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VIA E-mail reg.review@nigc.gov

National Indian Gaming Commission
Attn: Regulatory Review
1441 L Street, Suite 9100
Washington, DC 20005

Re: Comments on Preliminary Draft of 25 CFR Part 543 – Minimum Internal Control Standards for Class II Gaming

Dear Chairperson Stevens, Vice-Chairperson Cochran, and Commissioner Little:

On behalf of the Lytton Rancheria of California (Tribe), we hereby submit the following comments in response to the National Indian Gaming Commission's (Commission) Preliminary Draft of 25 CFR Part 543 – Minimum Internal Control Standards for Class II Gaming (Preliminary Draft). The Tribe appreciates the opportunity to submit comments on this proposed Preliminary Draft and welcomes the Commission's commitment to providing a comprehensive government-to-government consultation process. The Tribe supports the distribution of preliminary draft regulations as such supports a constructive government-to-government dialogue between tribes and the Commission, which ultimately will result in stronger and more effective regulations.

The Tribe commends the Commission on its commitment to adopting a complete set of minimum internal control standards for Class II gaming that are appropriately minimum and appreciates the Commission's efforts to consider the recommendations of both the Tribal Gaming Working Group (TGWG) and the Tribal Advisory Committee (TAC).

The Tribe recognizes that the Preliminary Draft is the Commission's initial attempt and that more work will be done and broader consultations will be had before the Commission publishes a proposed rule. The Tribe notes that even this initial attempt represents a vast improvement over the proposed Class II Minimum Internal Control Standards drafted by the previous Commission (2010 MICS); however, the Tribe continues to note significant concerns with the Preliminary Draft. Although the Tribe has noted some very specific issues with the Preliminary Draft, the Tribe will refrain from addressing most of its more specific concerns for future

consultations and comment periods so that it can focus on its significant concern with the overall foundation of the document.

It appears that the Commission created the Preliminary Draft by using portions of the TGWG proposed regulations, the TGWG guidance documents, and the 2010 MICS. This combination has resulted in an unbalanced and disjointed regulation. On one hand, there are sections that may have too little regulation (Pull Tabs, for example), while on the other there are sections that are heavily laden with details and procedures (Drop and Count, for example). While we understand that under-regulation poses many issues, procedures do not necessarily result in good or appropriate regulation either, as such do not necessarily translate into good “controls.” Thus, a regulation consisting of nothing but detailed procedures (instead of necessary and appropriate controls) might very well result in inadequate or ineffective regulation. Moreover, the Commission is urged to keep in mind that tribal operations are vastly different and therefore a one size fits all approach will not work. The unbalanced nature of the regulation and the continued inclusion of “procedures” create significant issues that the Tribe believes warrant serious reconsideration before the Commission issues a proposed rule. In an effort to assist the Commission in producing an effective and appropriate set of minimum internal control standards for Class II gaming, the Tribe provides the following comments:

543.2 – Definitions

Accountability – This definition needs to be revised as it is not a proper definition of the term and is, as result, incompatible with the way the term is used in the substantive portion of the regulation. The term accountability refers to an action, not a physical object.

Class II game – The term should be “Class II gaming” as this is the term used in the Indian Gaming Regulatory Act (IGRA), not “Class II game.” This term should be changed accordingly throughout the document.

SAE – This term is used and defined differently in the substantive portion of the regulations than it is in this section. Such differences should be corrected to avoid confusion.

Consideration should be given to including definitions for “Cashless Transaction” and “Complimentary Service and/or Item.”

543.7 & 543.8 - Bingo

The Preliminary Draft separates bingo into two sections, one for “Class II Gaming System Bingo” and one for “Manual Bingo.” The Tribe urges the Commission to seriously rethink this arrangement. Putting aside issues with the use of the term “Class II Gaming System Bingo” and the failure to define this term or “Manual Bingo,” attempting to separate bingo into one of two categories is impractical (in fact, we would argue, impossible).

The IGRA permits the use of a full spectrum of technologic aids in the play of bingo. Accordingly, one system could be completely manual with no technologic aids whatsoever,

while another may have an electronic ball draw but otherwise be manual. One might use an electronic ball draw and electronic cards, while yet another might use some other combination. There are a multitude of possibilities. Thus, there is no reasoned or principled way to distinguish controls for bingo based on the type of technologic aid that is (or is not) being used. Moreover, attempting to separate bingo in this manner can lead to limitations on technology. The Preliminary Draft itself clearly demonstrates the serious issues that are created by attempting to separate bingo into different categories. For example:

1. The “Manual Bingo” section contains a set of provisions that allow for the use of technologic aids. How is a system that uses technologic aids “manual” bingo? And if “manual” bingo can use technologic aids, how does a gaming operation distinguish between a “manual” bingo game being played with technologic aids and a “class II gaming system” bingo game being played with technologic aids?

