internal control standards for surveillance?

- Include surveillance language for keno currently located in the Guidance at § 1(c)(1)-(2).

² "Proposed Part 542.50 Revenue Audit (8-23-10)," [https://www.nigc.gov/images/uploads/NIGC%20Uploads/MICS/Proposed%20MICS%20Class%20III/Proposed%20Part%20542.50%20Revenue%20Audit%20\(8-23-10\).pdf](https://www.nigc.gov/images/uploads/NIGC%20Uploads/MICS/Proposed%20MICS%20Class%20III/Proposed%20Part%20542.50%20Revenue%20Audit%20(8-23-10).pdf)

- Include standard for "Fills and Credits".
- Define "designated camera" to include all fixed and pan, tilt zooms (PTZs).
- Insert standard to address progressive table games and coverage of progressive table meters.

§ 15 What are the minimum internal control standards for controlled keys?

- Change references from "player interface" to "gaming machine".
- § 15(c)(1) – Insert subsections to address "bill acceptor canister", "bill acceptor canister contents"; and "computerized key security systems".
- § 15(c)(2)(ii) – Insert "(3)" after ", at least three".
- § 15(c)(2)(ii) – To clarify that a reduced number of count team agents are need for Tier C operations with three tables or fewer, we suggest replacing the second sentence with the following: "For Tier C operations with four tables or more, at least three (3) count team agents are required to be present at the time count keys are issued for the count. For Tier C operations with three tables or fewer, at least two (2) count team agents are required to be present at the time count keys are issued for the count."

General Changes –

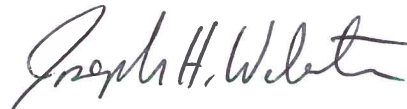
- Include standards for Class III "wireless gaming" throughout the Guidance as appropriate.
- Include a definitions section for Part 542 or definitions for each individual section, as appropriate.
- Ensure consistency in terminology – for example, either use "tribal regulatory gaming agency" or "TGRA" throughout; choose "agent" "employee", "personnel", or "staff member" and use single term throughout; other examples include "prize payout/payout/manual/hand payout", "patron/customer", "ticket/voucher", and "ball/object".
- Review each reference to "must" throughout the standards.
- Define "system" throughout.
- Define "gaming machine system components" to include both software and hardware.

Conclusion

On behalf of the Seminole Tribe of Florida, we appreciate the opportunity to comment on the Commission's proposed Guidance for Class III MICS.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP



By: Joseph H. Webster

cc: Jim Shore, Esq.