

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: Final rule.

SUMMARY: This rule supersedes certain specified sections of the current Minimum Internal Control Standards and replaces them with a new part titled Minimum Internal Control Standards for Class II Gaming. Since the implementation of Minimum Internal Control Standards (MICS), it became obvious that the MICS require technical adjustments and revisions so that they can effectively protect tribal assets, while still allowing tribes to utilize technological advances in the gaming industry. This rule applies only to Class II games.

DATES: This regulation is effective November 10, 2008, except for the amendments to §§ 542.7 and 542.16, which are effective October 13, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 10, 2008. Existing operations must develop tribal internal controls (TICS) within six months of the effective date and must implement those controls within 6 months of the development of the TICS. New operations (those that are not open on the effective date) must develop and implement the TICS when they open.

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

SUPPLEMENTARY INFORMATION:**Withdrawal of Classification Standards and Amendment to Definition of Facsimile**

The Commission has withdrawn the Classification standards it proposed on October 24, 2007. “Classification Standards for Bingo, Lotto, Etc. as Class II Gaming When Played Through an Electronic Medium Using ‘Electronic Computer, or Other Technologic Aids.’” 72 FR 60483. The Commission has also withdrawn the amendment to the definition of “electronic or electromechanical facsimile,” also proposed on October 24, 2007. “Definition for Electronic or

Electromechanical Facsimile.” 72 FR 60482. See the Commission’s notices of withdrawal, published simultaneously.

Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act (“IGRA” or “Act”), 25 U.S.C. 2701–21, creating the National Indian Gaming Commission (“NIGC” or “Commission”) and developing a comprehensive framework for the regulation of gaming on Indian lands. 25 U.S.C. 2702. The NIGC was granted, among other things, the authority to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of IGRA, 25 U.S.C. 2706(b)(10), as well as oversight and enforcement authority, including the authority to monitor tribal compliance with the Act, Commission regulations, and tribal gaming ordinances.

The Commission believes that the importance of internal control systems in the casino operating environment cannot be overemphasized. While this is true of any industry, it is particularly true and relevant to the revenue generation processes of a gaming enterprise, which, because of the physical and technical aspects of the games and their operation and the randomness of game outcomes, makes exacting internal controls mandatory. The internal control systems are the primary management procedures used to protect the operational integrity of gambling games, account for and protect gaming assets and revenues, and assure the reliability of the financial statements for Class II and III gaming operations. Consequently, internal control systems are a vitally important part of properly regulated gaming. Internal control systems govern the gaming enterprise’s governing board, management, and other personnel who are responsible for providing reasonable assurance regarding the achievement of the enterprise’s objectives, which typically include operational integrity, effectiveness and efficiency, reliable financial statement reporting, and compliance with applicable laws and regulations.

The Commission believes that strict regulations, such as the MICS, are not only appropriate but necessary for it to fulfill its responsibilities under the IGRA to establish necessary baseline, or *minimum*, Federal standards for all Tribal gaming operations on Indian lands. 25 U.S.C. 2702(3). Although the Commission recognizes that many Tribes had sophisticated internal control standards in place prior to the Commission’s original promulgation of its MICS, the Commission also

continues to believe that promulgation and revision of these standards is necessary and appropriate to effectively implement the provisions of the IGRA and, therefore, within the Commission’s clearly expressed statutory power and duty under Section 2706(b)(10) of the Act.

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 draft of descriptive technical standards for Class II gaming. As the technical standards were being developed the Commission realized that many of the provisions being considered for inclusion were not technical standards but rather internal controls. After reviewing the 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 have a direct impact on the technical standards that are being issued simultaneously—specifically bingo and other games similar to bingo.

Currently, MICS for both Class II and Class III gaming are contained in 25 CFR part 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 adopting a new part 543 that would be limited to Class II gaming.

To complete this task, the Commission requested that its standing MICS Advisory Committee embark on an aggressive schedule to complete the new draft part 543 to be published concurrently with the publishing of technical standards. Additionally, members of the Classification Standards Advisory Committee assisted in drafting MICS revisions to ensure that any changes were consistent with the draft technical standards. The Commission had originally planned to reflect the structure of part 542 in the drafting of new part 543. The controls in part 542 are categorized by the type of game they apply to or by an area within the gaming operation. However, 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 the type of game rather than the function that is being performed. This format represented a departure

from the longstanding practice of establishing controls specific to functions. Following this meeting, the Commission decided to go forward with the suggested alternative format. This new format is a one-size-fits-all set of controls governing the game of bingo and games similar to bingo, whether played manually or electronically, without regard to how the game actually functions.

The tribal representatives to the MICS Committee utilized 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 was 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 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 proposed rules that were at times more stringent

and at times less stringent than those recommended by the Committee.

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 Class II MICS would not conflict with 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 subject to a set of MICS better tailored to the risks found in small gaming operations and the resources available for addressing them.

Regulatory Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of the MICS on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit

enterprise that is independently owned and operated and is not dominant in its field.

