Iowa Tribe of Oklahoma

R.R. 1, Box 721
Perkins, Oklahoma 74059
(405) 547-2402
Fax: (405) 547-1032

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Ms. Tracie Stevens, Chairwoman
Ms. Steffani A. Cochran, Vice-Chairperson
Mr. Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Proposed Rule of 25 C.F.R. Part 543: Class II Minimum Internal Control Standards

Dear Commissioners:

The Iowa Tribe of Oklahoma ("Tribe") is pleased to submit the following comments regarding the National Indian Gaming Commission's ("Commission") proposed rule of the Class II Minimum Internal Control Standards ("MICS"). The Tribe appreciates the amount of time and resources the Commission has devoted to developing this proposed rule. In particular, we appreciate the Commission's efforts to take into account tribal input during this rulemaking process, and are grateful that the Commission has extended the comment period to provide tribal governments with additional time to review and analyze this complex rulemaking.

As a general matter, while we support the Commission's efforts to set out standards that will protect the integrity and security of tribal gaming operations, we remain concerned that the proposed rule's regulatory framework is overly detailed and prescriptive in that it dictates the specific methodology for meeting a particular standard or regulatory objectives rather than establishing the minimum or baseline internal control standards to govern the conduct of Class II gaming. The proposed rule specifies among other things, the title of the individual or department responsible for performing a specific task and the type of technology that must be used to carry out that task, without accounting for any of the structural and operational differences that exist among tribal gaming operations. One of our primary concerns is that, by including such specifics in the text of the regulation, the proposed rule may inadvertently require a particular type of organizational structure as a matter of compliance and impair the ability of tribal governments to determine the most appropriate and effective means of achieving compliance.

Addressing a complex subject such as the regulation of Class II gaming activities with such granularity and rigidity raises the risk that such regulations will quickly become outdated and incapable of keeping pace with new and emerging technologies. In the gaming industry, where technology and industry practices are constantly evolving, outdated regulations can not only hurt a tribe's bottom line by raising compliance costs, but also hinder the ability of tribal governments to capture inefficiencies through new technologies and management improvements. Such unintended consequences associated with out-of-date regulations can be especially detrimental to those smaller tribal gaming operations with more limited staff and fewer resources and capacity to perform the required functions.

We therefore urge the Commission to embrace a less prescriptive regulatory approach that focuses on what outcomes are required rather than on what specific steps must be followed. Rather than specifying the precise manner in which compliance must be achieved, the content of the Class II MICS should instead be focused on (1) stating the control standard; (2) clarifying the regulatory objective of that standard; and (3) outlining the subject matter that must be addressed in the internal control procedures. Under such an approach, tribal governments would have the necessary discretion and flexibility to customize their internal control procedures in a manner that reflects their actual management and organizational structure.

We note that there are a number of advantages associated with a more flexible and less prescriptive regulatory approach, including (1) enabling tribal governments to utilize the most effective methods of protecting the security and integrity of their gaming operations; (2) allowing tribal governments to develop and implement new methods and technology to combat fraud and integrity issues; and (3) giving tribal governments the ability and flexibility to adapt quickly to new methods that may enhance the security and integrity of their gaming operations. In addition, we believe that a less specific and more flexible regulatory approach is more consistent with IGRA's mandate that tribal governments be the exclusive regulator of their gaming activities on Indian lands.

In the alternative, the Commission could remedy some of the fundamental issues in the proposed rule by clarifying in the final rule that the regulations are not intended to require tribal governments to adopt a particular organizational structure or limit the use of alternative terminology, so long as the requisite control standard is met. Under proposed § 543.3, "How do tribal governments comply with this part," the Commission could include a provision clarifying that "Nothing in this Part is intended to impose a particular organizational structure or limit the use of alternative terminology." This would help alleviate any concerns over whether the use of different terminology to denote the same job title, location, or technology will in itself raise any compliance issues.

It would also minimize the need for the Commission to conduct periodic reviews and updates to reflect technological advances in the industry. Each time an agency updates its regulations, the agency must initiate a notice-and-comment period pursuant to the Administrative

Procedures Act and comply with all other rulemaking requirements under federal law, all of which can require significant investments of time and resources. To account for advances in technology, the Commission has already amended the MICS three times since June 27, 2002, August 12, 2005, and October 10, 2008 to account for advances in technology, meaning that on average, the Commission has had to update the MICS nearly every two years. Continuing to update federal regulations with such frequency is likely to increase the potential for confusion and inconsistency in the application of the MICS. We believe that inclusion of our proposed language will help ensure that the final rule of the Class II MICS remains timely and effective despite the inevitable changes in technology or industry practices.

