



## **DEPARTMENT OF THE INTERIOR**

### **National Indian Gaming Commission**

#### **25 CFR Part 547**

#### **RIN 3141-AA27**

### **Minimum Technical Standards for Class II Gaming Systems and Equipment**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Final rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) is amending its rules regarding technical standards for Class II gaming systems and equipment to harmonize the charitable gaming exemption amount in the technical standards with the charitable gaming exemption amount in its Class II minimum internal control standards.

**DATES:** The effective date of these regulations is [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Michael Hoenig, Senior Attorney, National Indian Gaming Commission, 1441 L Street NW, Suite 9100, Washington, DC 20005. Email: [michael\\_hoenig@nigc.gov](mailto:michael_hoenig@nigc.gov); telephone: 202-632-7003.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the Commission and set out a comprehensive framework for the regulation of gaming on

Indian lands. The Act requires the Commission to “monitor class II gaming conducted on Indian lands on a continuing basis” and to “promulgate such regulations and guidelines as it deems appropriate to implement” IGRA. 25 U.S.C. 2706(b)(1), (b)(10).

In 2008, the NIGC published a final rule in the Federal Register that established technical standards for ensuring the integrity of electronic Class II games and aids. 73 FR 60508, Oct. 10, 2008. The technical standards were designed to assist tribal gaming regulatory authorities and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provided guidance to equipment manufacturers and distributors of Class II gaming systems. The standards did not classify which games were Class II games and which games were Class III games.

## **II. Previous Rulemaking Activity**

In 2012, the NIGC published a final rule in the Federal Register amending its part 547 technical standards to: change the order of the first five sections; add definitions and amend existing definitions; amend requirements and time restrictions for grandfathered Class II gaming systems; amend the requirements concerning minimum odds for Class II games; amend standards for test labs; remove references to the Federal Communications Commission and Underwriters Laboratory; require a player interface to display a serial number and date of manufacture; amend requirements concerning approval of downloads to a Class II gaming system; and to clarify the term “alternate standard.” 77 FR 58473, Sept. 21, 2012. In addition, § 547.5(e)(5) of the rule states that the part does not apply to a charitable gaming operation provided that, among other requirements, the amount of gross gaming revenue of the charitable gaming operation does not exceed \$1 million. The rule became effective on October 22, 2012.

At the same time that the NIGC amended and published part 547, it amended and published rules containing minimum internal control standards (MICS) for Class II gaming. 77 FR 58708, Sept. 21, 2012. Similar to the part 547 technical standards, the part 543 MICS exempt charitable gaming operations that earn less than a set threshold amount. However, the Commission increased the threshold amount in the MICS from \$1 million to \$3 million.

In February 2013, the Commission published a Notice of Proposed Rulemaking proposing to revise the threshold amount in § 547.5(e)(5) from \$1 million to \$3 million in order to harmonize the charitable gaming exemption amounts in the technical standards and the MICS to ensure that the exemption for a “charitable gaming operation” is consistent throughout the Commission’s rules (78 FR 11795, Feb. 20, 2013).

### **III. Review of Public Comments**

In response to its Notice of Proposed Rulemaking published on February 20, 2013, the Commission received the following comments:

*547.5 How does a tribal government, TGRA, or tribal gaming operation comply with this part?*

*Comment:* One commenter commended the current Commission for its efforts to improve existing regulations and for the diligence with which it has undertaken its efforts to consult with tribes. The commenter agrees that the proposed revision is needed in order to match the charitable gaming exemption thresholds of both the technical standards and the MICS.

*Response:* No response is necessary.

*Comment:* One commenter stated that he was puzzled by the \$3 million charitable gaming exemption amount, and requested clarification on whether this threshold amount will have an impact on the amount of Class II gaming revenue fees that are required to be paid to the NIGC.

*Response:* The Commission states that the \$3 million threshold amount does not impact the amount of Class II gaming revenue fees that are required to be paid to the NIGC; but instead, merely exempts charitable gaming operations whose annual gross gaming revenue does not exceed \$3 million from having to abide by the technical standards contained in part 547. The Commission believes that no further revisions to these rules are necessary.

## **Regulatory Matters**

### Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

### Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment,

productivity, innovation, or the ability of the enterprises to compete with foreign based enterprises.

#### Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

#### Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

#### Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and assigned OMB Control Number 3141-0014. The OMB control number expires on November 30, 2015.

**List of Subjects in 25 CFR Part 547**

Gambling; Indian—Indian lands; Indian—tribal government.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 547 as follows:

**PART 547—MINIMUM TECHNICAL STANDARDS FOR CLASS II GAMING SYSTEMS AND EQUIPMENT**

1. The authority citation for part 547 continues to read as follows:

**Authority:** 25 U.S.C. 2706(b).

2. In § 547.5, revise paragraph (e)(5) to read as follows:

**§ 547.5 How does a tribal government, TGRA, or tribal gaming operation comply with this part?**

\* \* \* \* \*

(e) \* \* \* \*

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed \$3,000,000.

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DATED: April 18, 2013.

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**Tracie L. Stevens,**  
Chairwoman.

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**Daniel J. Little,**  
Associate Commissioner.