COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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BY E-MAIL

National Indian Gaming Commission
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Re: Comments on Proposed Class II Minimum Internal Control Standards
25 C.F.R. Part 543

To the Commission:

On behalf of the Colorado River Indian Tribes ("CRIT" or "the Tribes"), I write to comment on the Commission's proposed revisions to Part 543, Volume 25 of the Code of Federal Regulations, relating to Class II Minimum Internal Control Standards ("MICS"), as published in the Federal Register on June 1, 2012. We are pleased to have the opportunity to do so.

Comments

1. § 543.4 – Charitable Gaming Operations. The Commission states in the prefatory comments that it "does not intend to limit the definition of charitable organizations to those with a 501(c)(3) designation. For purposes of the MICS, an organization is charitable if the regulating tribe recognizes it as such." 77 Fed. Reg. at 32445. However, nothing in the actual language of the proposed rule offers that explicit assurance. We suggest that it should.

2. § 543.5 – Alternative Minimum Standard. This section sets out a procedure if the Tribal Gaming Regulatory Agency wishes to impose a standard different from (but not more stringent than) that set out in the MICS. The prefatory comment states: "Except when a TGRA institutes a stricter standard than those contained in this part, if a TGRA wishes to use a different standard, it may submit a request to the Chair for approval of an alternate minimum standard." Both this comment and the actual language of the section raise several issues.

- First, at the risk of sounding like the grammar police, we recommend that the Commission use the correct word – "alternative" – rather than "alternate."

- Use of the word "may" rather than "should" injects unnecessary uncertainty into the process. Section 543.5(a) permits a TGRA to adopt an alternative standard and requires that any such standard be submitted to the Chair. Section 543.5(b) states that the "Chair *may* approve or object to an alternate standard granted by a TGRA" (emphasis added).[1] Section 543.5(b)(4) states that no alternate standard may be implemented "until it has been approved by the TGRA pursuant to paragraph (a)(1) of this section *or* the Chair has approved it pursuant to paragraph (b)(1) of this section" (emphasis added). We recommend the substitution of "shall" for "may" in Section 543.5(a) and changing "or" to "and" in Section 543.5(b)(4), since any alternative standard must be approved by both the Tribe and the Commission.

3. § 543.9 – Pull Tabs. The proposed rule revises the definition of "kiosk" (§ 543.2) and authorizes machine redemption of pull tabs up to $600 without defacement, "so long as the tabs are secured and destroyed after removal from the kiosk in accordance with procedures approved by the TGRA." 77 Fed Reg. at 32446, § 543.9(d)(3). This is a constructive revision. However, subsection 543.9(d)(3), the subsection specifically authorizing machine readable redemption, does *not* contain the $600 limitation; that limitation appears in subsection (d)(4) and is directed at documentation and verification, *not* a cap on the dollar amount of points that may be redeemed by machine. We note this apparent discrepancy.

4. § 543.17(b) – Drop and Count. The proposed rule expands physical access to the count room from just "agents" of the gaming operation to include "other authorized persons." This appears to be a reasonable revision, so long as the non-agents are properly accompanied and supervised.

5. § 543.20 – Information and Technology. The Commission reviewed the use of the terms "personnel" and "agents" in this section, and extended the independence provision to all agents, rather than just the personnel of the gaming operation. 77 Fed. Reg. at 32447. We believe this is a constructive revision.

6. § 543.23(c)(8) – Audit and Accounting. The Commission's prefatory comment states that "[s]everal commenters requested that the rule replace 'Commission' with 'TGRA' as the entity responsible for citing instances of noncompliance. ..." The Commission declined to make this change, but "agreed that it is entirely appropriate to add the TGRA, and has done so in

[1] The prefatory comment states that "[e]xcept when a TGRA institutes a stricter standard than those contained in this part, if a TGRA wishes to use a different standard, it *may* submit a request to the Chair for approval of an alternative minimum standard." 77 Fed. Reg. at 32445.

the proposed rule." 77 Fed. Reg. at 32447. Nowhere in Section 543.23 are we able to find any specific designation of *any* entity responsible for citing non-compliance. The only logical place for the change referred to in the Commission's prefatory comment is Section 543.23(c)(8), which requires: "Follow-up observations and examinations must be performed to verify that corrective action has been taken regarding all instances of non-compliance cited by internal audit, the independent accountant, the Commission, and/or the TGRA." 77 Fed. Reg. at 32463. The Commission's intention seems laudatory, but its implementation appears less than clear.

We appreciate both the evident thought and sensitivity that went into the proposed revisions and the opportunity to comment on them.

Sincerely,

COLORADO RIVER INDIAN TRIBES

By: _____
Eldred Enas, Chairman

Cc: CRIT Tribal Gaming Agency
Rebecca Loudbear, Acting Attorney General