Indian tribes and tribal casinos do not meet this definition. Tribes are excluded from the governmental jurisdictions listed under (2), and tribally owned casinos are not ordinary commercial activities but are tribal governmental operations.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

As a practical matter, the economic impacts of the MICS will fall primarily upon the Indian tribes. The MICS impose some direct costs upon gaming tribes—regulatory compliance costs, for example. Accordingly, the Commission certifies that this action will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This 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 almost all gaming operations are compliant with part 542

or more stringent tribal internal control standards. Given the widespread compliance with part 542, the cost of complying with new part 543 should be minimal. Finally, the Commission contracted for a cost-benefit analysis for this rule as part of a package of four rules. The Commission decided not to go forward with the rules that would have a significant economic impact on the tribes. The study concluded that the cost of the MICS would not be significant. Specifically, the report states that the promulgation of MICS and technical standards is estimated to cost 7.8 million annualized over ten years. Accordingly, the MICS are not a major rule within the meaning of 5 U.S.C. 804.2, the Small Business Regulatory Enforcement Fairness Act. The Commission's cost-benefit analysis is available for review at the Commission's web site, www.nigc.gov, or by request using the addresses or telephone numbers, above.

Paperwork Reduction Act

This 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 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 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 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.*

Comments to Class II Minimum Internal Control Standards

We requested written comments from the public on the proposed Class II Minimum Internal Control Standards (72 FR 60495) during the comment period that opened on October 24, 2007, and closed on March 9, 2008. This proposed rule was published on the same day as three other proposed rules related to the regulation of Class II gaming. During the comment period, we received many comments that were not specific to the MICS but rather referred to the package of Class II rules proposed on October 24, 2007. Only a few of these comments were specific to the MICS. However, we considered the general comments as applying to the MICS as well as to the rest of the package. The comments are grouped based on the common topics addressed. The Commission carefully reviewed all comments and where appropriate revised the final rule to reflect those comments. The comments and the NIGC responses follow.

Comments Regarding Publication of the Proposed Class II MICS

Comment: The publishing of 5 proposed regulations simultaneously violates the federal trust responsibility and contravenes Executive Order 13175.

Response: The Commission published 4 proposed rules simultaneously as part of one package related to class II gaming. Since the rules all pertained to the regulation of Class II gaming activities the Commission determined that it was important for all interested parties to consider all of the parts at once. The other regulation published by the Commission was the facility licensing regulations that were not part of the previously mentioned package. We disagree that following the notice and comment requirements of the Administrative Procedures Act violates the trust responsibility.

Further, Congress has made abundantly clear that it intended the Commission to be an independent regulatory agency and, as such, exempt from the requirements of these Executive Orders and the Unfunded Mandates Reform Act. The Senate report accompanying the passage of IGRA provides Congress's intention clearly and unambiguously: the bill "established a National Indian Gaming Commission as an independent agency within the Department of Interior." S. Rep. No. 100-446, at 1 (1988). When it amended IGRA in 2005, Congress reiterated its intention:

Additionally, it is to be noted that the NIGC is an independent regulatory agency.

This status has ramifications, including, that the agency is not governed by Executive Order 13175, which compels agencies other than independent regulatory agencies to consult tribal officials in the development of regulatory policies that have tribal implications. The Executive Order encourages independent agencies to observe its precepts, however, and the Committee notes with approval that the Commission, through its current consultation policy, has endeavored to do so. S. Rep. No. 109-122 at 3 (2005).

Comment: Several comments suggested that the NIGC may have violated the Government Performance and Results Act ("GPRA") by embarking on several rulemaking exercises without an overall plan in violation of Public Law 109-221.

Response: The Commission agrees that Public Law 109-221, the Native American Technical Corrections Act of 2006, provides that the NIGC shall be subject to the GPRA. On September 30, 2007, the NIGC submitted a draft performance and accountability report to the Office of Management and Budget for review. The Commission made revisions to its GPRA plan and on September 18, 2008, mailed it to tribal leaders for comment.

Comments Regarding NIGC Authority to Promulgate MICS

Comment: A few commenters suggested that the Commission lacks the authority to promulgate Class II MICS, one analogizing the situation to that in *Colorado Indian Tribes v. NIGC*, where the DC Circuit ultimately found the Commission lacked the authority to enforce Class III MICS.

Response: The Commission disagrees. IGRA does give the Commission the authority to adopt Class II MICS. Congress was expressly concerned that gaming under IGRA be "conducted fairly and honestly by both the operators and the players" and that the "Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. 2702(2). To carry out this mission Congress granted the Commission the power to monitor, inspect, and examine Class II gaming. 25 U.S.C. 2706(b)(1)-(4), and to promulgate such regulations as it deems appropriate to implement the provisions of IGRA. 25 U.S.C. 2706(b)(10). The creation of MICS provides the basis for which the Commission can monitor, inspect, and examine. The Class II MICS create procedures the Commission can verify are being followed as well as creating a revenue trail. Without a set of national standards it would be very difficult for the Commission to exercise its power in a meaningful manner and therefore fulfill its mission.