As the Commission deliberates on the remaining issues in the proposed rule and moves towards the final stages of the rulemaking process, we urge the Commission to reconsider whether a one-size-fits-all approach to the Class II MICS is indeed the most cost-effective and appropriate means of establishing control standards, or whether a more flexible and less prescriptive regulatory framework represents a more balanced approach that can achieve the same regulatory goals. With this in mind, we now turn to our more specific concerns with the proposed rule and recommend revisions that we believe will address these concerns and otherwise clarify the scope and applicability of the proposed rule.

1. § 543.2 Definition of Kiosk. The proposed definition of a kiosk is unnecessarily narrow and potentially limiting because it includes specific functions of a kiosk as part of the definition, namely, the transfer of money to or from a customer account and redemption and reconciliation of pull tabs. The inclusion of such specifics suggests that the definition if all-inclusive and that any device commonly understood as kiosks that performs any other functions will not be covered under this definition. Rather than describing the specific functions of a kiosk, we recommend that the definition state, in broad terms, that kiosks are any devices that enable patrons of a Class II gaming operation to interact with systems and/or process transactions without the assistance of an agent.

2. § 543.3(e) Computer Applications. This provision provides that alternate documentation and/or procedures will be acceptable for any computer applications used that provide at least the level of control established by the standards of this Part. We believe this is an important provision that gives due deference to tribal governments to implement and enforce alternate procedures that maintain the requisite level of control. We ask, however, that this provision be expanded to cover computer applications *and/or other technologies* that may be utilized. The Class II MICS should not be construed to limit the use of other technology or preclude the use of certain technologies not specifically referenced, so long as requisite level of control is met.

3. § 543.3(h)(2) Enforcement of Commission MICS. We firmly believe that tribal governments bear the burden of implementing the Commission's regulations as the primary regulators of their gaming activities. The discussion draft preceding this proposed rule properly

recognized that tribes are the primary regulators of their gaming operations. Thus, the Commission has not previously found the inclusion of language recognizing the primary regulatory authority of tribes to be objectionable. It appears, however, as though this language has been struck from the proposed rule without any explanation. We ask that the Commission reinstate this statement to ensure that the tribal government's role as primary regulators is clearly and consistently recognized throughout the regulation.

Also, while we agree that tribal gaming operations should develop and implement SICS that, at a minimum, comply with the TICS, we are concerned by language suggesting that deficiencies in the SICS may be used by the Commission as a basis for an enforcement action. Unlike TICS and the MICS, which are regulatory in nature, the SICS are operational in nature and do not typically form the basis of agreed upon procedures ("AUP") audits. By basing enforcement actions on the SICS, the Class II MICS may inadvertently discourage tribal gaming operations from including standards in its SICS that exceed the Class II MICS. We ask that the proposed § 543.4(h)(2) be amended to reflect that deficiencies in the TICS, rather than in the SICS, may be used as a basis for an enforcement action.

4. § 543.4(b) Charitable Gaming Operations. We agree with the Commission's proposed change to delete § 543.4(b) from the regulation since the small gaming operation provision in proposed § 543.4(a) sufficiently covers all operations, charitable or not, with less than $3 million in gross gaming revenue.

5. § 534.5 Alternate Minimum Standard. We support the Commission's proposed change to § 543.5 of the proposed rule, which clarifies that Commission approval will not be needed for standards that exceed the level of control described in the Class II MICS. As a matter of consistency, however, we ask that the term "alternate minimum standard" be used instead of "alternate standard."

6. § 543.8(b)(2)(i) Bingo Cards. The term "authorized agent" is used in this section, as well as in many other sections in the proposed rule, despite the fact that, by definition, agents must be authorized to perform the specified function. We believe that use of the word "authorized" before agent is thus superfluous and should be deleted to avoid any confusion over the proper meaning of "agent," as that term is defined in this Part.

7. § 543.8(c)(4) Bingo Card Sales. We appreciate the Commission's acknowledgement that "bingo is bingo," regardless of whether technology is being used to assist in the conduct of the game, and support the proposed change to remove the regulatory distinction between "gaming system" and "manual" bingo. However, we have some concerns with manner in which certain bingo provisions have been consolidated. Specifically, with respect to the sales of bingo cards, it appears as though the proposed rule may not fully appreciate the key differences between bingo cards sold in manual bingo as opposed to Class II gaming system bingo. First, proposed § 543.8(c)(4) requires tribal governments to "record, track, and reconcile" the sales of

Class II gaming system bingo cards, thereby suggesting that tribal governments will be required to monitor and control the inventory of bingo cards sold. However, unlike in manual bingo where physical objects are used, there is no actual inventory of physical objects to control in Class II gaming system bingo. Thus, any requirements to track bingo card sales are incompatible with the nature of Class II gaming system bingo.