2. The “Class II Gaming System Bingo” section has controls that are both inappropriate and unworkable in an electronic environment. For example, one provision requires procedures that identify the method used to ensure the identity of each object drawn. In the electronic world, there are no “procedures” for identifying objects drawn because of the automated nature of electronic bingo. Other provisions require that all payouts be validated and verified by at least two agents. This is a ridiculous and impossible standard to meet in an electronic bingo environment where payouts occur on a constant basis and are validated and verified automatically by the system.

3. Both of 543.7 and 543.8 include a section entitled “Technologic Aids.” Again, addressing technologic aids in the “Manual Bingo” section simply proves the point that trying to separate bingo into different categories is neither practical nor helpful. Moreover, some of the portions of these sections contain very specific procedures relating to shipping. This could present a significant issue for operations that conduct both Class II and Class III gaming. Many tribal-state gaming compacts have very detailed shipping requirements. Although the Tribe’s facility is entirely Class II, we would imagine that most “mixed” facilities would want to follow one set of rules, whenever possible. This, however, would likely not be possible under the detailed shipping procedures in the Preliminary Draft.

Finally, the majority of both of these sections consists mainly of detailed procedures, not minimum standards, particularly the portions that were taken directly from the 2010 MICS. For the reasons stated in at the beginning of this letter, the Tribe would urge the Commission to reconsider its use of detailed procedures, particularly any of those from the 2010 MICS.

543.9 – Pull Tabs

With all due respect, it appears that not much thought was given to this section. Although the Tribe does not have Pull Tabs and thus does not have expertise in this area, the Tribe believes that this section fails to address some significant regulatory issues. Thus, the Tribe would urge the Commission to conduct a thorough review of this section and consider using the standards recommended by the TGWG and TAC.

543.10 – Card Games

Again, it appears not much thought was given to this section. We understand that there are not a significant number of tribes that operate card games; however, this does not mean that appropriate regulations should not exist. The Tribe does offer card games and is therefore in a position to know that this section has some serious flaws. In fact, this section is a perfect example of the unbalanced nature of the Preliminary Draft. On one hand, this section is full of very detailed procedures, while on the other hand, areas that should be regulated are notably absent. For example, there is nothing addressing controls for playing card inventory. The Tribe again urges the Commission to thoroughly review this section and consider using the standard recommended by the TGWG and TAC.

543.12 – Gaming Promotions & Player Tracking Systems

Promotions. The Tribe objects to controls being imposed on promotional activities. By definition, a promotional activity is not gaming, as there is no consideration involved. Accordingly, the Commission does not have the authority to regulate such activity. In the past, the Commission has recognized this limitation. Unfortunately, these new controls represent a significant change in the Commission's position and should be reconsidered.

Player Tracking Systems. It is unclear why the Commission chose to combine player tracking system controls with promotions since the two are unrelated. In any event, the Tribe believes that the two controls listed for player tracking systems are unnecessary and unhelpful. Moreover, all controls that protect the integrity of the player tracking system and its information are controlled by the Information Technology section.

For the above reasons, consideration should be given to deleting Section 543.12 in its entirety.

543.14 – Patron Deposit Accounts and Cashless Systems

The reference to smart cards in paragraph (a)(2) is inconsistent with the definition in 543.2. The manner in which the term is used in this section is incorrect. In addition, this section consists of a significant amount of very detailed procedures. Interestingly, however, despite all of the detail, many Title 31 requirements have been missed. This section is also confusing. Thus, consideration should be given to minimizing procedures and instead focusing on standards.

Consideration should also be given to separating Cashless Systems from Patron Deposit Accounts as combining the two as one section may place overly burdensome requirements on items such as "vouchers." (Although it is difficult to tell given the lack of a clear definition of "Cashless System" or any definition for "Cashless Transactions." Without proper definitions, it is difficult to determine what the term "Cashless System" encompasses and, thus, makes it impossible for the Tribe to provide any sort of useful comment relating to any proposed standards addressing "Cashless Systems.")

543.15 – Lines of Credit

This section consists of very detailed procedures and the manner in which it is formatted is confusing. Consideration should be given to minimizing procedures and instead focusing on standards. In addition, consideration should be given to reformatting this section so that it addresses the credit process in an orderly manner. For example: (1) Credit Establishment and Approval; (2) Credit Issuance; (3) Payment; and (4) Collections.