Comments Regarding NIGC Consultation With Tribes

Comment: Several comments pertained to the level of consultation conducted in connection with the regulations stating that the NIGC did not conduct meaningful consultation and that the consultation conducted was in violation of the NIGC's consultation policy. Further, commenters stated that the use of an advisory committee was not an acceptable substitute for consultation.

Response: The NIGC published its Government-to-Government Tribal Consultation Policy on March 24, 2004, 69 FR 16973. In that policy, the Commission recognized the government-to-government relationship that exists between the NIGC and federally-recognized tribes and stated that the primary focus of the NIGC's consultation policies would involve consulting with individual tribes and their recognized governmental leaders. The Commission's consultation policy also calls for providing early notification to affected tribes of any regulatory policies prior to a final agency decision regarding their formulation or implementation.

The Commission conducted extensive consultations that included the formation of a tribal advisory committee, face-to-face meetings with tribal governments, and regional meetings with tribal gaming associations. Additionally, the Commission followed the formal rulemaking process under the Administrative Procedures Act thereby providing tribes another opportunity to submit written comments.

As to the quality of consultation, some comments were critical of the Commission for not allotting sufficient time for individual consultation sessions. The Commission understands and appreciates this concern. The Commission would note, however, that it goes to great time and expense traveling to large, regional and national gaming association meetings to make itself available for consultations, and this minimizes the burdens of time and expense for the tribes. The Commission would point out as well that with approximately 225 tribes, balance of time spent between consultations and the Commission's other duties and obligations is often a difficult one to make. Further, the Commission believes that the criticism concerning the quality of consultation about the technical standards, however, is an unfair one, when only 25% of tribes accepted invitations for consultation between September 2005 and December 2007

and only a minority of those that accepted actually chose to discuss the MICS. That said, the Commission recognizes that there are many views about what consultation is and how it may best be done. The Commission is not married to its consultation practices and has already begun a dialogue and collaboration with tribal leaders, through the National Congress of American Indians and the National Indian Gaming Association, about finding mutually satisfactory methods of consultation.

Comment: Several comments stated that the proposed rule represented a material departure from the consensus documents submitted by the Tribal Advisory Committee.

Response: We disagree. The proposed rule accepted almost all of the suggestions by the Tribal Advisory Committee. Further, in the final regulation the Commission has made changes further closing the distance between the proposed rule and the alternative proposed by the Tribal Advisory Committee. As stated in the preamble, the Commission greatly values and appreciates the work on the MICS done by the tribal advisory committee and the working group of tribal leaders, tribal regulators, and manufacturers who advised them. During drafting, the Commission did state to the Committee and its working group that the Committee's role was advisory and that the Commission could, as the final decision-maker, choose to depart from the draft provided. The Commission believes that this was appropriate insofar as this is consistent with its federal regulatory oversight mission. Nonetheless, the draft that the advisory committee supplied makes up verbatim most of what the Commission has adopted.

Comments Regarding the Length of the Comment Period

Comment: Several comments stated that the comment period was not long enough.

Response: The October 24, 2007, notice of proposed rulemaking stated that the comment period would end on December 10, 2007. Based upon early comments received, the Commission elected to extend the comment period to March 9, 2008. This is a period of 138 days. The Commission believes this is a sufficient comment period.

Comments Regarding Implementation of Class II MICS

Comment: Several comments stated that tribes will not be able to implement a wholly separate set of MICS in a gaming operation that conducts both

Class II and Class III gaming activities without a complete overhaul of the operating procedures and comprehensive retraining of the entire staff. The logistical, organizational, and operational complexities, not to mention the time and expense that will be required to implement new Class II MICS is unworkable.

Response: The Commission appreciates the concern and recognizes that the control systems of a gaming enterprise are typically defined by function, e.g., table games, gaming machines, counter games and card games. However, recent technological advances in game development have somewhat blurred these distinctions. It is the expectation of the Commission that, from a practical perspective, except for the specific revenue centers of the Class II MICS (bingo, pull-tabs, card games) the remaining sections, which are generally relevant to the accounting for or facilitation of the noted games will out of necessity remain substantively identical to their companion standards in the Class III MICS (part 542). The dominant exception is that controls directly related to a Class III game will be omitted. Consequently, we disagree. The Commission believes the regulations ultimately arising from the next phase will have minimal impact on the gaming operation conducting both Class II and Class III gaming.

Comment: Incorporating the sections of part 542 listed in 543.1 will create conflicts given that the defined terms used in the proposed 543 may be very different from the defined term in 542. The Commission should take the time necessary to integrate the sections of part 542 with the new part 543 before promulgating the final rule.

Response: The Commission agrees, however, the risk of having gaps in regulation outweigh any confusion that would be caused by referencing part 542. It is the expectation of the Commission that this interim period during which the remaining part 543 sections are adopted will be as brief as possible.