Second, proposed § 543.8(c)(4) contains certain documentation requirements that may be potentially inconsistent with the technical standards set forth in 25 C.F.R. Part 547 that relate to bingo card sales. Specifically, this section requires tribal governments to keep track of the shift or session and the number of bingo cards sold. However, according to the bingo card sales requirements in the Class II Technical Standards, only the "amount in" and "amount out" must be maintained by the Class II gaming system. By including additional documentation requirements, the proposed rule appears to be establishing additional technical standards outside of 25 C.F.R. Part 547. Any and all technical standards relating to Class II gaming should be included in 25 C.F.R. Part 547.

Third, proposed § 543.8(c)(4)(iii) contains a disclaimer that if a Class II gaming system does not track the number of cards sold, such "system limitation" must be noted. The use of the term "system limitation" suggests that tracking the number of bingo cards sold in Class II gaming system bingo is a requirement elsewhere in the Class II MICS or Class II Technical Standards when it is not. As noted above, the only documentation requirement for bingo cards sales in the Class II Technical Standards is the "amount in" and "amount out." The requirement to make note of a Class II gaming system that does not track the number of bingo cards sold should therefore be deleted from this section.

Finally, it is unclear what is intended by the phrase "other associated meter information" in proposed § 543.8(c)(v). To avoid imposing additional technical requirements beyond that which is already required in 25 C.F.R. Part 547, we recommend deleting such language from this section.

8. § 543.8(d) Draw. As drafted, proposed § 543.8(d)(2)-(4) creates an unnecessary separation of controls for manual draw and server-based draw, despite the fact that the controls for draw in bingo are similar regardless of whether the gaming is conducted manually or through a gaming system. In our view, the only significant difference between manual and gaming system bingo is that gaming system bingo is subject to those technical standards set forth in 25 C.F.R. Part 547. We recommend a simpler and more streamlined approach that states the general draw requirements for *all* bingo games while clarifying that, for Class II gaming systems, certification with the Class II Technical Standards will be acceptable for meeting the required draw controls.

To ensure consistency in the intent and purpose of the draw controls, we recommend clarifying that certification pursuant to the Class II Technical Standards will be for purposes of

meeting the required controls in this section, not "verifying the randomness of the draw." While this section addresses verification of physical objects and the display of draw, there are no references to verifying randomness in the Class II gaming system context, and moreover, the agents responsible for verifying objects in bingo typically do not have the ability to carry out tasks relating to randomness verification. The phrase "verifying the randomness of the draw" should thus be removed from proposed § 543.8(d)(1)(ii) and § 543.8(d)(4)(iii).

9. § 543.8(e)(5) Authorization and Signatures. This provision requires two agents to witness every manual payout, regardless of the payout amount. The witness requirement, however, may not be as critical for smaller payouts that are not as vulnerable to security and integrity risks as higher payouts. Rather than requiring *all* manual payouts to be witnessed by two agents, we believe a more reasonable and balanced approach would be one in which the tribal gaming regulatory agency determines the proper threshold amount over which the witness requirement will be applicable. This will give the tribal gaming regulatory agency the necessary discretion to determine the proper threshold amount based on the operation's size and the number of agents available.

10. § 543.8(e)(6)(iv)(D) Payout Records. This provision requires agents to compare the amount of the prize at the player interface to the accounting system amount for all manual payouts. However, depending on the tribal gaming operation, those agents responsible for making manual payouts may not have access to the accounting system. Our concern is that this provision mandates certain procedures and access that may be inconsistent with industry best practices. To address these concerns, we ask that the Commission remove this requirement in the final rule or amend the provision to allow for greater flexibility in determining the extent to which certain agents will have access to the accounting system.

11. § 543.8(f) Cash and Cash Equivalent Controls. The preamble states that proposed § 543.18, "describes the standards and documentation requirements for securing and issuing money from the cage." The procedures set forth in proposed § 543.8(f), however, also describe the standards and documentation requirements for securing and issuing money – specifically, cash and cash equivalents – from the cage, but in the bingo context. Importantly, the cash and cash equivalent procedures in proposed § 543.8(f) are not specific to bingo, but rather generic procedures that would apply to any Class II game. To minimize the potential for confusion and inconsistencies in application, any and all requirements for a particular control should be brought together and consolidated into one section rather than scattered throughout the regulation. To that end, we recommend moving the requirements set forth in proposed § 543.8(f)(1)-(4) to proposed § 543.18(b) so that all related controls for cash and cash equivalents can be easily located under the section titled "What are the minimum internal control standards for the cage, vault, kiosk, cash and cash equivalents."

