

applicable regulations of the Commission, and any additional tribal standards adopted by the tribal gaming regulatory authority. The program must include the following elements:

(1) Determination by the tribal gaming regulatory authority that electronic, computer, or other technologic aids, along with the games played thereon, required to be certified as meeting the standards established by this part, have been tested and certified by a laboratory recognized under § 546.8(f) of this part as meeting all applicable Class II standards before the equipment is placed for use in the gaming operation.

(2) Internal controls that prevent unauthorized access to game control software to preclude modifications that would cause the electronic, computer, or other technologic aid and the games played therewith to potentially fail to meet the required standards.

(3) Periodic testing of all of the servers and a random sample of the electronic components and software to validate that the equipment and software continue to meet the required standards and are identical to that tested and certified by the testing laboratories.

(b) In authorizing particular Class II gaming within a gaming facility it licenses, a tribal gaming regulatory authority shall, at a minimum, require a finding and certification by an independent gaming testing laboratory, recognized by the tribal gaming regulatory authority under this part, that each electronic, computer, or other technologic aid used in connection with such gaming meets the standards of this part. If the tribe's gaming regulatory authority has established classification standards that apply additional criteria, the tribe shall require additional findings consistent with the additional standards as a condition to authorizing a technologic aid for use and play in the gaming facilities it regulates.

(c) The tribal gaming regulatory authority shall maintain a current listing of each electronic, computer, or other technologic aid including servers, player interfaces, and each game program it has authorized for play under the classification standards governed by this part, indicating that all such games meet the classification standards established by this part and any additional standards established by the tribe. The listing will show the asset identification number(s) of each electronic, computer, or other technologic aid including servers and player interfaces and the manufacturer's name; version number(s), game theme titles and other unique identifier(s), of the game operating software, for the games authorized for play as

documented in a certification report(s) issued by a testing laboratory.

§ 546.10 When must a tribe comply with this part?

(a) Tribes must comply with this part when placing Class II electronic, computer, or other technologic aids governed by this part in operation after [Insert 120 days after effective date].

(b) Tribes using Class II technologic aids governed by this part on or before [Insert 120 days from the effective date], may continue to operate those electronic, computer or other technologic aids for a period of five years from the same date. During this period technologic aids may be sold, leased, or otherwise transferred to another tribe.

(c) Individual hardware components of technologic aids governed by this part and in use on or before [Insert 120 days from effective date] may be repaired or replaced to ensure the proper functioning, security, or integrity of the game. All new software versions must be certified under this part except for changes made to ensure the proper functioning, security, or integrity of the game and changes that will not detract from the games overall compliance with the requirements of this part.

(d) On or before [Insert 120 days from the effective date], each tribal gaming regulatory authority shall submit to the Commission the list required by § 546.9(c) of this part.

(e) Nothing in this section is intended to authorize the continued operation of uncompact Class III machines that allow a player to play against the machine.

§ 546.11 What is the effect on this part if a section is declared invalid?

If any provision of this part be declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this part.

Dated: October 17, 2007.

Philip N. Hogen,

Chairman.

Cloyce V. Choney,

Commissioner.

Norman H. DesRosiers,

Commissioner.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 542 and 543

RIN 3141-AA37

Minimum Internal Control Standards for Class II Gaming

AGENCY: National Indian Gaming Commission (“NIGC” or “Commission”), Interior.

ACTION: Proposed rule.

SUMMARY: In response to the inherent risks and the need for effective controls in tribal gaming, the Commission, in January 1999, developed minimum internal control standards (MICS). Since their original implementation, it has become obvious that the MICS require technical adjustments and revisions so that they continue to be effective in protecting tribal assets, while still allowing tribes to utilize technological advances in the gaming industry. The current MICS are specific to the conduct of a wagering game without regards to whether the game is classified as a Class II or Class III game. This proposed rule is intended to supersede certain specified sections of the current MICS and replace them with a new part titled Minimum Internal Control Standards for Class II Gaming.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail Comments to “Comments on Class II MICS” National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Comments may be transmitted by facsimile to 202-632-7066, or mailed or submitted to the above address. Comments may also be submitted electronically to bingo_mics@nigc.gov.

FOR FURTHER INFORMATION CONTACT: Joe H. Smith, Director of Audits, telephone 202-632-7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

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I. Development of the Proposed Rule

On February 22, 2007, the Commission held a meeting of its Classification Standards Advisory Committee. At this meeting the tribal representatives on the committee presented to the Commission a final draft of descriptive technical standards for Class II gaming. As the technical standards were being developed the Commission realized that many of the provisions considered for inclusion were not technical standards but rather internal controls. After reviewing the final technical standards draft, the Commission decided, that for the technical standards to be effective, it would have to make changes to its existing minimum internal control standards (MICS). The updating of MICS will be done in phases with the first phase limited to those areas that had a direct impact on the technical standards, specifically, bingo and other games similar to bingo.

To complete this task, the Commission requested that its standing MICS Advisory Committee embark on an aggressive schedule to complete revisions to MICS to be published concurrently with the publishing of technical standards. Additionally, the Commission requested that members of the Classification Standards Advisory Committee assist in drafting MICS revisions to ensure that any changes were consistent with the draft technical standards. During a MICS Advisory Committee meeting held on June 25, 2007, in Dallas, Texas, tribal representatives on the MICS Committee urged the Commission to adopt a format for the new MICS regulations different than the one originally proposed by the Commission. This alternative format focused on functions within a gaming facility rather than game type. Following this meeting the Commission decided to go forward with the suggested alternative format.

The tribal representatives of the MICS Committee formed a working group, referred to by them as the Tribal Gaming Working Group (TGWG), to solicit information from tribal regulators, operators, and manufacturers. Tribal representatives requested that they be allowed time to consult with this group before providing advice to the Commission. The Commission agreed and between June and September 2007, the TGWG met several times in person and conducted numerous conference calls. The Commission did not participate in the establishment of this working group. However, Commission staff were invited to attend all of the meetings and participate in some of the

conference calls. The Commission felt it was important to make staff available to this working group to answer questions about the goals of the Commission in drafting regulation revisions. Commission staff participated in this capacity during in-person meetings on July 15, 2007, in Seattle, Washington, on July 24, 2007, in Arlington, Virginia, and on August 13 and 27, 2007 in Las Vegas, Nevada.

The Commission is grateful to the tribal representatives on the MICS Advisory Committee and to those who assisted the tribal representatives for all of their hard work and for the high quality draft minimum internal control regulations that resulted from their efforts. The proposed rule is largely adopted from the final draft MICS, delivered to the Commission by the tribal representatives of the Advisory Committee on September 4, 2007.

The full committee including the Commission, met to discuss the draft on September 12, 2007, in Arlington, Virginia. During this meeting the Commission raised questions about the draft regulations and received responses from the tribal representatives. The Commission also allowed members of the audience to make comments on the draft MICS as well as the process for developing them.

There are places, of course, where the Commission felt it could not accept the MICS Committee's recommendations. As such, the Commission has proposed rules more stringent than the tribal representatives to the Advisory Committee would have preferred. Highlights of the new part, as well as a discussion of Advisory Committee recommendations the Commission did not accept are included below.

II. MICS Structure

Currently, MICS for Class II and Class III gaming are contained in 25 CFR 542. As there are some essential differences between Class II and Class III gaming, the Commission decided that there should be separate MICS for Class II and Class III gaming. Therefore, the Commission is proposing a new part 543 that would be limited to Class II gaming.

The Commission had originally planned on mimicking the structure of part 542 in the drafting of new part 543. The controls in part 542 are segregated by the type of Class II game they apply to or by an area within the gaming operation. During the drafting process the MICS Advisory Committee recommended that the Commission adopt an alternative structure for the new part. The Commission has accepted the Advisory Committee's

recommendation to structure the proposed rule based on the conceptual proposition that one set of controls can be made applicable to all types and forms of the game of bingo and other games similar to bingo whether the game is played manually or electronically.

While it will eventually be necessary to bring many of the controls currently contained in part 542 into new part 543, in order to have separate and independent MICS for Class II and Class III gaming, the Commission felt it was necessary to structure this migration in phases. The most immediate concern was the controls related to bingo and other games similar to bingo. These controls were addressed first so that the current MICS would not conflict with the new proposed technical standards.

Accordingly, the proposed rule addresses only the game of bingo, other games similar to bingo, and directly related information technology controls. Many of the provisions of part 542 will remain effective and applicable to class II games until such time as replacement regulations are enacted by the Commission.