Comment: One comment proposed that if the Commission is unwilling to postpone these rules until all relevant sections of part 542 can be transferred that section 543.1 be amended to state, "To the extent that there is a discrepancy between the language or terms contained in this part 543 and that contained in the sections of part 542 incorporated by reference in section 543.1 of this part, the applicable language or terms contained in this part 543 shall apply."

Response: The Commission disagrees. The Commission believes that the risk of confusion is minimal and fully anticipates that the remaining sections will be proposed before TICS are required to be implemented.

Comment: The proposed rule states in section 543.3(c)(3) that “shall in accordance with the tribal gaming ordinance, establish that tribal internal control standards are established and implemented.” This could mistakenly be read to require revision to the tribal gaming ordinance.

Response: We disagree. This provision is necessary to ensure that tribes follow their ordinance requirements in the promulgation of TICS. We note that the commenter was able to understand this provision correctly and are sure that other tribes and tribal gaming regulatory agencies will likewise be able to understand its intent.

Comments Regarding Specific Definitions

Comment: Several comments suggested that the final definitions used in 543.2 of the MICS and 547.3 of the technical standards should conform to one another unless there is an appropriate reason for different terms.

Response: We agree. Where possible the Commission has used consistent terms. However, it is important to recognize that the two regulations possess differing objectives. Part 547 is intended to define the technical specification of a Class II gaming device and support systems; whereas part 543 is intended to set minimum standards, consistent with industry best practices, specific to the authorization, recognition, and recordation of the gaming and gaming related transactions. Consequently, users of the documents should be well aware of the definition section accompanying each rule.

Comment: Any defined terms not used in the final version text should be deleted.

Response: Except for Tier A and Tier B, we agree. Terms defined in Section 543.2 that are not utilized in this regulation have been deleted. The definition of Tier A and Tier B is necessary to an understanding of the applicability of certain subsections contained within section 543.7.

Comment: Statutorily defined terms like “Commission” do not need to be included in a section of specific terms.

Response: We disagree. The inclusion of the term “Commission” helps distinguish the federal commission from the tribal gaming commissions. Additionally, we do not see how the

inclusion of this definition harms tribes or causes confusion in anyway.

Comment: Since the term “agreed-upon procedures” is used many times in part 543, consideration should be given to defining the term. By defining the term, it would be possible to clarify that the CPA’s client could be any or all of the tribal government, the tribal gaming regulatory authority or the gaming operation. This definition is consistent with applicable provisions of the Statements on Standards for Attestation Engagements issued by the Auditing Standards Board.

Response: The Commission believes the current language is effective in defining the scope of the engagement.

Comment: Since the term “CPA” is used frequently in part 543, consideration should be given to defining the term and making it clear in the definition that the term refers to either individuals or firms, as the case may be.

Response: We disagree. Each state has a oversight body, generally referred to as a State Board of Accountancy, that is responsible for adopting regulations to carry out the laws governing the practice of public accountancy in that jurisdiction. It makes final licensing decisions and takes disciplinary actions against people who violate the licensing laws. Although much similarity exists from one state to another regarding the qualifications and licensing requirements of a Certified Public Accountant, to obtain an exact definition of the term within a particular state, the referenced oversight body should be consulted.

Comment: Since the term “internal control systems” is used frequently in part 543, consideration should be given to defining the term and making it clear in the definition that internal control systems (i) include “policies” and “procedures,” as well as “systems.”

Response: We disagree. The Institute of Internal Auditors defines internal controls as follows: The process effected by an entity’s board of directors, management, and other personnel designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (1) Operational controls—relating to the effective and efficient use of the entity’s resources; (2) Financial reporting controls—relating to the preparation of reliable published financial statements; and (3) Compliance controls—relating to the entity’s compliance with applicable laws and regulations.

Within the context of the MICS, it is important to recognize that the regulation is not intended to define a comprehensive system of internal

controls for a gaming enterprise. The objective is to identify a basic set of controls that the federal authority has determined to be necessary to satisfy its obligation as stipulated in Section 2702 of the Declaration of Policy of the IGRA. Conceptually, a similar motivation drives the tribal gaming regulatory authority in the creation of its minimum internal control standards, except that the scope may be broader and include all areas of the organization. However, even with the anticipated more expansive version of minimum internal controls codified by the tribal regulatory authority, such controls would generally be inadequate to define a gaming operation’s breadth of policies and procedures in which issues such as efficiency and customer service are captured. Furthermore, it is the gaming operation’s policies and procedures that frequently clarify how the property intends to comply with a regulatory requirement.

Comment: Since the last three sentences of the definition of “internal audit” are substantive provisions and readers who review section 543.3(f) may not realize that related substantive provisions have been organized in the definitions section, consideration should be given to relocating the last three sentences of the definition to an appropriate location in section 543.7(f).

Response: The definition of internal audit and internal auditor has been revised to clarify the role of the internal auditor.

Comment: The phrase “or other component” should be deleted from the definition of “kiosk” because kiosks are stand alone systems that are not “components” of anything or, if the phrase is retained, clarifying of what system a kiosk is a component.

