

# § 543.10 What are the minimum internal control standards for gaming promotions?

## Comparison of July TGWG Submission to July 2010 Draft MICS

On October 8, 2008, the NIGC published final Class III MICS in the Federal Register. 73 FR 60492. The effective date of that rule has been postponed until 2012. 76 FR 53817. In 2010, the NIGC posted on its web site draft Class II MICS. The Proposed MICS published in the Federal Register on October 8, 2008 reserved § 543.10 and the 2010 draft regulations did not suggest new language for the section. **Because there is no draft 2010 regulation, this document will compare the TGWG MICS proposal to the 2008 MICS published in the Federal Register.**

Editing convention: The words in **blue** (underlined) and **red** (struck-through) are the additions and deletions made by the TGWG. This document does not include discussion of sections 543.10(a) – (d) (Internal Control Procedures, Computerized applications, Variances, Supervision) of the TGWG Version. The provisions are identical to others discussed in earlier comparison documents.

2008 Proposed MICS	TGWG Version
Reserved	<p><del>Reserved</del></p> <p><b>§ 543.10 What are the minimum internal control standards for gaming promotions?</b></p> <p>(e) Gaming Promotions. Controls must be established in a manner designed to prevent unauthorized access, cheating, misappropriation, forgery, theft, or fraud. Such controls must include, but not be limited to, the following:</p> <ol style="list-style-type: none"> <li>(1) Rules of the gaming promotion;</li> <li>(2) Gaming promotion accounting; and</li> <li>(3) TGRA approval.</li> </ol>

### NIGC Comments to TGWG Proposed Regulation

*Effect of 2010 Draft Regulation:* The regulation related to promotions is currently included within part 543.7 as the Promotion standards are specific to the game of bingo. The standards recognize that promotions vary among gaming operations and are general in nature. The controls are included to ensure the rules of the promotions are available for patron review and when a computerized player tracking system is utilized, it is adequately secured to prevent compromise. Standards for promotional activity controls are also included in the proposed cage and card game sections.

*Effect of TGWG Proposal:* The inclusion of a new stand-alone gaming promotions section at part 543.10, implies that the standards will apply to all promotions provided by a gaming operation. Gaming promotions differ greatly for the various Class II gaming activities, though, and including the promotions in a standalone section could result in gaming operations expending much more time trying to evaluate the cost/ benefit of individual promotions. Also, the proposed standards are vague and lack specificity regarding the different promotions or the accountability of the expenses associated with the promotional programs.

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#### **TGWG Guidance**

(e) Risk Assessments. Risk assessments and periodic program reviews may be used to determine how often gaming promotions should be audited. When an assessment and review is necessary, an agent independent of the organizational component responsible for conducting gaming promotions (i.e., marketing) should perform it.

#### **NIGC Comment to TGWG Guidance**

Guidance is unnecessarily vague. It does not suggest or recommend that the risk assessments be performed by the internal auditors who are generally in the position to perform such assessments/reviews and who would generally be the individuals performing the audits. The meaning of the word “operations” is unclear. The language “independent of the organizational component responsible for conducting the audited operations should perform it” is complex and ambiguous.

#### **TGWG Guidance**

(f) Gaming Promotions Rules. Rules of the gaming promotion should be displayed or made readily available to participants upon request. Gaming promotions rules should include, but not be limited to, the following:

- (1) The rules of play;
  - (2) The nature and value of the associated prize(s) or cash award(s);
  - (3) Any restrictions or limitations on participant eligibility;
  - (4) The date(s), time(s), and location(s) for the associated promotional activity or activities;
  - (5) Any other restrictions or limitations, including any related to the claim of prizes or cash awards;
  - (6) The announcement date(s), time(s), and location(s) for the winning entry or entries;
- and
- (7) Rules governing promotions offered across multiple gaming operations, third party sponsored promotions, and joint promotions involving third parties.

#### **NIGC Comment to TGWG Guidance**

The use of “should” rather than “shall” or “must” in the guidance could lead the reader to believe that the standard is not required by the MICS but that it is recommended. Otherwise guidance appears relevant.

#### **TGWG Guidance**

(g) TGRA Approval. The TGRA should approve the gaming promotions program to ensure that it is implemented in a fair manner and is compliant with all applicable regulations (e.g., MICS, TICS, laws on advertising, etc.). Best practice suggests that this approval should occur prior to any public release of a gaming promotion. TGRAs may find it is most efficient to

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approve promotions by type or by template and review the following for each gaming promotion:

- (1) A narrative description of the proposed gaming promotion;
- (2) The rules governing entry and eligibility, including any applicable restrictions or limitations on eligibility;
- (3) The rules of play and method for selecting the winning entry or entries;
- (4) Applicable restrictions or limitations on the date, time, location, and manner for claiming a prize or cash awards;
- (5) Eligible prize(s) or cash award(s) and associated monetary value(s), including non-cash prizes' fair market value and cash substitution rules for non-cash prizes;
- (6) The identity of any external sponsorship for the gaming promotion, including contact information;
- (7) The date, time, and location where the gaming promotion will take place and the commencement and end dates of the promotion if it spans across multiple dates, including specific dates for each related event; and
- (8) A copy of any applicable advertisement or other promotional literature.

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### **TGWG Guidance**

#### **(h) Conduct of Promotional Activities.**

(1) Gaming operations should conduct promotional activities in accordance with the rules and procedures as approved by the TGRA.

(2) If the promotional activity is open to the general public, the gaming operation should conspicuously post the date, time and location of the promotion. Further, a complete copy of the rules related to play, eligibility, and claims should be made available to patrons upon request.

#### **(i) Prize Payouts.**

(1) Controls should include procedures for recording prize payouts including, but not limited to:

- (i) The name, address, and contact information of the winning patron(s);
- (ii) The prize(s) awarded and the value of the prize(s); and
- (iii) Any required IRS or other forms.

(2) Cash and cash equivalent payouts. When gaming promotions are used in conjunction with Class II gaming, controls should be established for payouts in accordance with MICS 543.14 (What are the minimum internal control standards for cage, vault, cash, and cash equivalents?) and the guidance provided in the associated document. Procedures should also comply with all applicable federal regulations (e.g., IRS code, Title 31, among others).

(3) Non-Cash Prizes. Best practice suggests that gaming operations utilize the following, or similar guidelines to ensure that non-cash prizes are properly distributed:

(i) Distribute non-cash prizes in accordance with the rules and procedures for the gaming promotion.

(ii) Do not allow substitution of non-monetary prizes for cash unless specifically authorized by the approved rules of the gaming promotion.

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(iii) Do not authorize exceptions in the absence of extraordinary circumstances and only where proper accounting standards and operating procedures specifically addressing such circumstances are in place.

(iv) Prohibit substitution of non-cash prizes for cash payment for any amount other than the fair market value of the advertised non-cash prize as required by the Internal Revenue Code.

(v) Do not substitute an advertised non-cash prize or award for another non-cash prize or award of a different type with a lesser value unless authorized by the rules.

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### **TGWG Guidance**

(j) Audit and Accounting.

(1) When gaming promotions are used in conjunction with Class II gaming then controls must be established for audit and accounting in accordance with MICS 543.19 (What are the minimum internal control standards for audit and accounting?) and the guidance provided in the associated document.

(2) Best practice suggests that each operational area secure daily audit and accounting records, forms, and documents prior to audit. For example a cashier may place records in a locked box for next-day delivery to accounting for audit.

### **NIGC Comment to TGWG Guidance**

The purpose of this guidance is unclear.