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## **NATIONAL INDIAN GAMING COMMISSION**

### **25 CFR Part 547**

### **RIN 3141-AA64**

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

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Final rule.

**SUMMARY:** The National Indian Gaming Commission is amending its minimum technical standards for Class II gaming systems and equipment. The rule amends the regulations that describe how tribal governments, tribal gaming regulatory authorities, and tribal gaming operations comply with the minimum technical standards.

**DATES:** *Effective Date:* [Insert date 30 days after date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Austin Badger, National Indian Gaming Commission; 1849 C Street NW., MS 1621, Washington, DC 20240. Telephone: 202–632–7003.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On October 10, 2008, the NIGC published a final rule in the **Federal Register** establishing minimum technical standards for Class II gaming systems and equipment. 73 FR 60508. The minimum technical standards are designed to assist tribal gaming

regulatory authorities (TGRAs) and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provide guidance to equipment manufacturers and distributors of Class II gaming systems. The minimum technical standards do not classify which games are Class II and which games are Class III.

When implemented in 2008, the part 547 minimum technical standards introduced several new requirements for Class II gaming systems designed to protect the security and integrity of Class II gaming systems and tribal operations. The Commission understood, however, that some existing Class II gaming systems might not meet all of the requirements of the minimum technical standards. Therefore, to avoid any potentially significant economic and practical consequences of requiring immediate compliance, the Commission implemented a five-year sunset provision which allowed eligible gaming systems manufactured before November 10, 2008 (2008 Systems) to remain on the gaming floor. The Commission believed that a five-year period was sufficient for market forces to move systems toward compliance with the standards applicable to systems manufactured on or after November 10, 2008.

On September 21, 2012, the NIGC published a final rule in the **Federal Register** which included an amendment delaying the sunset provision by an additional five years. 77 FR 58473. The Commission recognized that its prior analysis regarding the continued economic viability of 2008 Systems had proven to be mistaken. The NIGC had established the initial five-year period during a much stronger economy. Many tribal gaming operations set new priorities during the following economic downturn that required keeping a 2008 System on the gaming floor for a longer period. Balancing the economic needs of the industry against a risk that potentially increases as technology advances and 2008 Systems remain static, the Commission determined that 2008 Systems could continue to be offered for play until November 10, 2018.

Now, with the November 10, 2018, sunset for 2008 Systems approaching, the Commission has determined that it is in the best interest of Indian gaming to amend the regulations that describe how tribal governments, tribal gaming regulatory authorities, and tribal gaming operations comply with the minimum technical standards. The amendments include removal of the sunset provision, providing for additional annual review of 2008 Systems by TGRAs, and requiring all modifications of Class II gaming systems to be subject to a uniform independent laboratory testing and TGRA approval process. The Commission has determined that the amended rule continues to fulfill the rule's ultimate goal of assisting tribes in ensuring the security and integrity of Class II games played with technologic aids, the auditability of the gaming revenue that those games earn, and accounting and allowing for evolving and new technology.

## **II. Development of the Rule**

The development of the rule formally began with the Commission's notice to tribal leaders by letter dated November 22, 2016, of the topic's inclusion in the Commission's 2017 tribal consultation series. Thereafter, on March 23, 2017, in Tulsa, OK, and April 12, 2017, in San Diego, CA, the NIGC consulted on the 2008 Systems and associated sunset provision of the minimum technical standards. The Commission also solicited written comments through May 31, 2017. In addition, NIGC staff attended meetings with the National Indian Gaming Association Class II Subcommittee, as well as other representatives from the gaming industry. The consultations and meetings, combined with the written comments, proved invaluable in the development of a discussion draft issued on June 14, 2017, which, among other proposed amendments, proposed removing the November 10, 2018, sunset for 2008 Systems. Additional written comments responsive to the discussion draft were solicited through July 15, 2017.

The Commission subsequently published a proposed rule in the **Federal Register** on September 28, 2017. 82 FR 45228. The proposed rule included several amendments to the discussion draft prompted by the Commission's careful consideration of the substantive comments received through consultation and written submissions. The proposed rule included the Commission's responses to comments received and invited interested parties to continue to participate in the rulemaking process by submitting comments and any supporting data responsive to the proposed rule to the Commission by November 13, 2017. The comments received throughout this process have proven invaluable to the Commission in developing this rule amending the minimum technical standards for Class II gaming systems and equipment.

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

In response to the proposed rule the Commission received the following comments.