Response: We disagree. The kiosk is normally at the very least a component of an accounting system. Retention of the phrase confers flexibility for application of future technological advances.

Comment: The term MICS should be defined and clarified so that it does not mean any variance to such a standard or a more stringent standard that may be established by a tribal internal control standard.

Response: We disagree. The MICS is defined by part 543 in its entirety. Section 543.3 is intended to communicate that an alternative procedure to that contained in the federal rule is acceptable as long as it does not conflict with the rule it is intended to replace. Essentially, the Commission recognizes that a procedure, although different, could satisfy all elements of a part 543

standard. Furthermore, it is entirely permissible for the tribal gaming regulatory authority to require a control that is more stringent than that in the MICS.

Comment: The term "CPA NIGC MICS Compliance Checklist" should be shortened to "NIGC Checklist."

Response: We disagree. The NIGC provides various documents to assist tribal gaming regulators, operators and practitioners. Some are in the form of checklists; therefore, the title of this item is intended to differentiate it from others.

Comment: The definition of the term "PIN" contained in 543.7(g)(1)(iv) should be moved to the definition section.

Response: The Commission agrees. The definition has been moved from 543.7(g)(1)(iv) to 543.2.

Comment: None of the sections of part 543 are based on tiers and all tiers must comply with all provisions of the current part 543. Therefore, the definitions of Tier A, B, and C should be deleted.

Response: We disagree. The first phase of the task of developing a comprehensive set of minimum internal controls for Class II gaming does not contain the drop and count, internal audit and surveillance sections that have different applications based on Tier classification; however, the next phase of the rule making will include these standards. Therefore, it is worthwhile to leave the Tier definition in the rule. Additionally, the definition of Tier A and Tier B is necessary to an understanding of the applicability of subsection 543.7(i)(3)(X), which is relevant to only Tier C.

Comment: The term "tribal internal control standards" should be defined because it is used throughout part 543 but it is not defined.

Response: Part 543 in its entirety establishes minimum internal controls for tribal operations. Attempting to further define the tribes' specific internal controls would be difficult since tribes vary in the method by which they implement the phrase. For example, some tribal gaming regulatory authorities have formal due process procedures whereby their minimum internal control standards are adopted as governmental regulations; others require a council resolution to create the rule; and some merely approve the internal control systems submitted to the gaming operation. The position of the NIGC is that the agency should not dictate to the tribe the methodology by which the tribe creates its rules governing the conduct of gaming on its lands; only that the rule must equal or

exceed the level of control established by the federal regulation.

Comments Regarding Section 543.3

Comment: The heading to this section should be changed to substitute the term "tribal government" for the term "I."

Response: We agree. The term has been changed.

Comment: The terms "ensure" and "implement" should be deleted so that it is left to the discretion of the tribal government to determine whether, when, and how to enforce the tribal minimum internal standards which have been adopted.

Response: The Commission disagrees. The federal regulation is intended to require tribes to ensure tribal internal controls are established and implemented that accomplish three objectives: (1) Provide a level of control that equals or exceeds those set forth in part 543; (2) establish standards to detect and deter unlawful activity; and (3) set a deadline, as specified in the above referenced section, for the gaming operation to come into compliance with the tribal internal controls. Although the Commission recognizes the tribes' primary oversight role, the federal rules objective is to set a minimum threshold applicable to all tribal gaming; consequently, failure to comply would result in an ineffective regulation.

Comment: It should be made clear that variances are allowed under this part. It should not simply incorporate by reference the provisions in 542.18.

Response: The Commission will consider specifically setting out the variance section as well as all other sections that are presently incorporated by reference in its next revision of the MICS.

Comment: Section 543.3(c) requires that tribal internal control standards comply with 31 CFR part 103. Authority for the implementation and enforcement of 31 CFR part 103 rests with the Department of Treasury. We believe it is beyond the Commission's authority to require compliance with other agencies' regulations.

Response: We agree. This provision has been changed to require that the tribal gaming regulatory authority develop standards for identifying and reporting possible illegal activity. A program similar to that required by 31 CFR part 103 would satisfy this requirement.

Comment: It should be made clear that the regulations impose requirements on the tribal gaming regulatory authority not directly on the gaming operation.

Response: The regulation requires the tribal gaming regulatory authority to

establish and implement tribal internal control standards that provide a level of control that equals or exceeds those set forth in this part and establish a deadline consistent with the timelines within this section for its gaming operation(s) to comply with the tribal internal controls. Consequently, the application of the federal rule to the gaming enterprise is through the tribal gaming regulatory authority.

Comment: There should be a time gap between the date the tribal gaming regulatory authority establishes the new tribal internal control standards and the date the gaming operation must comply with those standards. Under this approach, the date the gaming operation would be required to comply with the new rules would be pegged to the date those standards are adopted and the date would apply to both existing and new operations.