The second phase of this process of developing a comprehensive set of Class II MICS will address forms of Class II gaming other than bingo and games similar to bingo, such as pull-tabs and poker, and will codify the rules governing the processes that support the games, such as drop and count, cage, credit and internal audit. Furthermore, just as with part 542, the concept of tier classification will be preserved, so that smaller gaming operations will be held to a set of MICS better tailored to the risks found in small gaming operations and the resources available for addressing them.

III. Tier Structure

The proposed rule allows an exemption, commonly referred to as the small and charitable exemption, for gaming operations earning less than \$1 million in gross gaming revenue. A proposal was made to increase the threshold from \$1 million to \$3 million. The basis for the proposal was the premise that the higher threshold would be more consistent with other gaming jurisdictions, would acknowledge that smaller gaming operations may not have the resources to invest in the specified controls and, in all likelihood, the inherent risk associated with their games do not justify them. The Commission appreciates that the burden of compliance may be heavier on smaller gaming operations than larger ones that may have greater resources to allocate to internal controls. The

Commission has concluded that the tier structure mitigates impact on small operations. Therefore, the Commission has decided to keep the \$1 million dollar ceiling for the small and charitable gaming exemption.

IV. Small and Charitable Gaming Operations

Small and charitable operations are required to adopt tribal internal controls that, at a minimum, protect the integrity of the games offered and safeguard the assets used in connection with the operation. The Commission has added a requirement that the gaming operations must create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

V. Tribal Internal Control Standards

The tribal representatives on the Advisory Committee proposed that a regulation be included stipulating that only applicable standards shall apply to the tribe's gaming operation(s). The Commission disagrees. The proposed new section 543.3(c) addresses the issue by requiring that the tribe's gaming regulatory body adopt tribal internal control standards that equal or exceed those set forth in the proposed rule. Furthermore, within the preamble to part 542 final rule, published June 2002, the question was addressed as follows, "Indian gaming is and always will be very diverse. The Commission therefore recognizes that developing one set of MICS to address all situations in every tribal gaming operation is not possible. It is not intended for Tribes to simply adopt these MICS verbatim as tribal internal control standards. Instead, Tribal gaming regulatory authorities should utilize the following to develop their own internal control standards as provided for in section 542.3(c) of this part."

VI. Alternative Procedures

The tribal representatives on the Advisory Committee proposed that a regulation be adopted that would authorize the tribal gaming regulatory authorities to approve without federal concurrence, alternative procedures to those required by the new part. The Commission is not prepared to adopt such a procedure at this time. Consequently, the Commission continues to rely on the variance process contained in 25 CFR 542.18.

VII. Agents

The proposed rule utilizes the term "agent" in many places throughout part 543. In today's complex gaming environment it is not uncommon for support functions such as an internal

audit to be outsourced, and vendors to actively participate in the maintenance of gaming related equipment and software programs. MICS, therefore, need to account for such variables. This definition is not intended, however, to allow persons to circumvent the management contract approval process or the need for licenses and background investigations for primary management officials and key employees.

VIII. Smart Cards

The present definition of smart cards contained in part 542.13 is unclear. Essentially, all smart cards are not prohibited by the MICS; only those that possess the sole source of the patron account data. If the card is accessing the account data within the cashless gaming system or the system maintains a redundant record or the card has a specified value that cannot change, used merely to transfer wagering credits to a device, the smart card is not prohibited. Accordingly, the Commission has specified which smart cards are prohibited.

IX. Manual Payouts

Proposed section 543.7(c) identifies controls applicable to manual payouts and short pays. Prize payouts over a predetermined amount, not to exceed \$50,000 dollars, would require the signatures of two authorized individuals, one of whom must be a supervisor. The Commission has determined that it is an adequate control for the associated risk.

X. Promotional Prize Payouts

Proposed section 543.7(c) also provides standards applicable to promotional prize payouts. The Commission considers these types of payouts to be of a high risk. Accordingly, the signatures of two persons are required to authorize payouts exceeding \$599 dollars.

XI. Patron Account Transaction Record

Proposed section 543.7(g) requires gaming operations to make available to the patron or tribal gaming regulatory authority, upon request of either, a record of the transactions occurring within a patron's wagering account.

XII. Audit Tasks to be performed at Relevant Periods

Proposed section 543.7(i) includes standards pertaining to the accounting and auditing function associated with the game of bingo and other games similar to bingo. The auditing tasks represent procedures deemed by the MICS Advisory Committee to be necessary to effectively account for and

detect anomalies in server-based games' performance data. The established gaming jurisdictions provide little guidance on what minimum controls should be required by a gaming oversight body. The MICS Advisory Committee recognized that the accepted industry practice of comparing the actual performance of a gaming machine to a predetermined criterion, theoretical hold, has an awkward, if not meaningless, application to the server-based game of bingo or other games similar to bingo. The conclusion is based upon the greater volatility of a bingo game, as compared to a random number generator possessing a predetermined cycle, even if the game is affected by skill. Consequently, to mitigate the risk of foregoing the typical analysis process, alternative auditing tasks were identified and are recommended.

XIII. Inter-tribal Prize Pools

Proposed section 543.7(i) contains standards pertaining to the accounting and auditing function associated with the game of bingo and games similar to bingo. Included are controls specific to the data that a vendor would provide to a tribe relevant to the operation and maintenance of a linked prize pool. Although the proposed controls are more abbreviated than the corresponding standards in existing part 542 pertaining to linked electronic games and host and remote host locations, the proposal appears to satisfy the overall regulatory objectives of requiring the vendor to share game performance data with the participating individual locations.

XIV. Information Technology

The standards proposed at new § 543.16 reflect only those controls directly related to and deemed necessary to augment the controls pertaining to the game of bingo and other games similar to bingo. During the second phase of this overall process of enacting MICS for class II gaming, it is anticipated that additional standards will be added.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million dollars or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. The Commission has determined that the cost of compliance with this regulation shall be minimal for several reasons. First, part 542 has been in effect since 1999 and requires that all Indian gaming operations be in compliance with the MICS. Second, considering that the Indian gaming industry spent approximately \$419 million in 2006 on regulation and given the testimony of various tribal and industry leaders, it can be assumed that all gaming operations are compliant with part 542 or more stringent tribal internal control standards. Finally, given the widespread compliance with part 542, the cost of complying with new part 543 should be minimal.

Paperwork Reduction Act

This proposed regulation requires an information collection under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as did the regulation it replaces. There is no change to the paperwork requirements created by this rule.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

List of Subjects in 25 CFR Parts 542 and 543

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, the Commission proposes to amend its regulations at 25 CFR chapter III as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

1. The authority citation for part 542 continues to read as follows:

Authority: 25 U.S.C. 2702(c), 2706(b)(10).

§ 542.7 [Removed and Reserved]

2. Section 542.7 is removed and reserved effective [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 542.16 [Removed and Reserved]

3. Section 542.16 is removed and reserved effective [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

4. Add new part 543 to read as follows:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

Sec.

543.1 What does this part cover?

543.2 What are the definitions for this part?

543.3 How do I comply with this part?

543.4–543.5 [RESERVED]

543.6 Does this part apply to small and charitable gaming operations?

543.7 What are the minimum internal control standards for bingo?

543.8–543.15 [RESERVED]

543.16 What are the minimum internal controls for information technology?

Authority: 25 U.S.C. 2701 *et seq.*

§ 543.1 What does this part cover?

This part, along with §§ 542.14 through 542.15, 542.17 through 542.23, 542.30 through 542.33, and 542.40 through 542.43 of this chapter establishes the minimum internal control standards for the conduct of Class II bingo and other games similar

to bingo on Indian lands as described in 25 U.S.C. 2701 *et seq.* Throughout this part the term bingo includes other games similar to bingo.

§ 543.2 What are the definitions for this part?

The definitions in this section shall apply to all sections of this part unless otherwise noted.

Account access component, A component within a Class II gaming system that reads or recognizes account access media and gives a patron the ability to interact with their account.

Account access medium, A magnetic stripe card or any other medium inserted into, or otherwise made to interact with, an account access component in order to give a patron the ability to interact with an account.

Accountability, All financial instruments, receivables, and patron deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Actual bingo win percentage, The percentage calculated by dividing the bingo win by the bingo sales. Can be calculated for individual prize schedules or type of player interfaces on a per-day or cumulative basis.

Agent, An employee or licensed person authorized by the gaming operation, as approved by the tribal gaming regulatory authority, designated for certain authorizations, decisions, tasks and actions in the gaming operation. This definition is not intended to eliminate nor suggests that appropriate management contracts are not required, where applicable, as referenced in 25 U.S.C. 2711.

Amount in, The total value of all financial instruments and cashless transactions accepted by the Class II gaming system.

