

Uniform Tribal Gaming Regulation CGCC-8 ~~(9-24-09)~~

Table of Contents:

- (a) BACKGROUND AND PURPOSE.
  - (b) INTERNAL CONTROL STANDARDS.
  - (c) INTERNAL CONTROL SYSTEM.
  - (d) VERIFICATION OF TRIBAL MICS.
  - (e) NET WIN.
  - (f) AGREED-UPON PROCEDURES REPORT.
  - (g) COMPLIANCE INSPECTION PROTOCOLS.
  - (h) COMPACT COMPLIANCE REPORTS.
  - (i) TRIBAL ACTION PLAN.
  - (j) CONFIDENTIALITY.
  - (k) PERIODIC REVIEW REGARDING THIS REGULATION.
  - (l) DISPUTES.
  - (m) NIGC ALTERNATIVE COMPLIANCE.
  - (n) SEVERABILITY.
- 

(a) BACKGROUND AND PURPOSE.

(1) The 1999 Tribal-State Gaming Compact and comparable provisions of the New or Amended Compacts (collectively the “Compacts”) provide under section 6.1 that each Tribe will conduct its Gaming Activities in compliance with a Gaming Ordinance adopted by the Tribe and with rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency (“TGA”). Section 7.1 of the Compacts places on the TGA the responsibility for the conduct of “on-site gaming regulation and control in order to enforce the terms” of the Compacts. To that end, the TGA is required to adopt and enforce regulations, procedures and practices which ensure that the Gaming Operation “meets the highest standards of regulation and internal controls.” Section 8.1 of the Compacts charges the TGA with responsibility to promulgate rules, regulations and specifications and to ensure their enforcement. Certain subsections of section 8.1 of the Compacts outline matters which, at a minimum, these rules, regulations, and specifications must address (collectively, “Internal Control Standards” or “Tribal MICS”). Subject to the conditions stated therein, Sections 7.4 through 7.4.4 of the Compacts provide the State Gaming Agency (“SGA”) with rights to inspect the Gaming Facility to ensure compliance with the Compacts.

(2) The purpose of this regulation is to provide a uniform and effective system for the SGA to verify that the Tribal MICS have been adopted and enforced by the TGA in accordance with the Compacts.

(3) For purposes of this regulation, the California Gambling Control Commission (“CGCC”) is designated as the SGA. Only the CGCC shall be permitted to conduct compliance inspections under this regulation until the State designates a different SGA by providing written notice to the Tribes pursuant to section 13.0 of the Compacts. At no time shall more than one State agency serve as the SGA under this regulation.

(4) Nothing in this regulation shall modify or otherwise affect the rights and obligations of the SGA under the Compacts, including but not limited to the ability of the CGCC and the Department of Justice, Bureau of Gambling Control, to share documents disclosed pursuant to this regulation, subject to the Compacts' confidentiality provisions.

(5) Unless otherwise defined in this regulation, terms used in this regulation shall have the same meanings and definitions as set forth in the Compacts. Nothing in this regulation shall modify or amend the Compacts. To the extent there is any conflict between the provisions of this regulation and the Compacts, the provisions of the Compacts shall control.

(b) INTERNAL CONTROL STANDARDS.

(1) General Requirements. Pursuant to the Compacts, each Tribe shall promulgate rules, regulations, and specifications referred to above as "Tribal MICS" regarding the operation of Class III gaming.

(2) Standard of Compliance. The Minimum Internal Control Standards ("MICS") promulgated by the National Indian Gaming Commission ("NIGC") and set forth at 25 CFR Part 542 (as in effect on October 19, 2006 or as it may be amended), if adopted by a Tribe as its Tribal MICS, satisfy the requirements set forth in section (b)(1) above.

(3) Material Compliance.

(A) Tribal MICS that Meet or Exceed MICS. Notwithstanding the fact that a Tribe has not adopted the MICS pursuant to section (b)(2), a Tribe's Tribal MICS that meet or exceed the standards set forth in the MICS will satisfy the requirements of section (b)(1).

(B) Alternative Tribal MICS. A Tribe that has not satisfied the standards set forth in sections (b)(2) or (b)(3)(A) shall promulgate rules, regulations and specifications as its Tribal MICS that comply with the Compacts' requirements addressed within this regulation.

(c) INTERNAL CONTROL SYSTEM. Each Tribe shall ensure that its Gaming Operation implements and maintains internal control systems that, at a minimum, ensure compliance with the Tribal MICS that apply to its Gaming Operation.

(d) VERIFICATION OF TRIBAL MICS. The SGA may verify a Tribe's compliance with sections (b)(2) or (b)(3). SGA verification may be accomplished by on or off-site inspection of a document that sets forth the Tribal MICS.

(e) NET WIN. The Compacts' definition of "net win" shall apply to matters covered by this regulation, rather than the definition of "net win" provided at 25 CFR 542.19(d).