Response: The rule does identify specific timelines. From the date the rule is published in the **Federal Register**, the tribal gaming regulatory authority has six months to develop or revise its tribal internal control standards to comply with this Part and, upon implementation the regulatory authority shall establish a timeframe for its respective gaming operation(s) to come into compliance. Furthermore, at the discretion of the tribe, the period for the gaming operation(s) to come into compliance may be extended an additional six months. A gaming property that is opened after the date this rule is published in the **Federal Register** must be compliant upon opening.

Comment: In order to add flexibility, the requirement that the report be issued to the tribe, the tribal gaming regulatory authority, and the manager should be changed to only mandate that the report should be issued to whoever engages the CPA and anyone else that entity designates.

Response: We agree. The Commission concurs and has modified the regulation accordingly.

Comment: The responsibility for submitting the report should be placed on the tribal gaming regulatory authority not the tribe.

Response: We disagree. Since the tribe is ultimately responsible and since the tribal gaming regulatory authority is a component of tribal government, the distinction is not necessary.

Comment: The term "fiscal year" is more precise than the term "business year."

Response: We disagree. Fiscal year is generally defined as the twelve consecutive months used by a business entity to account for and report on its

business operations. Business year is generally defined as the fiscal year based on the cycle of the given business rather than a calendar year. Although the terms are essentially synonymous, as used in the subject regulation, the Commission believes "business year" is more appropriate.

Comment: The checklist or internal testing procedure is done by the internal auditor so it is redundant to require the CPA to do it.

Response: We disagree. The checklist is relevant to the CPA, unless the practitioner determines that, and in accordance with relevant professional standards for attestation engagements, reliance can be placed on the work of the internal auditor. The extent of that reliance would determine the scope of checklists that the internal auditor might perform.

Comments Regarding Section 543.7

Comment: The term "critical proprietary software" in 543.7 is not defined. The Commission should consider changing the term to "game software."

Response: We agree. The Commission concurs with the comment and has modified the regulation accordingly, see 543.7(e)(2).

Comment: It is not clear what entity is responsible for verifying game software.

Response: The regulation anticipates that the tribal gaming regulatory authority will adopt a rule requiring personnel independent of the bingo department to test the signature of the game to ensure it is consistent with that previously approved. However, in practice, the Commission is aware that frequently the tribal regulator will assume responsibility for this task, which is common to the gaming industry.

Comment: The Commission should clarify what procedure the tribal gaming regulatory authority should use to verify authenticity and consider if this is feasible for a tribal gaming regulatory authority.

Response: We disagree. The detailed procedures necessary to confirm the authenticity of a game program may vary. This is consistent with section 547.8(f) of the technical standards.

Comments on Section 543.16

Comment: Section 543.16(e) appears to be a technical standard instead of an internal control.

Response: We disagree. The standard pertains to procedural requirements specific to the review of computer access records and unsuccessful log on attempts.

Comment: In Section 543.16(f) it is unclear to what the term "version number" refers.

Response: We disagree. In the noted standard, the term refers to software applications; therefore, we believe the meaning to be evident.

Comments Regarding Alternative Procedures

Comment: One commenter suggested that time and money could be saved by allowing alternative procedures in the MICS.

Response: We disagree. Essentially the regulations do allow for alternative procedures by allowing for variances.

Comment: The Commission should allow self-regulated tribes to approve alternative procedures to those in the Class II MICS.

Response: The MICS are common in established gaming jurisdictions and, to be effective in establishing a minimum baseline for the internal operating procedures of tribal gaming enterprises, the rule must be concise, explicit, and uniform for all tribal gaming operations to which they apply. Furthermore, to nurture and promote public confidence in the integrity and regulation of Indian gaming and ensure its adequate regulation to protect tribal gaming assets and the interests of tribal stakeholders and the public, the Commission's MICS regulations must be reasonably uniform in their implementation and application and regularly monitored and enforced by tribal regulators and the NIGC to ensure tribal compliance. Regardless, self-regulated tribes may adopt variances.

Comments Regarding Application of MICS to Small and Charitable Gaming Operations

Comment: Several comments stated that the threshold for applying the MICS to small or charitable gaming is too low. Raising the threshold to \$3 million dollars would not eliminate the requirement for internal controls since small and charitable operations must operate under appropriate standards, however it would save in regulatory expenditures allowing tribal governments to retain more gaming dollars for governmental services and infrastructure.

Response: The Commission agrees to some extent and therefore has raised the threshold to \$2 million. We note that the threshold contained in the Class II technical standards will remain at \$1 million as proposed because the cost of compliance will be a one-time cost.

Comments Regarding MICS References to Classification and Technical Standards

Comment: Several comments stated that the MICS should not reference proposed classification standards or proposed technical standards.

Response: The Commission agrees. Because the classification standards are being withdrawn simultaneously with the publishing of these regulations, all references to classification standards have been removed. The MICS did not include any references to the technical standards.

Comments on Game Classification

Comment: One commenter stated that part 543 assumes that the bingo games will be similar to slot machines and such provisions are improper because Class II games cannot include "slot machines of any kind."