Amount out, The total value of all financial instruments and cashless transactions paid by the Class II gaming system, plus the total value of manual payments.

Bingo paper, A consumable physical object that has one or more bingo cards on its face.

Bingo sales, The value of purchases made by players to participate in bingo.

Bingo win, The result of bingo sales minus prize payouts.

Cage, A secure work area within the gaming operation for cashiers which may include a storage area for the gaming operation bankroll.

Cash equivalents, The monetary value that a gaming operation may assign to a document, financial instrument, or anything else of representative value other than cash. A cash equivalent includes, but is not limited to, tokens,

chips, coupons, vouchers, payout slips and tickets, and other items to which a gaming operation has assigned an exchange value.

Cashless system, A system that performs cashless transactions and maintains records of those cashless transactions.

Cashless transaction, A movement of funds electronically from one component to another, often to or from a patron deposit account.

Class II game, A game as described in 25 U.S.C. 2703(7)(A).

Class II Gaming System, All components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games including accounting functions mandated by part 547 of this chapter.

Commission, The National Indian Gaming Commission.

Count, The act of counting and recording the drop and/or other funds.

Count room, A secured room where the count is performed.

Count team, Agents who perform the count.

Coupon, A financial instrument of fixed wagering value, usually paper, that can only be used to acquire non-cashable credits through interaction with a voucher system. This does not include instruments such as printed advertising material that cannot be validated directly by a voucher system.

Drop, The total amount of financial instruments removed from financial instrument storage components in Class II gaming systems.

Drop period, The period of time that occurs between sequential drops.

Electronic funds transfer, A transfer of funds to or from a Class II gaming system through the use of a cashless system, which are transfers from an external financial institution.

Financial instrument, Any tangible item of value tendered in Class II game play including but not limited to bills, coins, vouchers, and coupons.

Financial instrument acceptor, Any component that accepts financial instruments.

Financial instrument storage component, Any component that stores financial instruments.

Game software, The operational program or programs that govern the play, display of results, and/or awarding of prizes or credits for Class II games.

Gaming Equipment, All electronic, electro-mechanical, mechanical or other physical components utilized in the play of Class II games.

Independent, The separation of functions so that the person or process

monitoring, reviewing or authorizing the controlled transaction(s) is separate from the persons or process performing the controlled transaction(s).

Inter-tribal prize pool, A fund to which multiple tribes contribute from which prizes are paid to winning players at a participating tribal gaming facility and which is administered by one of the participating tribes or a third party, (e.g. progressive prize pools, shared prize pools, etc.).

Internal audit, means persons who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship, as the internal audit department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Internal audit personnel may provide audit coverage to more than one operation within a tribe's gaming operation holdings.

Kiosk, A self serve point of sale or other component capable of accepting or dispensing financial instruments and may also be capable of initiating cashless transactions of values to or from a patron deposit account or promotional account.

Manual payout, The payment to a player of some or all of a player's accumulated credits (e.g. short pays, cancelled credits, etc.) or an amount owed as a result of a winning event by an agent of the gaming operation.

MICS, Minimum internal control standards in this part.

Non-cashable credit, Credits given by an operator to a patron; placed on a Class II gaming system through a coupon, cashless transaction, or other approved means; and capable of activating play but not being converted to cash.

Patron deposit account, An account maintained on behalf of a patron, for the purpose of depositing and withdrawing cashable funds for the primary purpose of interacting with a gaming activity.

Patron deposits, The funds placed with a designated cashier by patrons for the patrons' use at a future time.

Player interface, Any component(s) of a Class II gaming system, including an electronic or technological aid (not limited to terminals, player stations, handhelds, fixed units, etc.) that directly enable(s) player interaction in a Class II game.

Player tracking system, A system typically used by a gaming operation to record the amount of play of an individual patron.

Prize payout, A transaction associated with a winning event.

Prize schedule, A set of prizes available to players for achieving pre-designated patterns in Class II game(s).

Program Storage Media, An electronic data storage component, such as a CD-ROM, EPROM, hard disk, or flash memory on which software is stored and from which software is read.

Progressive prize, A prize that increases by a selectable or predefined amount based on play of a Class II game.

Promotional account, A file, record, or other data structure that records transactions involving a patron or patrons that are not otherwise recorded in a patron deposit account.

Promotional prize payout, Merchandise or awards given to players by the gaming operation which is based on gaming activity.

Random number generator (RNG), A software module, hardware component or combination of these designed to produce outputs that are effectively random.

Server, A computer which controls one or more applications or environments.

Shift, An eight-hour period, unless otherwise approved by the tribal gaming regulatory authority, not to exceed 24 hours.

Short pay, The payment of the unpaid balance of an incomplete payout by a player interface.

Tier A, Gaming operations with annual gross gaming revenues of more than \$1 million but not more than \$5 million.

Tier B, Gaming operations with annual gross gaming revenues of more than \$5 million but not more than \$15 million.

Tier C, Gaming operations with annual gross gaming revenues of more than \$15 million.

Tribal Gaming Regulatory Authority, The entity authorized by tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

Voucher, A financial instrument of fixed value that can only be used to acquire an equivalent value of cashable credits or cash through interaction with a voucher system.

Voucher System, A component of the Class II gaming system or an external system that securely maintains records of vouchers and coupons; validates payment of vouchers; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 543.3 How do I comply with this part?

(a) *Compliance based upon tier.*

[Reserved]

(b) *Determination of tier.* [Reserved]

(c) *Tribal internal control standards.*

Within six months of [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], each tribal gaming regulatory authority shall, in accordance with the tribal gaming ordinance, establish or ensure that tribal internal control standards are established and implemented that shall:

(1) Provide a level of control that equals or exceeds those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103; and

(3) Establish a deadline, which shall not exceed six months from the date the tribal gaming regulatory authority establishes internal controls by which a gaming operation must come into compliance with the tribal internal control standards. However, the tribal gaming regulatory authority may extend the deadline by an additional six months if written notice citing justification is provided to the Commission no later than two weeks before the expiration of the nine month period.

(d) *Gaming operations.* Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal internal control standards.

(1) *Existing gaming operations.* All gaming operations that are operating on or before [INSERT DATE ONE YEAR FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], shall comply with this part within the time requirements established in paragraph (c) of this section. In the interim, such operations shall continue to comply with existing tribal internal control standards.

(2) *New gaming operations.* All gaming operations that commence operations after [INSERT DATE SIX MONTHS FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], shall comply with this part before commencement of operations.

(e) *Submission to Commission.* Tribal regulations promulgated pursuant to this part shall not be required to be submitted to the Commission pursuant to § 522.3(b) of this chapter.

(f) *CPA testing.* (1) An independent certified public accountant (CPA) shall be engaged to perform "Agreed-Upon Procedures" to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a tribally approved variance thereto that has received Commission concurrence. The CPA shall report each event and

procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or tribally approved variance that has received Commission concurrence. The "Agreed-Upon Procedures" may be performed in conjunction with the annual audit. The CPA shall report his or her findings to the tribe, tribal gaming regulatory authority, and management. The tribe shall submit two copies of the report to the Commission within 120 days of the gaming operation's fiscal year end. This regulation is intended to communicate the Commission's position on the minimum Agreed-Upon Procedures to be performed by the CPA. Throughout these regulations, the CPA's engagement and reporting are based on Statements on Standards for Attestation Engagements (SSAE's) in effect as of December 31, 2003, specifically SSAE 10 ("Revision and Recodification Agreed-Upon Procedures Engagements"). If future revisions are made to the SSAE's or new SSAE's are adopted that are applicable to this type of engagement, the CPA is to comply with any new or revised professional standards in conducting engagements pursuant to these regulations and the issuance of the agreed-upon procedures report. The CPA shall perform the "Agreed-Upon Procedures" in accordance with the following:

(i) As a prerequisite to the evaluation of the gaming operation's internal control systems, it is recommended that the CPA obtain and review an organization chart depicting segregation of functions and responsibilities, a description of the duties and responsibilities of each position shown on the organization chart, and an accurate, detailed narrative description of the gaming operation's procedures in effect that demonstrate compliance.

(ii) Complete the CPA NIGC MICS Compliance checklists or other comparable testing procedures. The checklists should measure compliance on a sampling basis by performing inspections, observations and substantive testing. The CPA shall complete separate checklists for bingo and information technology. All questions on each applicable checklist should be completed. Work-paper references are suggested for all "no" responses for the results obtained during testing (unless a note in the "W/P Ref" can explain the exception).