543.17 – Drop and Count

This section is a perfect example of the significant problems that arise from having too many details and unnecessary repetition. The following are just a few examples of the many issues the Tribe noted in this section:

1. The separation of universally applicable standards by “game type” is unnecessary (drop and count standards should all be the same), cumbersome, and results in inconsistencies. For example:
 - a. There is a section for “card game soft count standards,” yet no other section has “soft count standards” (nor is there a reason to differentiate the count as hard or soft);
 - b. The “player interface financial instrument count standards” section has a provision addressing access for emergencies. Obviously, this provision is applicable to all counts, but is not included in the “card game soft count standards” section.
2. This section uses terms, such as “financial instrument storage component,” that are not neither defined nor used anywhere else in the regulation (“drop box” is the universal term).

The above represent just a few examples of some major issues in this section. The Tribe urges the Commission to replace this section with the Drop and Count standards recommended by the TGWG and TAC. If, however, the Commission decides not to do this, we urge the Commission to at least make significant changes to correct inconsistencies and remove unnecessary repetitiveness.

543.18 – Cage, Vault, Kiosk, Cash and Cash Equivalents

It appears that a large portion of this section was taken from the 2010 MICS. As a result, there is a great deal of procedure in this section. Again, the Tribe urges the Commission to review this section with a focus on standards and not procedures.

543.20 – Information Technology

There is too much procedure in this section and the Tribe urges the Commission to replace the procedures in this section with appropriate minimum standards.

543.21 – Surveillance

The Tribes notes that much of the language in this section is language recommended by the TGWG and TAC. The Tribe is pleased to see the Commission's acceptance of the recommended language. The Tribe does, however, note that some parts of this section appear to be detailed procedures taken from the 2010 MICS. The Tribe is also concerned with the return of the phrase "sufficient clarity." Thus, the Tribe requests the Commission reconsider its use of detailed procedures and the term "sufficient clarity."

543.23 - Audit and Accounting

Although parts of this section appear to be taken from the TGWG and TAC recommendations, some parts consist of very detailed procedures (for example, paragraphs (c)(1)(i)-(ix)). The Tribe urges the Commission to reconsider the use of such detailed procedures.

543.24 – Revenue Audit

Again, there is too much procedure in this section and the Tribe urges the Commission to replace the procedures in this section with appropriate minimum standards. Additionally, consideration should be given to combining Audit and Accounting with Revenue Audit as separating these activities into two sections is confusing and impractical given that there are many "crossover" requirements. For example, each section requires a minimum bankroll calculation and segregation of duties. Separating requirements, such as these, into different sections makes it difficult to determine responsibility for the requirement.

General/Global Issues

1. The Preliminary Draft contains a number of new requirements that may implicate the technical specifications of the games and gaming systems being used. For example, the Information Technology section imposes a number of requirements that may or may not already be addressed in Part 547. For example, there is a provisions requiring unused services and non-essential ports to be disabled; these are technical requirements more appropriate for technical standards. The Commission should carefully review the Preliminary Draft to make sure that all technical standards are deleted from the Preliminary Draft and, if appropriate, moved to Part 547.
2. Some sections of the Preliminary Draft provide cross-references to other sections. For example, 543.7 - Bingo references 543.20 - Information Technology. The use of cross-referencing, however, is inconsistent. Such inconsistency can lead to confusion as the lack of a cross-reference can infer that the requirements of other sections simply do not apply to that particular section, whether or not that is truly the case. The Tribe believes that cross-references are unnecessary and therefore suggests deleting all cross-references to eliminate the risk associated with inadvertent inconsistencies. If, however, the Commission decides to retain such references, it should ensure that the use of cross-referencing is done in a consistent manner.
3. Boilerplate language is not used in a consistent manner. Certain boilerplate provisions, such as supervision, should be in all (or almost all) sections. This, however, is not the case. The Commission should ensure that boilerplate language is used consistently to avoid confusion. Further, with regard specifically to supervision, at least on section (Information Technology)

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uses language that is completely different from that used in other sections. The Commission should reconsider the use of this different language as it does not appear that there is a rational reason for such difference.

CONCLUSION

On behalf of the Lytton Rancheria of California, we appreciate the opportunity to comment on the Commission's Preliminary Draft of Part 543. The Tribe looks forward to future discussions and/or consultations with representatives of Commission regarding these regulations.

Sincerely,

A handwritten signature in black ink that reads "Kathryn A. Ogas". The signature is written in a cursive, flowing style.

Kathryn A. Ogas
Attorney for the Lytton Rancheria of California