12. § 543.8(g) Technological Aids to the Play of Bingo. As an initial matter, the title of this section, "Technological aids to the play of bingo" should be replaced with "Class II gaming

systems." On a more substantive level, it appears as though the shipping, receiving, and "testing" requirements in this section may potentially limit the ability of tribal governments to carry out their regulatory functions in accordance with best practices and 25 C.F.R. Part 547. With respect to the shipping and receiving requirements, while we agree with the need to protect the integrity and security of Class II gaming system component shipments, we believe that the specific methodology for shipping and receiving such components should be within the discretion of the tribal gaming operation and the tribal gaming regulatory authority. Otherwise, the Class II MICS may mandate certain procedures and requirements that are out of touch with industry best practices and impractical from an efficiency standpoint.

For instance, proposed § 543.8(g)(1)(i)(B) requires that gaming components be certified in accordance with 25 C.F.R. Part 547 *prior* to shipment, which may be unnecessarily burdensome for those tribal gaming operations that typically certify gaming systems *after* shipment in order to have an opportunity to test, review, examine, and trial the product within the gaming facility. The regulatory objective here is to ensure that each gaming system is properly certified in accordance with 25 C.F.R. Part 547; it should be immaterial for MICS compliance purposes whether such certification takes place before or after shipment.

Furthermore, proposed § 543.8(g)(5) outlines the various testing that must be completed during the installation process to ensure the proper installation of the player interface. The relationship between the testing requirements in this section and those set forth in 25 C.F.R. Part 547 is unclear. The regulatory objective of this section is to ensure the proper *installation* of player interfaces, not the proper *testing* of player interfaces, a subject which is already comprehensively addressed in 25 C.F.R. Part 547. Any additional testing of player interfaces that is not already required in 25 C.F.R. Part 547 should be within the discretion of the tribal government. We therefore respectfully request that the specific testing requirements for player interfaces be removed from this section and replaced with a statement that requires compliance with all applicable testing requirements.

13. § 543.8(h)(1) Operations. This section seeks to establish a one-size-fits-all approach to addressing malfunctions at the operational level, and in so doing, fails to take into account the particular circumstances specific to each malfunction. There are a number of variables that may come into play when a gaming system or any of its components malfunction, including contractual obligations to follow certain procedures in the event of a malfunction; it would be virtually impossible for the regulations to capture all of the possible scenarios.

In our view, the key regulatory objective here is to ensure that procedures are in place to investigate, document, and resolve malfunctions. As long as procedures are in place to ensure proper investigation, documentation, and resolution of malfunctions, the specific methodology in carrying out such procedures should be within the discretion of tribal governments.

Similarly, with respect to the removal, retirement, and/or destruction of a Class II gaming system from operation, the key regulatory objective should be to ensure that procedures are in place to address fundamental concerns with removed systems, such as those relating to the final accounting information and the proper documentation of unique identifiers, product descriptions, and the ultimate disposition of such systems. Mandating the actual procedural steps that tribal gaming operations must follow prior to and following the removal, retirement, and/or destruction of a Class II gaming system could become limiting by hindering the ability of tribal governments to respond in the most effective and efficient manner. We therefore respectfully request that proposed § 543.8(h)(1)-(2) be amended to allow for greater flexibility at the operational level in developing specific procedures relating to malfunctions and the removal, retirement, and/or destruction of Class II gaming systems.

14. § 543.8(i) Vouchers. The proposed rule defines cash equivalents as including "tokens, chips, coupons, vouchers, payout slips and tickets, and other items to which a gaming operation has assigned an exchange value." Since vouchers are, by definition, cash equivalents, any required control standards relating to vouchers should be moved to proposed § 543.18, which contains all of the requirements for cash and cash equivalents. We do not believe this will present any real regulatory concerns since the requirements for vouchers in this section are not specific to bingo but rather generic requirements that could be applied to any Class II game.

15. § 543.10(b) Exchanges or Transfers. This section requires every exchange between table banks and the cage to be authorized by a supervisor, despite the fact that, in practice, exchanges generally occur without the intervention of a supervisor. In the interest of efficiency and practicality, tribal gaming operations should be allowed to carry out exchanges without supervisory intervention. This section does state that supervisory authorization will not be required if table banks are maintained at an "imprest level" and runners are used for the exchanges at the table. It is unclear, however, what is meant by the term "imprest level" in relation to table games, and we ask for further clarification to ensure that tribal governments understand how this exception to the supervisory requirement is to be applied.