(iii) The CPA shall perform, at a minimum, the following procedures in conjunction with the completion of the checklists:

(A) At least one unannounced observation of each of the following:

financial instrument acceptor drop and count. The AICPA's "Audits of Casinos" Audit and Accounting Guide provides that observations in the casino cage and count room should be unannounced. For purposes of these procedures, "unannounced" means that no officers, directors, or employees are given advance information regarding the dates or times of such observations. The independent accountant should make arrangements with the gaming operation and tribal gaming regulatory authority to ensure proper identification of the CPA's personnel and to provide for their prompt access to the count rooms. The checklists should provide for drop and count observations. The count room should not be entered until the count is in process and the CPA should not leave the room until the monies have been counted and verified to the count sheet by the CPA and accepted into accountability.

(B) Observations of the gaming operation's agents as they perform their duties.

(C) Interviews with the gaming operation's agents who perform the relevant procedures.

(D) Compliance testing of various documents relevant to the procedures. The scope of such testing should be indicated on the checklist where applicable.

(E) For new gaming operations that have been in operation for three months or less at the end of their business year, performance of this regulation, this section, is not required for the partial period.

(2) Alternatively, at the discretion of the tribe, the tribe may engage an independent CPA to perform the testing, observations and procedures reflected in paragraphs (f)(1)(i), (ii), and (iii) of this section utilizing the tribal internal control standards adopted by the tribal gaming regulatory authority or tribally approved variance that has received Commission concurrence. Accordingly, the CPA will verify compliance by the gaming operation with the tribal internal control standards. Should the tribe elect this alternative, as a prerequisite, the CPA will perform the following:

(i) The CPA shall compare the tribal internal control standards to the MICS to ascertain whether the criteria set forth in the MICS or Commission approved variances are adequately addressed.

(ii) The CPA may utilize personnel of the tribal gaming regulatory authority to cross-reference the tribal internal control standards to the MICS, provided the CPA performs a review of the tribal gaming regulatory authority personnel's work and assumes complete

responsibility for the proper completion of the work product.

(iii) The CPA shall report each procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy paragraph (f)(2)(i) of this section.

(3) *Reliance on Internal Auditors.* (i) The CPA may rely on the work of an internal auditor, to the extent allowed by the professional standards, for the performance of the recommended procedures specified in paragraphs (f)(1)(iii)(B), (C), and (D) of this section, and for the completion of the checklists as they relate to the procedures covered therein.

(ii) Agreed-upon procedures are to be performed by the CPA to determine that the internal audit procedures performed for a past 12-month period (includes two six month periods) encompassing a portion or all of the most recent business year have been properly completed. The CPA will apply the following agreed-upon procedures to the gaming operation's written assertion:

(A) Obtain internal audit department work-papers completed for a 12-month period (includes two six month periods) encompassing a portion or all of the most recent business year and determine whether the CPA NIGC MICS Compliance Checklists or other comparable testing procedures were included in the internal audit work-papers and all steps described in the checklists were initialed or signed by an internal audit representative.

(B) For the internal audit work-papers obtained in paragraph (f)(3)(ii)(A) of this section, on a sample basis, re-perform the procedures included in CPA NIGC MICS Compliance Checklists or other comparable testing procedures prepared by internal audit and determine if all instances of noncompliance noted in the sample were documented as such by internal audit. The CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the applicable Drop and Count procedures are not included in the sample re-performance of procedures because the CPA is required to perform the drop and count observations as required under paragraph (f)(1)(iii)(A) of this section of the agreed-upon procedures. The CPA's sample should comprise a minimum of three percent of the procedures required in each CPA NIGC MICS Compliance Checklist or other comparable testing procedures for the bingo department and five percent for the other departments completed by internal audit in compliance with the internal audit MICS. The re-performance of procedures is performed as follows:

(1) For inquiries, the CPA should either speak with the same individual or an individual of the same job position as the internal auditor did for the procedure indicated in the CPA checklist.

(2) For observations, the CPA should observe the same process as the internal auditor did for the procedure as indicated in their checklist.

(3) For document testing, the CPA should look at the same original document as tested by the internal auditor for the procedure as indicated in their checklist. The CPA need only retest the minimum sample size required in the checklist.

(C) The CPA is to investigate and document any differences between their re-performance results and the internal audit results.

(D) Documentation shall be maintained for five years by the CPA indicating the procedures re-performed along with the results.

(E) When performing the procedures for paragraph (f)(3)(ii)(B) of this section in subsequent years, the CPA must select a different sample so that the CPA will re-perform substantially all of the procedures after several years.

(F) Additional procedures performed at the request of the Commission, the tribal gaming regulatory authority or management should be included in the Agreed-Upon Procedures report transmitted to the Commission.

(4) *Report Format.* The NIGC has concluded that the performance of these procedures is an attestation engagement in which the CPA applies such Agreed-Upon Procedures to the gaming operation's assertion that it is in compliance with the MICS and, if applicable under paragraph (f)(2) of this section, the tribal internal control standards and approved variances, provide a level of control that equals or exceeds that of the MICS. Accordingly, the Statements on Standards for Attestation Engagements (SSAE's), specifically SSAE 10, issued by the Auditing Standards Board is applicable. SSAE 10 provides current, pertinent guidance regarding agreed-upon procedure engagements, and the sample report formats included within those standards should be used, as appropriate, in the preparation of the CPA's agreed-upon procedures report. If future revisions are made to this standard or new SSAE's are adopted that are applicable to this type of engagement, the CPA is to comply with any revised professional standards in issuing their agreed upon procedures report. The Commission will provide an example report and letter formats upon request that may be used and contain all

of the information discussed below. The report must describe all instances of procedural noncompliance (regardless of materiality) with the MICS or approved variations, and all instances where the tribal gaming regulatory authority's regulations do not comply with the MICS. When describing the agreed-upon procedures performed, the CPA should also indicate whether procedures performed by other individuals were utilized to substitute for the procedures required to be performed by the CPA. For each instance of noncompliance noted in the CPA's agreed-upon procedures report, the following information must be included: The citation of the applicable MICS for which the instance of noncompliance was noted; a narrative description of the noncompliance, including the number of exceptions and sample size tested.

(5) *Report Submission Requirements.* (i) The CPA shall prepare a report of the findings for the tribe and management. The tribe shall submit two copies of the report to the Commission no later than 120 days after the gaming operation's business year end. This report should be provided in addition to any other reports required to be submitted to the Commission.

(ii) The CPA should maintain the work-papers supporting the report for a minimum of five years. Digital storage is acceptable. The Commission may request access to these work-papers, through the tribe.

(6) *CPA NIGC MICS Compliance Checklists.* In connection with the CPA testing pursuant to this section and as referenced therein, the Commission will provide CPA MICS Compliance Checklists upon request.

(g) *Enforcement of Commission Minimum Internal Control Standards.* (1) Each tribal gaming regulatory authority is required to establish and implement internal control standards pursuant to paragraph (c) of this section. Each gaming operation is then required, pursuant to paragraph (d) of this section, to develop and implement an internal control system that complies with the tribal internal control standards. Failure to do so may subject the tribal operator of the gaming operation, or the management contractor, to penalties under 25 U.S.C. 2713.

(2) Recognizing that tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the tribe and tribal gaming regulatory authority of deficiencies in the internal controls of its gaming operation and

allowing a reasonable period of time to address such deficiencies. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.

§§ 543.4–543.5 [Reserved]

§ 543.6 Does this part apply to small and charitable gaming operations?

(a) *Small gaming operations.* This part shall not apply to small gaming operations provided that:

(1) The tribal gaming regulatory authority permits the operation to be exempt from this part;

(2) The annual gross gaming revenue of the operation does not exceed \$1 million; and

(3) The tribal gaming regulatory authority develops and the operation complies with alternate procedures that:

(i) Protect the integrity of games offered;

(ii) Safeguard the assets used in connection with the operation; and

(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

(b) *Charitable gaming operations.* This part shall not apply to charitable gaming operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(3) The charitable gaming operation is operated wholly by the charitable organization's agents;

(4) The annual gross gaming revenue of the charitable operation does not exceed \$1 million; and

(5) The tribal gaming regulatory authority develops and the charitable gaming operation complies with alternate procedures that:

(i) Protect the integrity of the games offered;

(ii) Safeguard the assets used in connection with the gaming operation; and

(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

(c) *Independent operators.* Nothing in this section shall exempt gaming operations conducted by independent operators for the benefit of a charitable organization.

§ 543.7 What are the minimum internal control standards for bingo?