(f) CGCC REVIEW OF AGREED-UPON-PROCEDURES REPORT. A Tribe may elect to provide the SGA any Agreed-Upon-Procedures report prepared in accordance with 25 CFR 542.3(f), and where applicable, all information supplied by the Tribe and the TGA, for the

purpose of allowing the SGA to perform a risk assessment to determine priorities in its compliance inspections under this regulation.

(g) COMPLIANCE INSPECTION PROTOCOLS.

(1) Preface. Except where section (m) “NIGC ALTERNATIVE COMPLIANCE” applies, the SGA shall follow the protocols in this section (g) with respect to compliance inspections conducted by the SGA pursuant to this regulation. In conducting such inspections, the Tribe and the SGA acknowledge that the Tribe’s role under the Compacts is to serve as the primary regulator of its Gaming Operation and the SGA’s role is to assure that the Tribe’s regulatory obligations are being satisfied based on sections (b)(2), (b)(3)(A) or (b)(3)(B) above.

(2) General Approach. The compliance inspection process shall be accomplished by verifying that the Tribe has adopted Tribal MICS as set forth in section (b) above and verifying that the TGA is ensuring the enforcement of the Tribal MICS.

(3) Initiation of State Compliance Process. The SGA shall notify the Tribal Chairperson and the TGA in writing at least 30 days in advance of any scheduled compliance inspection. This letter shall include a request for documents to be made available to the SGA during the on-site compliance inspection and may include a request for a dedicated work area. At the start of the compliance inspection, an entrance conference shall be held to discuss with Tribal and TGA representatives the scope of the compliance inspection, timelines and schedule.

(4) On-Site Inspection Process. The SGA shall consult with the TGA regarding the methods and means by which the Tribe determines that its regulatory efforts are being properly enforced. The SGA may conduct an on-site compliance inspection at the Tribe’s gaming facility that the SGA reasonably determines is necessary to ensure compliance with the Compacts. The compliance inspection may encompass, and shall be limited to, the subject areas listed in the Tribal MICS. The SGA will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and TGA and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. At the conclusion of the on-site compliance inspection, an exit conference will be held to provide the Tribal and TGA representatives an oral summary of SGA findings from the compliance inspection.

(h) COMPLIANCE INSPECTION REPORTS.

(1) No later than 60 days following the SGA’s completion of a section (g) on-site compliance inspection, or such other time period as is mutually agreeable, the SGA shall deliver a draft compliance inspection report (“Draft Report”) to the Tribe and to the TGA, including specific compliance exceptions, if any.

(2) Following receipt of the Draft Report, the Tribe shall have 60 days, or such other time period as is mutually agreeable, to respond to the Draft Report. If the Tribe accepts the Draft Report, the SGA shall finalize the Draft Report and, within 30 days of acceptance, deliver a final Compliance Inspection Report (“Final Report”) to the Tribe and the TGA. If no response to the Draft Report is received from the Tribe by the 60th day, or such other time period as is mutually agreeable, the SGA shall consider the Draft Report final. Within 20 days of the date on

which the Draft Report is considered final, the SGA shall submit the Final Report to the Tribe and the TGA.

(3) Within 30 days of receipt of the Tribe' response to the Draft Report, or such other time period as is mutually agreeable, the SGA and the Tribe shall make good faith efforts to resolve any differences concerning the content of the Draft Report.

(4) If differences remain after the SGA and the Tribe have made good faith efforts to resolve them, at the option of the Tribe, the Tribe's objections to the Draft Report may be referred to the appointed/elected officials of the SGA for further consideration as provided in section (1)(2) below.

(5) The SGA shall not issue a Final Report until:

(A) The Tribe accepts the Draft Report;

(B) A dispute remains and the Tribe elects not to refer any objections to the appointed/elected officials of the SGA for further consideration; or

(C) The parties resolve, or are unable to resolve, their differences with respect to the Draft Report through referral to the appointed/elected officials of the SGA for further consideration.

(6) Any written response from the Tribe with respect to the Draft Report shall be included in and made part of the Final Report.

(i) TRIBAL ACTION PLAN.

(1) If the Final Report requests further action on the part of the Tribe, the Tribe ~~will~~may provide a written tribal action plan addressing any specific compliance exceptions ("Tribal Action Plan") within 45 days of receipt of the Final Report or such other time period as is mutually agreeable. Recognizing that the Tribe is the primary regulator of its gaming operation, the Tribe will, within a three-month period after submitting the Tribal Action Plan, develop and implement remedial procedures identified in the Tribal Action Plan. If the SGA does not agree with the Tribal Action Plan, the Tribe and SGA will make good faith efforts to address and resolve the specific compliance exceptions identified.

(2) In the event that the SGA has requested further action in the Final Report and the Tribe has not submitted a Tribal Action Plan, the SGA and the Tribe shall, within 60 days of the Tribe's receipt of the Final Report or such other time period as is mutually agreeable, make good faith efforts to address and resolve the specific compliance exceptions contained in the Final Report ~~and to create a mutually agreeable Tribal Action Plan.~~

(3) If differences remain after the SGA and the Tribe have made good faith efforts to resolve them under sections (1) and (2) above, at the option of the Tribe, the matter may be referred to the appointed/elected officials of the SGA for further consideration as provided in section (1)(2) below.

