



by Sheryl L. Ashley

Class II MICs: Where Are You on the Path to Compliance?

The National Indian Gaming Commission (NIGC) published the revisions to regulations 25 CFR Part 543 and 25 CFR Part 547 on September 21, 2012. These highly debated regulations became effective on October 22, 2012, exercising a significant impact on almost all properties within Indian Country. Highlighted below are some of the most important elements and discussion points that tribes must continue to address.

Implementation Deadlines

25 CFR Part 547 (Technical Standards) – This regulation is applicable to all properties, including those with less than \$3 million in Gross Gaming Revenue (GGR), and requires compliance within 120 days after date of publication (February 19, 2013). *Unless all Class II machines on property are already certified per §547.5(a) or §547.5(c). A list of grandfathered machines must be provided to the NIGC with Tribal Gaming Regulatory Authority (TGRA) approval to remain in use*

through November 10, 2018. If tribal gaming organizations have not provided this grandfathered listing yet, it is due as soon as possible.

25 CFR Part 543 (*Class II Minimum Internal Control Standards*) – All existing gaming operations must ensure Tribal Internal Control Standards (TICS) have been developed by October 22, 2013. Gaming operations are then required to develop their System of Internal Controls (SICS) and implement the TICS at the beginning of the gaming facility's next fiscal year (543.3(b)(2)), or at the option of the TGRA, extended by an additional six (6) months. All new gaming facilities commencing operations after the effective date are required to implement the controls prior to opening (543.3(c)(2)). Tribal gaming organizations need to be actively working on the SIC in order to comply with these requirements.

The understanding and analysis of new regulations typically begins with a thorough understanding of the underlying drivers to change; however, rather than discussing the past legal challenges to tribal sovereignty, provided here is a roadmap of the upcoming changes that must be considered within Class II and mixed Class II/III facilities. A prioritized plan of action and synchronized approach to compliance as well as important discussion points for the consideration of members of tribal councils, boards, gaming commissions and management follows. Although presented in a sequential format, these considerations must be tailored to each specific property based upon risk, human capital, and assessment of adoption costs.

Top 10 List – Path to Compliance

1. Complete a technical standards audit to determine areas of technical deficiencies. This includes partnering with vendors to ensure that Class II machines and systems meet the technical standards described in regulation 547.
2. Address and remedy action items discovered through the technological standards audit.
3. Determine the organization's Class II Tier, based on the last audited/reviewed financial statements' net gaming revenue number:
 - Tier A GGR > \$3 million but not > \$8 million
 - Tier B GGR > \$8 million but not > \$15 million
 - Tier C GGR > \$15 million

Small operations (less than \$3 million in GGR) must apply to, and be approved by, their TGRA for alternate standards

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before being considered exempt. For Mixed Class II/III properties, it is based on GGR for all Class II/III revenues combined based on information provided by the Acting General Counsel at NIGC. (This differs from the previous article “Traversing the Slopes of Compliance: Class II MICS” published in *Indian Gaming*, March 2013.)

4. Have a tier specific desk review performed of the current TICS. This will cross-reference the new regulations with what is currently covered in the TICS, noting any areas of deficiency.

5. Armed with the results of step 4, update the current SICs. These steps should be performed within enough time to implement into practice the required changes by the above referenced deadline.

6. Paired with the update of the ICS, an update and subsequent approval of the Policy & Procedure (P&P) manual will need to occur.

7. Organization-wide implementation of procedural compliance through training and practice.

8. Complete a thorough risk assessment once ICS and P&P have been updated.

9. Address and mitigate any risks discovered through the performance of step 8.

10. Commence discussions regarding audit and reporting impacts through consultations with an audit firm, TGRA, and management team.

In summary, the passage into operational compliance with the revised regulations is not without many significant challenges, but as with all change, prioritization, communication, and a proactive team environment will enable continued tribal success long into the future. ♣

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