(a) *Bingo Cards*—(1) *Inventory of bingo paper.* (i) The bingo paper inventory shall be controlled so as to assure the integrity of the bingo paper being used as follows:

(A) When received, bingo paper shall be inventoried and secured by an authorized agent(s) independent of bingo sales;

(B) The issue of bingo paper to the cashiers shall be documented and signed for by the authorized agent(s) responsible for inventory control and a cashier. The bingo control log shall include the series number of the bingo paper;

(C) The bingo control log shall be utilized by the gaming operation to verify the integrity of the bingo paper being used; and

(D) Once each month, an authorized agent(s) independent of both bingo paper sales and bingo paper inventory control shall verify the accuracy of the ending balance in the bingo control log by reconciling it with the bingo paper inventory.

(ii) Paragraph (a)(1) of this section does not apply where no physical inventory is applicable.

(2) *Bingo Sales.* (i) There shall be an accurate accounting of all bingo sales.

(ii) All bingo sales records shall include the following information:

(A) Date;

(B) Time;

(C) Shift or session;

(D) Sales transaction identifiers, which may be the unique card identifier(s) sold or when electronic bingo card faces are sold, the unique identifiers of the card faces sold;

(E) Quantity of bingo cards sold;

(F) Dollar amount of bingo sales;

(G) Signature, initials, or

identification of the agent or device who conducted the bingo sales; and

(H) When bingo sales are recorded manually, total sales are verified by an authorized agent independent of the bingo sales being verified and the signature, initials, or identification of the authorized agent who verified the bingo sales is recorded.

(iii) No person shall have unrestricted access to modify bingo sales records.

(iv) An authorized agent independent of the seller shall perform the following standards for each seller at the end of each session:

(A) Reconcile the documented total dollar amount of cards sold to the documented quantity of cards sold;

(B) Note any variances; and

(C) Appropriately investigate any noted variances with the results of the follow-up documented.

(3) *Voiding bingo cards.* (i) Procedures shall be established and implemented to prevent the voiding of card sales after the start of the calling of the game for which the bingo card was sold. Cards may not be voided after the start of a game for which the card was sold.

(ii) When a bingo card must be voided the following controls shall apply as relevant:

(A) A non-electronic bingo card shall be marked void; and

(B) The authorization of the void, by an authorized agent independent of the original sale transaction (supervisor recommended), shall be recorded either by signature on the bingo card or by electronically associating the void authorization to the sale transaction of the voided bingo card.

(4) *Re-issue of previously sold bingo cards.* When one or more previously sold bingo cards need to be reissued, the following controls shall apply: the original sale of the bingo cards must be verified; and the reissue of the bingo cards must be documented, including the identity of the agent authorizing re-issuance.

(b) Draw—(1) *Verification and display.* (i) Procedures shall be established and implemented to ensure the identity of each object drawn is accurately recorded and transmitted to the participants. The procedures must identify the method used to ensure the identity of each object drawn.

(ii) For all games offering a prize payout of \$1,200 or more, as the objects are drawn the identity of the objects shall be immediately recorded and maintained for a minimum of 24 hours.

(iii) Controls shall be present to assure that all objects eligible for the draw are available to be drawn prior to the next draw.

(c) *Manual Payouts and Short Pays.*

(1) Procedures shall be established and implemented to prevent unauthorized access or fraudulent transactions using manual payout documents, including:

(i) Payout documents shall be controlled and completed in a manner that is intended to prevent a custodian of funds from altering the dollar amount on all parts of the payout document subsequent to the manual payout and misappropriating the funds.

(ii) Payout documents shall be controlled and completed in a manner that deters any one individual from initiating and producing a fraudulent payout document, obtaining the funds, forging signatures on the payout document, routing all parts of the document, and misappropriating the funds. Recommended procedures of this standard include but are not limited to the following:

(A) Funds are issued either to a second verifier of the manual payout (i.e., someone other than the agents who generated/requested the payout) or to two agents concurrently (i.e., the generator/requestor of the document

and the verifier of the manual payout). Both witness the manual payout; or

(B) The routing of one part of the completed document is under the physical control (e.g., dropped in a locked box) of an agent other than the agent that obtained/issued the funds and the agent that obtained/issued the funds must not be able to place the document in the locked box.

(iii) *Segregation of responsibilities.*

The functions of sales and prize payout verification shall be segregated, if performed manually. Agents who sell bingo cards on the floor shall not verify bingo cards for prize payouts with bingo cards in their possession of the same type as the bingo card being verified for the game. Floor clerks who sell bingo cards on the floor are permitted to announce the identifiers of winning bingo cards.

(iv) *Validation.* Procedures shall be established and implemented to determine the validity of the claim prior to the payment of a prize (i.e., bingo card was sold for the game played, not voided, etc.) by at least two persons.

(v) *Verification.* Procedures shall be established and implemented to ensure that at least two persons verify the winning pattern has been achieved on the winning card prior to the payment of a prize.

(vi) *Authorization and Signatures.* (A) A Class II gaming system may substitute as one authorization/signature verifying, validating or authorizing a winning card of less than \$1,200 or other manual payout. Where a Class II gaming system substitutes as an authorization/signature, the manual payout is subject to the limitations provided in this section.

(B) For manual prize payouts of \$1,200 or more and less than a predetermined amount not to exceed \$50,000, at least two agents must authorize, sign and witness the manual prize payout.

(1) Manual prize payouts over a predetermined amount not to exceed \$50,000 shall require one of the two signatures and verifications to be a supervisory or management employee independent of the operation of bingo.

(2) This predetermined amount, not to exceed \$50,000, shall be authorized by management, approved by the tribal gaming regulatory authority, documented, and maintained.

(2) Documentation, including;

(i) Manual payouts and short-pays exceeding \$10 shall be documented on a two-part form, of which a restricted system record can be considered one part of the form, and documentation shall include the following information:

(A) Date and time;

(B) Player interface identifier or game identifier;

(C) Dollar amount paid (both alpha and numeric) or description of personal property awarded, including fair market value. Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) Type of manual payout (e.g., Prize payout, external bonus payout, short pay, etc.);

(E) Game outcome (e.g., patterns, symbols, bingo card identifier/description, etc.) for manual prize payouts, external bonus description, reason for short pay, etc.;

(F) Preprinted or concurrently printed sequential manual payout identifier; and

(G) Signatures or other authorizations, as required by this part.

(ii) For short-pays of \$10 or less, the documentation (single-part form or log is acceptable) shall include the following information:

(A) Date and time;

(B) Player interface number;

(C) Dollar amount paid (both alpha and numeric). Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) The signature of at least one agent verifying and witnessing the short pay; and

(E) Reason for short pay.

(iii) In other situations that allow an agent to input a prize payout or change the dollar amount of the prize payout by more than \$1 in a Class II gaming system that has an automated prize payout component, two agents, one of which is a supervisory employee, must be physically involved in verifying and witnessing the prize payout.

(iv) For manually paid promotional prize payouts, as a result of the play of a game and where the amount paid is not included in the prize schedule, the documentation (single-part form or log is acceptable) shall include the following information:

(A) Date and time;

(B) Player interface number;

(C) Dollar amount paid (both alpha and numeric). Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) The signature of at least one agent verifying and witnessing the manual promotional prize payout of \$599 or less and two agents verifying and witnessing the manual promotional prize payout exceeding \$599;

(E) Description or name of the promotion; and

(F) Total amount of manual promotional prize payouts shall be recorded by shift, session or other relevant time period.

(v) When a controlled manual payout document is voided, the agent completing the void shall clearly mark "void" across the face of the document, sign across the face of the document and all parts of the document shall be retained for accountability.

(d) *Operational controls.* (1) Procedures shall be established and implemented with the intent to prevent unauthorized access to or fraudulent transactions involving cash or cash equivalents.

(2) Cash or cash equivalents exchanged between two persons shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or if applicable each session. Unexplained variances shall be documented and maintained. Unverified transfers of cash or cash equivalents are prohibited.

(3) Procedures shall be established and implemented to control cash or cash equivalents in accordance with this section and based on the amount of the transaction. These procedures include but are not limited to, counting and recording on an accountability form by shift, session or relevant time period the following:

(i) Inventory, including any increases or decreases;

(ii) Transfers;

(iii) Exchanges, including acknowledging signatures or initials; and

(iv) Resulting variances.

(4) Any change of control of accountability, exchange or transfer shall require the cash or cash equivalents be counted and recorded independently by at least two persons and reconciled to the recorded amount.

(e) *Gaming equipment.* (1) Procedures shall be established and implemented with the intention to restrict access to agents for the following:

(i) Controlled gaming equipment/components (e.g., draw objects, and back-up draw objects); and

(ii) Random number generator software. (Additional information technology security standards can be found in § 543.16 of this part)

(2) The critical proprietary software components of a Class II gaming system will be identified in the test laboratory report. When initially received, the software shall be verified to be authentic copies, as certified by the independent testing laboratory.