Response: These regulations are not intended to be used to classify machines as either Class II or Class III. It is possible for Class III games to be compliant with these MICS. Therefore, compliance with these MICS is not an indicator or evidence that a game is Class II.

List of Subjects in 25 CFR Parts 542 and 543

Accounting, Auditing, Gambling, Incorporation by reference, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, the Commission amends 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 October 13, 2009.

§ 542.16 [Removed and Reserved]

■ 3. Section 542.16 is removed and reserved effective October 13, 2009.

■ 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 tribal governments 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 542.18, 542.20 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 apply to all sections of this part unless otherwise noted.

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 suggest that appropriate management contracts are not required, where applicable, as are 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.

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. The audit function of a gaming operation that is independent of the department subject to the audit. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined.

Internal auditor. The person(s) who perform an independent audit. Independence is obtained through the organizational reporting relationship, as the internal audit department must not report to management of the gaming operation. 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.

PIN. A personal identification number.

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).

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 and coupons; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 543.3 How do tribal governments comply with this part?

(a) Compliance based upon tier.

[Reserved]

(b) Determination of tier. [Reserved]

(c) Tribal internal control standards.

Within six months of October 10, 2008, each tribal gaming regulatory authority must, in accordance with the tribal gaming ordinance, establish or ensure that tribal internal control standards are established and implemented that must:

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

(2) Contain standards to identify, detect and deter money laundering in furtherance of a criminal enterprise, terrorism, tax evasion or other unlawful activity. The standards should be designed to facilitate the keeping of records and the filing of reports with the appropriate federal regulatory and law enforcement authorities.

(3) Establish a deadline, which must 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 six month period.

(d) Gaming operations. Each gaming operation must 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 November 10, 2008, must comply with this part within the time requirements established in paragraph (c) of this section. In the interim, such operations must continue to comply with existing tribal internal control standards.

(2) New gaming operations. All gaming operations that commence operations after April 10, 2009, must comply with this part before commencement of operations.

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

(f) CPA testing. (1) An independent certified public accountant (CPA) must 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 must 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 tribe must submit two copies of the report to the Commission within 120 days of the gaming operation's fiscal year end. In performing the compliance audit, the CPA must use the Statements on Standards for Attestation Engagements No. 10 at Sections 101 ("Attest Engagements") and 201 ("Agreed-Upon Procedures Engagements") (collectively "SSAE's"), July 12, 2007, American Institute of Certified Public Accountants Inc. (AICPA). SSAE No. 10 at Sections 101 and 201 are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Commission must publish notice of change in the **Federal Register** and the material must be available to the public. You may obtain a copy from the American Institute of Certified Public Accountants, 220 Leigh Farm Rd., Durham, NC 27707, 1-888-777-7077, at <http://www.aicpa.org>. You may inspect a copy at the National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005, 202-632-7003. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. The CPA must 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 must 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 must 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. 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 must 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 must 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 has 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 must 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, at Sections 101 and 201 are 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 must prepare a report of the findings for the tribe and management. The tribe must 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 does 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 \$2 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 does 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 \$2 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. For more information please see www.fasb.gov or www.fasb.org.

(c) Independent operators. Nothing in this section exempts 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 must be controlled so as to assure the integrity of the bingo paper being used as follows:

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

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

(C) The bingo control log must 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 must 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 must be an accurate accounting of all bingo sales.

(ii) All bingo sales records must 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 must 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 must 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 must apply as relevant:

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

(B) The authorization of the void, by an authorized agent independent of the original sale transaction (supervisor recommended), must 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) Reissue of previously sold bingo cards. When one or more previously sold bingo cards need to be reissued, the following controls must 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 reissuance.

(b) Draw—(1) Verification and display. (i) Procedures must 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 must be immediately recorded and maintained for a minimum of 24 hours.

(iii) Controls must 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 must be established and implemented to prevent unauthorized access or fraudulent transactions using manual payout documents, including:

(i) Payout documents must 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 must 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 must be segregated, if performed manually. Agents who sell bingo cards on the floor must 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 must 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 must 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 must 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, must 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 must be documented on a two-part form, of which a restricted system record can be considered one part of the form, and documentation must 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) must 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) must 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 must be recorded by shift, session or other relevant time period.

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

(d) Operational controls. (1) Procedures must 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 must 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 must be documented and maintained. Unverified transfers of cash or cash equivalents are prohibited.

(3) Procedures must 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 must 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 must 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 game software components of a Class II gaming system will be identified in the test laboratory report.

When initially received, the software must be verified to be authentic copies, as certified by the independent testing laboratory.

(3) Procedures must 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 must 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 must be tested annually for accurate communications and appropriate logging of events.

(4) Records must 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 must 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 must 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 must 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 must remain in the cashier's accountability for reconciliation purposes. The voucher redemption system reports must 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 must 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 must 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 must 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 must 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 must apply:

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

(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 must 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 must verify the identity of the patron and availability of funds. Reliance on a secured PIN entered by the patron is an acceptable method of verifying patron identity.