16. § 543.10(g) Promotional Progressive Pots and Pools. As a technical matter, we ask that the title of this section be amended to correspond with the term used in the definitions section of this proposed rule – i.e., rather than "Promotional Progressive Pots and Pools," this section should instead read "Promotional Progressive Pots and/*or* Pools." All generic references to pots, pools, and funds should also be amended to clarify that the requirements in this section will be applicable to promotional progressive pots and pools only, not just any game involving pots and pools. Although these may appear to be minor changes, we believe that such technical details are critical to ensuring the proper interpretation and application of the Class II MICS requirements.

On a related note, to avoid any confusion regarding the narrow applicability of this section to promotional progressive pots and/or pools, we ask that the Commission either remove

the language "any related promotions, including drawings and giveaway programs" from this section or provide clarification as to how such "related promotions" differ from promotional progressive pots and pools.

17. § 543.13 Complimentary Services or Items. This section requires tribal governments to document and record the authorization, issuance and tracking of complimentary services or items. We are concerned that the term "tracking" may be inappropriate and confusing when used in the context of complimentary services or items. For instance, it is unclear whether the items themselves must be tracked and inventoried, or whether logs must be maintained. Moreover, a requirement to "track" *all* complimentary services and items could prove unnecessarily onerous and burdensome since it would include items of minimal value such as pens, key chains, cups, etc. To address these concerns and eliminate the potential for confusion, we ask that the term "tracking" in proposed § 543.13(c)(1)(i) be replaced with "redemption."

18. § 543.17(c)(5) Count Team. The underlying concern in this section appears to be the proper independence and segregation of cage/vault agents and those engaging in drop and count functions. Proposed § 543.17(c)(5) requires that count team agents be independent of the department being counted, *as well as cage/vault departments*. In our view, rather than requiring count team agents to be completely independent of the cage/vault departments, the regulation should be clarified to state that a cage/vault agent may be used so long as the agent is not the sole recorder of the count and does not participate in transferring drop proceeds to the cage/vault. We believe this proposed change is more consistent with the operational realities of the drop and count process and will not affect or compromise the intended regulatory objective of ensuring proper independence and segregation of functions.

19. § 543.18(e)(5) Kiosks. Requirements concerning the security of communications between kiosks and cashless systems should be located in the section dealing with information technology, not in this more generalized section on kiosks. Scattering requirements relating to the same or similar control increases the potential for confusion and the likelihood that a tribal government may inadvertently fall out of compliance for failing to locate a requirement that deals with subject matter addressed in another section.

20. § 543.18(e)(6) Kiosk Reports. The terminology used in this section is confusing and inconsistent with the terminology generally used by the industry in describing reconciliations. Specifically, it is unclear what type of information should be included in a "recap of the disposition of wagering instruments," and how such "recap" differs from a reconciliation report. We request that the final rule either remove this confusing terminology or provide clarification as to the specific information that must be included in the kiosk reports.

21. § 543.18(f) Patron Deposited Funds. It appears as though the controls for patron deposited funds would be more appropriately placed in proposed § 543.14, which sets forth the

required controls for patron deposit accounts. Such change would make it easier to find and apply all of the required controls relating to patron accounts. In implementing this change, we ask that the Commission provide clear guidance on how patron deposited *funds* differ from patron deposited *accounts*. In defining patron deposited *funds*, it should be clear that such funds are dissimilar from *safekeeping funds*, which are generally not used for wagering purposes.

22. § 543.24 Revenue Audit. It is our understanding that revenue audit departments within tribal gaming operations are generally responsible for checking daily revenue amounts and ensuring the daily balancing of revenue summary reports. The requirements in this section, however, go beyond those functions traditionally performed by revenue audit employees. For instance, this section includes requirements for investigating variances, reviewing player tracking systems, and performing currency counter tests. Without any clarification that this section is not intended to apply to revenue audit departments only, it is unclear whether it will matter for compliance purposes which department carries out the requisite functions. To resolve these concerns, we ask that the section be renamed to "Operational audits" to clarify that any any department with the proper independence and segregation of functions can carry out the responsibilities in this section.

In closing, the Tribe believes that the implementation of the final rule of the Class II MICS will operate to enhance the integrity and security of Class II gaming activities. However, without careful drafting and consideration of all the potential unintended consequences, the Class II MICS could have the effect of hurting tribal gaming operations and the ability of tribal gaming operations to effectively regulate their gaming operations.

We appreciate the Commission's attention to these comments.

Sincerely,

/s/

Janice Rowe-Kurak, Chairwoman
Iowa Tribe of Oklahoma
Business Committee