(3) Procedures shall be established relating to the periodic inspection, maintenance, testing, and documentation of a random sampling of gaming equipment/components, including but not limited to:

(i) Software related to game outcome shall be authenticated semi-annually by an agent independent of bingo operations by comparing signatures against the test laboratory letter on file with the tribal gaming regulatory authority for that version.

(ii) Class II gaming system interfaces to external systems shall be tested annually for accurate communications and appropriate logging of events.

(4) Records shall be maintained for each player interface that indicate the date the player interface was placed into service or made available for play, the date the player interface was removed from service and not available for play, and any changes in player interface identifiers.

(f) *Voucher systems.* (1) The voucher system shall be utilized to verify the authenticity of each voucher or coupon redeemed.

(2) If the voucher is valid, the patron is paid the appropriate amount.

(3) Procedures shall be established and implemented to document the payment of a claim on a voucher that is not physically available or a voucher that cannot be validated (e.g., mutilated, expired, lost, stolen, etc.).

(i) If paid, appropriate documentation is retained for reconciliation purposes.

(ii) Payment of a voucher for \$50 or more, a supervisory employee shall review the applicable voucher system, player interface or other transaction history records to verify the validity of the voucher and initial the voucher or documentation prior to payment.

(4) Vouchers redeemed shall remain in the cashier's accountability for reconciliation purposes. The voucher redemption system reports shall be used to ensure all paid vouchers have been validated.

(5) Vouchers paid during a period while the voucher system is temporarily out of operation shall be marked "paid", initialed and dated by the cashier. If the voucher is greater than a predetermined amount approved (not to exceed \$500), a supervisory employee shall approve the payment and evidence that approval by initialing the voucher prior to payment.

(6) Paid vouchers are maintained in the cashier's accountability for reconciliation purposes.

(7) Upon restored operation of the voucher system, vouchers redeemed while the voucher system was temporarily out of operation shall be validated as expeditiously as possible.

(8) Unredeemed vouchers can only be voided in the voucher system by supervisory employees. The supervisory employee completing the void shall clearly mark "void" across the face of

the voucher and sign across the face of the voucher, if available. The accounting department will maintain the voided voucher, if available.

(g) *Patron accounts and cashless systems.* (1) All smart cards (i.e., cards that possess the means to electronically store or retrieve data) that maintain the only source of account data are prohibited.

(2) For patron deposit accounts the following standards shall apply:

(i) For each patron deposit account, an agent shall:

(A) Require the patron to personally appear at the gaming operation;

(B) Record the type of identification credential examined, the credential number, the expiration date of credential, and the date credential was examined. (Note: A patron's driver's license is the preferred method for verifying the patron's identity. A passport, non-resident alien identification card, other government issued identification credential or another picture identification credential normally acceptable as a means of identification when cashing checks, may also be used.);

(C) Record the patron's name and may include another identifier (e.g., nickname, title, etc.) of the patron, if requested by patron;

(D) Record a unique identity for each patron deposit account;

(E) Record the date the account was opened; and

(F) Provide the account holder with a secure method of access to the account.

(ii) Patron deposit accounts shall be established for patrons at designated areas of accountability and the creation of the account must meet all the controls of paragraph (g)(2)(i) of this section when the patron makes an initial deposit of cash or cash equivalents.

(iii) If patron deposit account adjustments may be made by the operation, the operation must be authorized by the account holder to make necessary adjustments. This requirement can be met through the collection of a single authorization that covers the life of the patron deposit account.

(iv) *Patron deposits & withdrawals.*

(A) Prior to the patron making a withdrawal from a patron deposit account, the cashier shall verify the identity of the patron and availability of funds. Reliance on a secured Personal Identification Number (PIN) entered by the patron is an acceptable method of verifying patron identity.

(B) A multi-part deposit/withdrawal record shall be created when the

transaction is processed by a cashier, including;

(1) Same document number on all copies;

(2) Type of transaction, deposit or withdrawal;

(3) Name or other identifier of the patron;

(4) At least the last four digits of the account identifier;

(5) Patron signature for withdrawals, unless a secured PIN is utilized by the patron;

(6) Date of transaction;

(7) Dollar amount of transaction;

(8) Nature of deposit or withdrawal (e.g., cash, check, chips); and

(9) Signature of the cashier processing the transaction.

(C) A copy of the transaction record shall be secured for reconciliation of the cashier's bank for each shift. All transactions involving patron deposit accounts shall be accurately tracked.

(D) The copy of the transaction record shall be forwarded to the accounting department at the end of the gaming day.

(E) When a cashier is not involved in the deposit/withdrawal of funds, procedures shall be established that safeguard the integrity of the process used.

(v) *Patron Deposit Account Adjustments.* (A) Adjustments to the

patron deposit accounts shall be performed by an agent.

(B) A record shall be created when the transaction is processed, including;

(1) Unique transaction identifier;

(2) Type of transaction, adjustment;

(3) Name or other identifier of the patron;

(4) At least the last four digits of the account identifier;

(5) Date of transaction;

(6) Dollar amount of transaction;

(7) Reason for the adjustment; and

(8) Signature or unique identifier for the agent who made the adjustment.

(C) The transaction record shall be forwarded to the accounting department at the end of the gaming day.

(vi) Where available, systems reports that indicate the dollar amount of transactions for patron deposit accounts (e.g., deposits, withdrawals, account adjustments, etc.) that should be reflected in each cashier's accountability shall be utilized at the conclusion of each shift in the reconciling of funds.

(vii) Cashless transactions and electronic funds transfers to and from patron deposit accounts shall be recorded and maintained at the end of the gaming operations specified 24-hour accounting period.

(viii) Procedures shall be established to maintain a detailed record for each

patron deposit account that includes the dollar amount of all funds deposited and withdrawn, account adjustments made, and the transfers to or from player interfaces.

(ix) Detailed patron deposit account transaction records shall be available to the patron upon reasonable request and to the tribal gaming regulatory authority upon request.

(x) Only dedicated gaming operation bank accounts shall be used to record electronic funds transfers to or from the patron deposit accounts. Gaming operation bank accounts dedicated to electronic funds transfers to or from the patron deposit accounts shall not be used for any other types of transactions.

(3) For promotional and other accounts the following standards shall apply:

(i) Changes to promotional and other accounts shall be performed by an agent.

(ii) The following standards apply if a player tracking system is utilized:

(A) In the absence of the patron, modifications to balances on a promotional or other account must be made under the authorization of supervisory employees and shall be sufficiently documented (including substantiation of reasons for modification). Modifications are randomly verified by independent agents on a quarterly basis. This standard does not apply to the deletion of balances related to inactive or closed accounts through an automated process.

(B) Access to inactive or closed accounts is restricted to supervisory employees.

(C) Patron identification is required when redeeming values. Reliance on a secured Personal Identification Number (PIN) by the patron is an acceptable method of verifying patron identification.

(h) *Promotions.* (1) The conditions for participating in promotional programs, including drawings and giveaway programs shall be approved and available for patron review at the gaming operation.

(2) Changes to the player tracking systems, promotional accounts, 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, shall be performed under the authority of supervisory employees, independent of the department initiating the change. Alternatively, the changes may be performed by supervisory employees of the department initiating the change if sufficient documentation is generated

and the propriety of the changes are randomly verified by supervisory employees independent of the department initiating the change on a monthly basis.

(3) All other changes to the player tracking system shall be appropriately documented.

(4) All relevant controls from § 543.16 of this part will apply.

(i) *Accounting.* (1) *Accounting/audit standards.* (i) Accounting/auditing procedures shall be performed by agents who are independent of the persons who performed the transactions being reviewed.

(ii) All accounting/audit procedures and actions shall be documented (e.g., log, checklist, investigations and notation on reports), maintained for inspection and provided to the tribal gaming regulatory authority upon request.

(iii) Accounting/audit procedures shall be performed reviewing transactions for relevant accounting periods, including a 24-hour accounting period and reconciled in total for those time periods.

(iv) Accounting/audit procedures shall be performed within seven days of the transaction's occurrence date being reviewed.

(v) Accounting/audit procedures shall be in place to review variances related to bingo accounting data, which shall include at a minimum any variance noted by the Class II gaming system for cashless transactions in and out, electronic funds transfer in and out, external bonus payouts, vouchers out and coupon promotion out.

(vi) At least monthly, an accounting/audit agent shall confirm that the appropriate investigation has been completed for the review of variances.

(2) Audit tasks to be performed for each day's business.

