



**THLOPTHLOCCO TRIBAL TOWN**  
**Federal Charter 1938 — Creek Tribe**  
**P.O. Box 188 • Okemah, Oklahoma 74859-0188**  
**(918) 560-6198/(866) 988-8696 • Fax (918) 560-6195**

June 22, 2015  
Ms. Vannice McCoy Doulou  
National Indian Gaming Commission  
U.S. Department of Interior  
1849 C. St. NW, Mail Stop # 1621  
Washington, DC 20240

RE: Request for Comment Regarding Proposal to Withdraw Part 542 & Replace With Non-Mandatory Guidance

Dear Mrs. Doulou,

The Thlopthlocco Tribal Town, a federally-recognized Indian Tribe is pleased to have the opportunity to comment on the National Indian Gaming Association's (NIGC) proposal to withdraw the current Class III minimum internal control standards regulations (MICS) at 25 C.F.R. Part 542 (Part 542), and replace the regulations with non-binding guidelines. Although we commend the NIGC for formulating a plan to update the arguably out-of-date Class III MICS, the Thlopthlocco Tribal Town cannot support the withdrawal of the Part 542 at this time.

The Thlopthlocco Tribal Town is authorized to conduct Class III gaming pursuant to an approved compact with the State of Oklahoma. The standards in Part 542 have had an important and positive impact on our Tribe, as well as the Indian gaming industry. Since 1999, Part 542 has provided as a uniform and solid baseline for tribes to issue their own tribal internal control standards. Part 542 facilitates regulatory compliance and shortens the learning curve for regulators recruited from another state or tribal jurisdiction. Many of the tribal-state compacts (or their amendments) that make Class III gaming possible under the Indian Gaming Regulatory Act (IGRA) incorporate the MICS. Repealing Part 542 would negatively impact our Tribe and many others that have relied upon the federal Class III MICS, as well as undermined the benefits of a federal industry-wide uniform standard.

Withdrawing Part 542 may invalidate material sections of many gaming compacts. According to the Government Accountability Office (GAO), three states have compacts that require compliance with Part 542 and nine states have compacts that require MICS at least as stringent as those in Part 542. Withdrawing the section removes the clear and comprehensive MICS on which numerous states and tribes have negotiated compacts.

The Thlopthlocco Tribal Town and the State of Oklahoma agreed to a baseline level of control that expressly references Part 542. The approved compact provides, "All enterprises and facilities shall comply with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards (25 C.F.R., Part 542)." The compact further states, "subsections of this Compact shall remain in full force and effect, unless the invalidated provision, section or subsection is material." The compact does not grandfather the MICS at the time the compact was signed - the reference is tied to the currentness of Part 542. Accordingly, any modification of Part 542 is the equivalent of erasing a material term on which our Tribe and the State conditioned their agreement.

Removing Part 542 will financially strain tribal governments. Tribal governments regularly adopt the MICS in their gaming ordinances, which are subsequently approved by the NIGC as required by § 2710(b)(1)(B) of

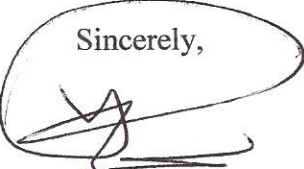
the IGRA. Any modification to Part 542 will undoubtedly require tribes to amend their gaming ordinances and seek NIGC approval, both of which require time and money.

Lastly, Thlopthlocco Tribal Town recognizes the issues presented by the Colo. River Indian Tribes v. Nat'l Indian Gaming Com'n, 383 F.Supp.2d 123, 138 (D.D.C. 2005) decision. In CRIT, the court found the NIGC lacked authority to adopt mandatory internal control standards or Class III gaming and also to impose MICS regulations on tribes. Currently, the NIGC is maintaining the federal MICS for those tribes who have voluntarily relied upon Part 542 by adopting and incorporating the MICS into a regulation, tribal-state compact, or tribal gaming ordinance, and providing regulatory oversight where chosen and agreed to by tribes.

If Part 542 is withdrawn, states may interpret tribal-state gaming compacts in a manner that requires the state to devise and enforce its own minimum internal control standards, thus providing a backdoor for intrusive state regulation. A more practical approach is to maintain the MICS in Part 542 and create additional non-binding guidelines to which tribes and states could look to streamline gaming operations. Given that many compacts have adopted Part 542 as a baseline, tribes would benefit from new non-binding recommendations in addition to their compact requirements.

For these reasons, the Thlopthlocco Tribal Town supports the NIGC's continued provision of minimum internal control standards for Class III gaming and expressly requests Part 542 remain in place at this time.

Sincerely,



Ryan Morrow  
Town King

Thlopthlocco Tribal Town

---

<sup>i</sup> U.S. Gov't Accountability Office, GAO-15-355, Indian Gaming Regulation and Oversight by the Federal Government, States, and Tribes (2015).

<sup>ii</sup> Model Tribal Gaming Compact Between the Thlopthlocco Tribal Town and the State of Oklahoma, Part 5(B).

<sup>iii</sup> *Id.* at Part 13(A).