(B) A multi-part deposit/withdrawal record must 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 must be secured for reconciliation of the cashier's bank for each shift. All transactions involving patron deposit accounts must be accurately tracked.

(D) The copy of the transaction record must 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 must be established that safeguard the integrity of the process used.

(v) Patron Deposit Account Adjustments. (A) Adjustments to the patron deposit accounts must be performed by an agent.

(B) A record must 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 must 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 must 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 must be recorded and maintained at the end of the gaming operations specified 24-hour accounting period.

(viii) Procedures must 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 must be available to the patron upon reasonable request and to the tribal gaming regulatory authority upon request.

(x) Only dedicated gaming operation bank accounts must 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 must not be used for any other types of transactions.

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

(i) Changes to promotional and other accounts must 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 must 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 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 must 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, must 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 must be appropriately documented.

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

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

(ii) All accounting/audit procedures and actions must 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 must 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 must be performed within seven days of the transaction's occurrence date being reviewed.

(v) Accounting/audit procedures must be in place to review variances related to bingo accounting data, which must 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 must 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 must be reviewed for proper authorization, completion and accurate calculations.

(ii) Manual payout summary report, if applicable, must 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 must 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 must be reviewed for proper authorizations and completion.

(v) Where manual payout information is available per player interface, records of manual payouts must be reviewed against the recorded manual payout amounts per player interface.

(vi) Manual payout forms must 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 must be reviewed for proper authorization and completion.

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

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

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

(xi) Amount of financial instruments accepted per financial instrument type and per financial instrument acceptor must 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 must be reviewed for reasonableness.

(xiii) Amount of financial instruments dispensed per financial instrument type and per financial instrument dispenser must 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 must 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 must be reconciled, as follows:

(A) A report must 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 \pm 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 must be indicated in any Class II gaming system exception reports generated.

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

(xxiv) Accounting/auditing agents must 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 must 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 must 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 must 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 must be counted and recorded.

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

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

(vi) Investigation must 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 must be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vii) The results of a variance investigation, including the date and personnel involved in any investigation, 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 must 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 must 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 must 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 must be removed and counted by at least two agents; and

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

(xi) At the conclusion of a promotion, accounting/audit agents must 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 must be established and implemented to govern the participation in inter-tribal prize pools, which at a minimum must include the review, verification and maintenance of the following records, which must 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 must be recorded at the end of the gaming operations specified 24-hour accounting period. Such data must 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 must be established and implemented that ensure the reliability of the performance data.

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

(iv) An agent must 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 must 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 must 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 must 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 must review bingo statistical information on at least a monthly basis.

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

(v) Such investigations must 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 must be conspicuously

displayed at or near the player interface(s) to which the prize applies.

(ii) At least once each day, each gaming operation must 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 must be recorded on the progressive log.

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

(v) Procedures must 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, must 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 must be precluded from having access to the secured computer area(s).

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

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

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

(i) Each user must 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 must 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 must be maintained.

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

(4) Procedures must 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 must 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 must 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 must 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 must 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: September 24, 2008.

Philip N. Hogen,
Chairman.

Norman H. DesRosiers,
Vice Chairman.

[FR Doc. E8-23081 Filed 10-9-08; 8:45 am]

BILLING CODE 7565-01-P

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, Interior.

ACTION: Final rule.

SUMMARY: The rule adds a new part to the Commission's regulations establishing technical standards for Class II games—bingo, lotto, other games similar to bingo, pull tabs, and "instant bingo"—that are played using "electronic, computer, or other technologic aids" as parts of a Class II gaming system. The rule establishes a process for ensuring the integrity of such games and aids—examination by

an independent testing laboratory and approval by the tribal gaming regulatory authority—before being made available to the public for play in a tribal gaming operation. The standards will assist tribal gaming regulatory authorities and operators in ensuring the integrity and security of Class II gaming and the accountability of Class II gaming revenue. The standards will also provide guidance to equipment manufacturers and distributors of Class II gaming systems.

The rule does not attempt to distinguish Class II gaming from Class III gaming. Rather, the rule assumes that the games played on Class II gaming systems are, in fact, Class II.

DATES: Effective November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Gross, Associate General Counsel, General Law, Office of General Counsel, National Indian Gaming Commission, 1441 L St., NW., Suite 9100, Washington, DC 20005, telephone: 202.632.7003. This is not a toll-free call.

SUPPLEMENTARY INFORMATION:

Withdrawal of Classification Standards and Amendment to Definition of Facsimile

The Commission has withdrawn the Classification standards it proposed on October 24, 2007. "Classification Standards for Bingo, Lotto, Etc. as Class II Gaming When Played Through an Electronic Medium Using 'Electronic Computer, or Other Technologic Aids.'" 72 FR 60483. The Commission has also withdrawn the amendment to the definition of "electronic or electromechanical facsimile," also proposed on October 24, 2007. "Definition for Electronic or Electromechanical Facsimile." 72 FR 60482. See the Commission's notices of withdrawal, published simultaneously.

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 ("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