(i) Records of bingo card sales shall be reviewed for proper authorization, completion and accurate calculations.

(ii) Manual payout summary report, if applicable, shall be reviewed for proper authorizations, completion, accurate calculations, and authorization confirming manual payout summary report totals.

(iii) A random sampling of records of manual payouts shall be reviewed for proper authorizations and completion for manual payouts less than \$1,200.

(iv) Records of all manual prize payouts of \$1,200 or more shall be reviewed for proper authorizations and completion.

(v) Where manual payout information is available per player interface, records of manual payouts shall be reviewed

against the recorded manual payout amounts per player interface.

(vi) Manual payout forms shall be reconciled to each cashier's accountability documents and in total for each relevant period (e.g., session, shift, day, etc.).

(vii) Records of voided manual payouts shall be reviewed for proper authorization and completion.

(viii) Records of voided bingo cards shall be reviewed for proper authorization and completion.

(ix) Use of controlled forms shall be reviewed to ensure each form is accounted for.

(x) Where bingo sales are available per player interface, bingo sales shall be reviewed for reasonableness.

(xi) Amount of financial instruments accepted per financial instrument type and per financial instrument acceptor shall be reviewed for reasonableness, to include but not limited to zero amounts.

(xii) Where total prize payouts are available per player interface, total prize payouts shall be reviewed for reasonableness.

(xiii) Amount of financial instruments dispensed per financial instrument type and per financial instrument dispenser shall be reviewed for reasonableness, to include but not limited to zero amounts.

(xiv) For a random sampling, foot the vouchers redeemed and trace the totals to the totals recorded in the voucher system and to the amount recorded in the applicable cashier's accountability document.

(xv) Daily exception information provided by systems used in the operation of bingo shall be reviewed for propriety of transactions and unusual occurrences.

(xvi) Ensure promotional coupons which are not financial instruments are properly cancelled to prevent improper recirculation.

(xvii) Reconcile all parts of the form used to document transfers that increase/decrease the inventory of an accountability (includes booths and any other accountability areas).

(xviii) Reconcile voucher liability (e.g.,

issued – voided – redeemed – expired = unpaid) to the voucher system records.

(xix) The total of all patron deposit accounts shall be reconciled, as follows:

(A) A report shall be generated that details each day's beginning and ending balance of patron deposit accounts, adjustments to patron deposit accounts, and all patron deposit account transactions.

(B) Reconcile the beginning and ending balances to the summary of manual deposit/withdrawal and account adjustment documentation to the patron deposit account report.

(xx) Reconcile each day's patron deposit account liability (e.g., deposits +/- adjustments - withdrawals = total account balance) to the system records.

(xxi) Reconcile electronic funds transfers to the cashless system records, the records of the outside entity which processed the transactions and the operations dedicated cashless account bank records.

(xxii) Accounting data used in performance analysis may only be altered to correct amounts that were determined to be in error. When correcting accounting data, the correct amount shall be indicated in any Class II gaming system exception reports generated.

(xxiii) Accounting/auditing agents shall reconcile the audited bingo totals report to the audited bingo accounting data for each day.

(xxiv) Accounting/auditing agents shall ensure each day's bingo accounting data used in performance reports has been audited and reconciled.

(xxv) If the Class II gaming system produces exception reports they shall be reviewed on a daily basis for propriety of transactions and unusual occurrences.

(3) Audit tasks to be performed at relevant periods:

(i) Financial instrument acceptor data shall be recorded immediately prior to or subsequent to a financial instrument acceptor drop. The financial instrument acceptor amount-in data must be recorded at least weekly. The time between recordings may extend beyond one week in order for a recording to coincide with the end of an accounting period only if such extension is for no longer than six additional days.

(ii) When a player interface is removed from the floor, the financial instrument acceptor contents shall be protected to prevent the misappropriation of stored funds.

(iii) When a player interface is permanently removed from the floor, the financial instrument acceptor contents shall be counted and recorded.

(iv) For currency interface systems, accounting/auditing agents shall make appropriate comparisons of system generated count as recorded in the statistical report at least one drop period per month. Discrepancies shall be resolved prior to generation/distribution of reports.

(v) For each drop period, accounting/auditing agents shall compare the amount-in per financial instrument accepted by the financial instrument acceptors to the drop amount counted for the period. Discrepancies shall be resolved before the generation/distribution of statistical reports.

(vi) Investigation shall be performed for any one player interface having an unresolved drop variance in excess of an amount that is both more than \$25 and at least three percent (3%) of the actual drop. The investigation performed and results of the investigation shall be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vii) The results of variance investigations, including the date and personnel involved in the investigations, will be documented in the appropriate report and retained. The results will also include any corrective action taken (e.g., accounting data storage component replaced, interface component repaired, software debugged, etc.). The investigation will be completed and the results documented within seven days of the day the variance was noted, unless otherwise justified.

(viii) Procedures shall be established and implemented to perform the following on a regular basis, at a minimum of monthly, and using predetermined thresholds:

(A) Where the Class II gaming system is capable of providing information per player interface, identify and investigate player interfaces with total prize payouts exceeding bingo sales;

(B) Where bingo sales is available per player interface, investigate any percentage of increase/decrease exceeding a predetermined threshold, not to exceed 20%, in total bingo sales as compared to a similar period of time that represents consistency in prior performance.

(C) Investigate any exception noted in paragraphs (i)(3)(viii)(A) and (B) of this section and document the findings. The investigation may include procedures to review one or more of the following:

(1) Verify days on floor are comparable.

(2) Non-prize payouts for authenticity and propriety.

(3) Player interface out of service periods.

(4) Unusual fluctuations in manual payouts.

(D) If the investigation does not identify an explanation for exceptions then a physical check procedure shall be performed, as required by paragraph (i)(3)(viii)(E) of this section.

(E) Document any investigation of unresolved exceptions using a predefined player interface physical check procedure and checklist, to include a minimum of the following as applicable:

(1) Verify game software;

(2) Verify player interface configurations;

(3) Test amount in accounting data for accuracy upon insertion of financial instruments into the financial instrument acceptor;

(4) Test amount out accounting data for accuracy upon dispensing of financial instruments from the financial instrument dispenser;

(5) Record findings and repairs or modifications made to resolve malfunctions, including date and time, player interface identifier and signature of the agent performing the player interface physical check, and additional signatures as required; and

(6) Maintain player interface physical check records, either in physical or electronic form, for the period prescribed by the procedure.

(ix) For Class II gaming systems, procedures shall be performed at least monthly to verify that the system accounting data is accurate.

(x) For Tier C, at least weekly:

(A) Financial instruments accepted at a kiosk shall be removed and counted by at least two agents; and

(B) Kiosk transactions shall be reconciled to the beginning and ending balances for each kiosk.

(xi) At the conclusion of a promotion, accounting/audit agents shall perform procedures (e.g., interviews, review of payout documentation, etc.) to ensure that promotional prize payouts, drawings, and giveaway programs are conducted in accordance with the rules provided to the patrons.

(4) *Inter-tribal prize pools.* Procedures shall be established and implemented to govern the participation in inter-tribal prize pools, which at a minimum shall include the review, verification and maintenance of the following records, which shall be made available, within a reasonable time of the request, to the tribal gaming regulatory authority upon request:

(i) Summary of contributions in total made to an inter-tribal prize pool;

(ii) Summary of disbursements in total from an inter-tribal prize pool; and

(iii) Summary of inter-tribal prize pool funds availability.

(5) *Performance Analysis.* (i) Bingo performance data shall be recorded at the end of the gaming operations specified 24-hour accounting period. Such data shall include:

(A) Amount-in and amount-out for each Class II gaming system.

(B) The total value of all financial instruments accepted by the Class II gaming system by each financial instrument acceptor and by each financial instrument type.

(C) The total value of all financial instruments dispensed by the Class II

gaming system and by each financial instrument type.

(D) The total value of all manual payouts by each Class II gaming system.

(E) The total value of bingo purchases for each Class II gaming system.

(F) The total value of prizes paid for each Class II gaming system.

(ii) Procedures shall be established and implemented that ensure the reliability of the performance data.

(iii) Upon receipt of the summary of the data, the accounting department shall review it for reasonableness using pre-established parameters defined by the gaming operation.

(iv) An agent shall record and maintain all required data before and after any maintenance or modifications that involves the clearing of the data (e.g., system software upgrades, data storage media replacement, etc.). The information recorded shall be used when reviewing performance reports to ensure that the maintenance or modifications did not improperly affect the data in the reports.

