

*****NCLGS LEGISLATIVE ALERT*****

DATE: NOVEMBER 7, 2007
TO: NCLGS LEGISLATORS
FROM: SUSAN NOLAN
NCLGS EXECUTIVE DIRECTOR
RE: **NIGC PROPOSES RULES TO CLARIFY CLASS III GAMING**

Attachments:

- *NIGC Publishes Class II Regulations* (10/24 NIGC Press Release)
- [Classification Standards for Class II Games](#) (Rule Text)
- [Definition for "Electronic or Electromechanical Facsimile"](#) (Rule Text)
- [Minimum Internal Control Standards for Class II Gaming](#) (Rule Text)
- [Technical Standards for Class II Games](#) (Rule Text)
- *U.S. Moves to Regulate Indians' Video Bingo* (10/25 Arizona Daily Star)

On October 24, the National Indian Gaming Commission (NIGC) issued proposed rules relating to the regulation of Class II and Class III Indian Gaming. Advancing technology has contributed towards confusion between Class II and Class III games. The rules were published by the NIGC in an attempt to provide a clean line between Class II games that are utilized without tribal-state compacts, such as bingo, and Class III games or slot machines, which need to be authorized through compacts. Comments on the proposed rules are due by December 10, 2007.

PROPOSED RULES:

The rules would

- establish classification standards for Class II games to distinguish them from Class III games
- revise the definition for "electronic or electromechanical facsimile," meaning Class III games
- establish technical standards for Class II gaming, and establish a process for ensuring the integrity of such games before implementation
- also establish federal regulations for the use of Class II gaming

BACKGROUND

In 1992, the NIGC—authorized to regulate gaming under the Indian Gaming Regulatory Act (IGRA) of 1988—set regulations and definitions to simplify classifications of Indian gaming. These definitions, though redefined subsequently, still are thought not to provide sufficient clarity.

In 1999, the NIGC set Minimal Internal Control Standards (MICS) to further clarify Class II and Class III gaming. Since then, a U.S. District Court in 2005 decided for the Colorado River Indian Tribe (CRIT) over the NIGC in relation to an NIGC audit of the tribe's gaming facilities ruling that MICS do not apply to Class III gaming.

FUTURE FEDERAL ACTIVITY

The National Indian Gaming Association (NIGA) has come out in opposition to the MICS, but has suggested that a consensus needs to be made between the NIGC and NIGA regarding the issue. NIGA has stated that NIGC proposed rules could cost tribes as much as \$1 billion annually and slow down the play of Class II games.

Tribes have not come out in support for newly proposed regulations, although the rules are seen as being much weaker than those released last year.

NCLGS

The NCLGS State-Federal Relations Committee will continue to follow the NIGC MICS and recently proposed rules, as well as receive perspectives from interested parties on January 4. The committee discussions will be held in conjunction with the NCLGS Winter Meeting scheduled for January 4 through 6, 2008, in Scottsdale, Arizona.

Also at the winter meeting, NCLGS legislators will review suggested amendments to a NCLGS *Tribal-State Compact Informational Checklist*, which identifies key compact components for states considering compacts for the first time or renegotiating existing tribal-state gaming compacts.

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