(j) CONFIDENTIALITY. Pursuant to section 7.4.3(b) of the Compacts, the SGA shall exercise utmost care in the preservation of the confidentiality of any and all documents and information received from the Tribe in compliance with this regulation and shall apply the highest standards of confidentiality expected under state law to preserve such documents and information from disclosure.

(k) PERIODIC REVIEW REGARDING THIS REGULATION.

(1) Nothing in this regulation shall be construed to preclude individual Tribes and the SGA from meeting, from time-to-time, to discuss Tribal MICS and compliance matters.

(2) The Association, as defined in section 2.2 of the Compacts and commonly known as the Tribal-State Regulatory Association, shall meet from time-to-time upon the request of any delegate to discuss possible modifications of this regulation.

(l) DISPUTES.

(1) If a dispute arises between the SGA and a Tribe involving the application or interpretation of this regulation, the parties shall make good faith efforts to resolve their differences.

(2) If these good faith discussions do not resolve the matter, at the option of the Tribe, the matter may be referred to the appointed/elected officials of the SGA for further consideration. Provided that the CGCC is serving as the SGA, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented to the appointed/elected officials of the SGA for consideration shall be subject to the confidentiality provisions of the Compacts.

(3) If, after further consideration by the appointed/elected officials of the SGA, a dispute remains, it may be referred for resolution pursuant to the dispute resolution process outlined in Compact section 9.0. If the Tribe does not opt for further consideration by the appointed/elected officials of the SGA, the dispute may be referred for resolution pursuant to the dispute resolution process outlined in Compact section 9.0.

(m) NIGC ALTERNATIVE COMPLIANCE.

(1) Sections (c), (d), (f), (g), (h) and (i) shall not apply to any Tribe's Gaming Operation while the Tribe has a gaming ordinance in effect that provides for NIGC monitoring and enforcement of the MICS set forth at 25 CFR Part 542 (as in effect on October 19, 2006, or as it may be amended). In addition, upon the written request of the SGA, the following shall occur:

(A) The TGA or Tribe shall provide a copy of the following documents to the SGA within 30 days of their receipt from or submission to the NIGC:

(i) Each final written report or document issued to the Tribe by the NIGC resulting from a MICS compliance site inspection/visit, or compliance review/audit (“NIGC Report”);

(ii) The NIGC’s supporting reports or documents (the “Supporting Papers”), if any, pertaining to the MICS review and preparation of the NIGC Report which the Tribe or the TGA shall request from the NIGC following the conclusion of the NIGC review and reporting process, provided however that the Supporting Papers shall not include documentation related to any financial review/audit of gaming revenue; and

(iii) Any documents the Tribe, TGA or Gaming Operation has delivered to the NIGC in response to any such NIGC Report.

(B) The TGA makes itself available upon at least 30 days written notice from the SGA, to address questions the SGA may have regarding any NIGC Report, which may include the SGA’s access to papers, books, records, equipment, or places of the gaming operation that are reasonably necessary to address such questions and, where possible, such documents are identified in the written notice from the SGA;

(C) The TGA provides the SGA with a copy of the independent CPA agreed upon procedures report conducted pursuant to 25 CFR Part 542.3(f) pertaining to Class III gaming within 30 days of its receipt and, where applicable, all information supplied by the Tribe, the TGA, or Gaming Operation to the NIGC in response thereto within 30 days of when it was supplied; and

(D) Any documents received from the Tribe or TGA shall be confidential pursuant to section (j).

(2) This NIGC alternative compliance section shall no longer apply to a Tribe’s gaming operation in the event that any of the following occur:

(A) The Tribal gaming ordinance that provides for NIGC monitoring and enforcement of the MICS is amended to eliminate such monitoring and enforcement;

(B) The SGA does not receive from the TGA or Tribe the NIGC Report within the required time period;

(C) The NIGC does not commence, for any three (3) year period following the effective date of this regulation, a MICS compliance site inspection/visit, or on-site compliance review/audit designed by the NIGC, after a regulatory review of relevant information, to effectively monitor and ensure MICS compliance, memorialized by an NIGC Report.

(3) Should a Tribe desire to re-establish applicability of this NIGC alternative compliance section, following the occurrence of a disqualifying event listed in Section (m)(2) above, the Tribe may provide written notice to the SGA of such desire and this NIGC alternative

compliance section shall apply beginning one (1) year after such notice, or such other date as is mutually agreeable in writing, so long as the Tribe meets the requirements of Section (m)(1).

~~(3)~~(4) Nothing in this section (m) is intended to amend, supersede, or negate any provision of the Compacts. However, satisfaction of this section (m) shall demonstrate compliance with Tribal MICS as provided for in section (b)(2) and/or (b)(3)(A) for purposes of this regulation and for purposes of the Compacts.

(n) **SEVERABILITY**. If any provision of this regulation or its application is held invalid, the validity of the remaining provisions shall be determined pursuant to applicable rules of statutory and regulatory construction.