(6) *Statistical reporting.* (i) The bingo sales, prize payouts, bingo win, and actual bingo win percentages shall be recorded for:

(A) Each shift or session;

(B) Each day;

(C) Month-to-date; and

(D) Year-to-date or fiscal year-to-date.

(ii) A monthly comparison for reasonableness shall be made of the amount of bingo paper sold from the bingo paper control log to the amount of bingo paper sales revenue recognized.

(iii) Management employees independent of the bingo department shall review bingo statistical information on at least a monthly basis.

(iv) Agents independent of the bingo department shall investigate any large or unusual statistical fluctuations, as defined by the gaming operation.

(v) Such investigations shall be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vi) The actual bingo win percentages used in the statistical reports should not include operating expenses (e.g., a percentage payment to administrators of inter-tribal prize pools), promotional prize payouts or bonus payouts not included in the prize schedule.

(7) *Progressive prize pools.* (i) A display that shows the amount of the progressive prize shall be conspicuously displayed at or near the player interface(s) to which the prize applies.

(ii) At least once each day, each gaming operation shall record the total amount of each progressive prize pool offered at the gaming operation on the progressive log.

(iii) When a manual payment for a progressive prize is made from a progressive prize pool, the amount shall be recorded on the progressive log.

(iv) Each gaming operation shall record, on the progressive log, the base reset amount of each progressive prize the gaming operation offers.

(v) Procedures shall be established and implemented specific to the transfer of progressive amounts in excess of the base reset amount to other awards or prizes. Such procedures may also include other methods of distribution that accrue to the benefit of the gaming public.

§§ 543.8–543.15 [Reserved]

§ 543.16 What are the minimum internal controls for information technology?

(a) Physical security measures restricting access to agents, including vendors, shall exist over the servers, including computer terminals, storage media, software and data files to prevent unauthorized access and loss of integrity of data and processing.

(b) Unauthorized individuals shall be precluded from having access to the secured computer area(s).

(c) *User controls.* (1) Computer systems, including application software, shall be secured through the use of passwords or other approved means.

(2) Procedures shall be established and implemented to ensure that management or independent agents assign and control access to computer system functions.

(3) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have his or her own individual user identification and password.

(ii) When an individual has multiple user profiles, only one user profile per application may be used at a time.

(iii) Passwords must be changed at least quarterly with changes documented. Documentation is not required if the system prompts users to change passwords and then denies access if the change is not completed.

(iv) The system must be updated to change the status of terminated users from active to inactive status within 72 hours of termination.

(v) At least quarterly, independent agents shall review user access records for appropriate assignment of access and to ensure that terminated users do not have access to system functions.

(vi) Documentation of the quarterly user access review shall be maintained.

(vii) System exception information (e.g., changes to system parameters, corrections, overrides, voids, etc.) must be maintained.

(4) Procedures shall be established and implemented to ensure access listings are maintained which include at a minimum:

(i) User name or identification number (or equivalent); and

(ii) Listing of functions the user can perform or equivalent means of identifying same.

(d) Adequate backup and recovery procedures shall be in place that include:

(1) *Daily backup of data files*—(i) *Backup of all programs.* Backup of programs is not required if the program can be reinstalled.

(ii) Secured storage of all backup data files and programs, or other adequate protection to prevent the permanent loss of any data.

(iii) Backup data files and programs may be stored in a secured manner in another building that is physically separated from the building where the system's hardware and software are located. They may also be stored in the same building as the hardware/software as long as they are secured in a fireproof safe or some other manner that will ensure the safety of the files and programs in the event of a fire or other disaster.

(2) Recovery procedures shall be tested on a sample basis at least annually with documentation of results.

(e) *Access records.* (1) Procedures must be established to ensure computer access records, if capable of being generated by the computer system, are reviewed for propriety for the following at a minimum:

(i) Class II gaming systems;

(ii) Accounting/auditing systems;

(iii) Cashless systems;

(iv) Voucher systems;

(v) Player tracking systems; and

(vi) External bonusing systems.

(2) If the computer system cannot deny access after a predetermined number of consecutive unsuccessful attempts to log on, the system shall record unsuccessful log on attempts.

(f) *Remote access controls.* (1) For computer systems that can be accessed remotely, the written system of internal controls must specifically address remote access procedures including, at a minimum:

(i) Record the application remotely accessed, authorized user's name and business address and version number, if applicable;

(ii) Require approved secured connection;

(iii) The procedures used in establishing and using passwords to allow authorized users to access the computer system through remote access;

(iv) The agents involved and procedures performed to enable the

physical connection to the computer system when the authorized user requires access to the system through remote access; and

(v) The agents involved and procedures performed to ensure the remote access connection is disconnected when the remote access is no longer required.

(2) In the event of remote access, the information technology employees shall prepare a complete record of the access to include:

(i) Name or identifier of the employee authorizing access;

(ii) Name or identifier of the authorized user accessing system;

(iii) Date, time, and duration of access; and

(iv) Description of work performed in adequate detail to include the old and new version numbers, if applicable of any software that was modified, and details regarding any other changes made to the system.

Dated: October 17, 2007.

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Commissioner.

Cloyce V. Choney,

Commissioner.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 547

RIN 3141-AA29

Technical Standards for Electronic, Computer, or Other Technologic Aids Used in the Play of Class II Games

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would add a new part to the Commission's regulations establishing technical standards for Class II games—bingo, lotto, other games similar to bingo, pull tabs, or "instant bingo"—that are played using "electronic, computer, or other technologic aids." The proposed rule would also establish a process for ensuring the integrity of such games and aids before their placement in a Class II tribal gaming operation. No such standards currently exist. The Commission proposes this action in order to assist tribal gaming regulatory authorities and operators in ensuring the integrity and security of Class II

games and the accountability of gaming revenue.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail comments to "Comments on Technical Standards," National Indian Gaming Commission, 1441 L Street, NW., Washington, DC 20005, Attn: Michael Gross, Associate General Counsel, General Law. Comments may be transmitted by facsimile to 202-632-7066, but the original also must be mailed or submitted to the above address. Comments may be sent electronically, instead of by mail or fax, to technical_standards@nigc.gov. Please indicate "Class II technical regulations" in the subject line.

FOR FURTHER INFORMATION CONTACT:

Michael Gross, Associate General Counsel, General Law, Office of General Counsel, telephone: 202.632.7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act, 25 U.S.C. 2701-21 ("IGRA"), enacted by the Congress in 1988, establishes the National Indian Gaming Commission ("NIGC" or "Commission") and sets out a comprehensive framework for the regulation of gaming on Indian lands. IGRA establishes three classes of Indian gaming.

"Class I gaming" means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

"Class II gaming" means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, as well as various non-house-banked card games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming are banking card games such as blackjack, electronic or electromechanical facsimiles of any game of chance, and slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. Indian tribes can engage in Class II gaming without any state involvement.

"Class III gaming" includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including lotteries and most

forms of casino gaming, such as slot machines, roulette, and banking card games like blackjack. Class III gaming may be conducted lawfully only if the tribe and the state in which the tribe is located enter into a tribal-state compact for such gaming. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior. Because of the compact requirement, states, Indian tribes, and the NIGC possess regulatory authority over Class III gaming. In addition, the United States Department of Justice possesses exclusive criminal, and certain civil, jurisdiction over Class III gaming on Indian lands.

The Commission has determined that it is in the best interests of Indian gaming to adopt technical standards that govern the implementation of electronic, computer, and other technologic aids used in the play of Class II games because no such standards currently exist. The technical standards seek to provide a means for tribal gaming regulatory authorities and tribal operators to ensure that the integrity of Class II games played with the use of electronic, computer, or other technologic aids is maintained; that the games and aids are secure; and that the games and aids are fully auditable, *i.e.* that they provide a means for the gaming authority and gaming operation to account for all gaming revenue.

Development of the Proposed Rule

The development of the proposed rule began formally with the March 31, 2004, appointment of an advisory committee comprised of tribal government representatives with substantial experience and expertise in gaming regulation and operations, the Commission, and Commission staff. Although the Commission initially intended to develop one set of regulations, this committee's work ultimately resulted in the Commission's publication of a proposed rule for Class II classification standards, 71 FR 30238 (May 25, 2006), and a separate proposed rule for Class II technical standards, 71 FR 46336 (August 11, 2006). A detailed history of the advisory committee's work on the technical standards to that point, its meetings, the Commission's consultations with Indian tribes, and the contributions and participation of the interested general public is published in the preamble to that proposed rule. 71 FR 46336-46337.

The ultimate goal of that first set of technical standards was as it is here—to ensure the security and integrity of Class II games played with technologic aids and to ensure the auditability of the gaming revenue that those games earn.