#### *Removal of the Sunset Provision*

*Comment:* Commenters overwhelmingly supported removal of the sunset provision. One commenter, however, suggested that the sunset provision should not be removed.

*Response:* The following responses seek to address each of the substantive arguments raised by the commenter that suggested the sunset provision should not be removed.

*Comment:* A commenter suggested that the public and tribes would be best served if all Class II gaming systems adhered to a uniform minimum standard.

*Response:* The Commission acknowledges that the rule permits the continued existence of two sets of minimum standards for Class II gaming systems – one for 2008 Systems and one for systems manufactured after November 10, 2008. The Commission disagrees, however, that a uniform minimum standard is necessary to best serve the needs of the public and tribes.

First and foremost, the Commission's minimum technical standards are just that – minimums. The standards implemented by tribes applicable to gaming operations within their

lands are not required nor intended to be uniform. Each tribe is empowered and encouraged to implement additional or more stringent tribal standards applicable to Class II gaming systems operating within their lands. IGRA and the Commission recognize that tribes have the primary responsibility for regulating Class II gaming within their lands. A stated purpose of IGRA is to promote tribal economic development, self-sufficiency, and self-government. 25 U.S.C. § 2702(1). The minimum technical standards are therefore designed to give TGRAs the primary role in approving Class II gaming systems and modifications.

The Commission's minimum technical standards represent the standards that, in the Commission's judgment, are best able to assist TGRAs with ensuring the integrity and security of Class II gaming, ensuring the accountability of Class II gaming revenue, and providing guidance to equipment manufacturers and distributors of Class II gaming systems. Importantly, the minimum technical standards are one component of a regulatory framework that includes the Commission's minimum internal control standards (MICS). 25 CFR part 543. The Commission endeavored to place all minimum requirements for the design, construction, and implementation of Class II gaming systems into the minimum technical standards and all minimum requirements for the operation of such systems, and the authorization, recognition, and recordation of gaming and gaming-related transactions into the MICS. The MICS apply uniformly to the operation of all Class II gaming, irrespective of Class II gaming system manufacture date.

The Commission's minimum technical standards and MICS make meaningful the Commission's monitoring, inspection, and examination authority. 25 U.S.C. § 2706(b). Without such minimums, the Commission would be required to independently evaluate, at significant expense, the technical standards and internal controls implemented by each tribe to determine whether each tribe's technical standards and internal controls adequately protected the security and integrity of Indian gaming. With such minimums, the Commission can efficiently evaluate a

tribal gaming operation by verifying that the operation adheres to standards and controls that meet or exceed Commission minimums. Thus, the Commission has long maintained that it has a regulatory interest in a uniform set of minimum standards – an interest that includes the efficient administration of its monitoring, inspection, and examination authority.

In 2008, 2012, and now, the Commission has sought to balance its interest in a uniform set of minimum standards against the economic impact of applying those standards to systems manufactured before the standards were in place. The Commission recognizes that despite being initially certified to a subset of the standards applicable to newer systems, 2008 Systems have continued to operate within the overall regulatory framework in a manner that protects the security and integrity of Indian gaming. The Commission credits tribes, TGRAs and manufacturers for, as the Commission acknowledged in 2012, the relatively few problems to the patron or the gaming operations attributable to 2008 Systems. In balance, the Commission has determined that the continued operation of 2008 Systems is in the best interest of Indian gaming provided that such systems are subject to additional annual review by TGRAs. The Commission is fully prepared, however, to revisit the minimum technical standards, including those applicable to 2008 Systems, if necessary to address any threat to the integrity of Class II gaming systems and equipment.

Finally, the Commission acknowledges that it has previously expressed concern regarding risks that potentially increase as technology advances and 2008 Systems remain static. The Commission now recognizes, however, that 2008 Systems have generally not remained static, but instead have been modified over time in compliance with existing regulations. Repair and replacement of individual components of Class II gaming systems have been and continue to be permitted. Modification of components of 2008 Systems also continue to be permitted provided the TGRA determines that the modification either maintains compliance with the

requirements for 2008 Systems or increases compliance with the requirements for newer systems. The rule seeks to continue to facilitate the on-going modification of 2008 Systems as needed to respond to developments in technology with the goal of increased compliance with the requirements for newer systems.

*Comment:* A commenter suggests that the economic needs of tribes considered by the Commission in 2008 and 2012 are no longer applicable.

*Response:* The Commission has determined that, while the significance of the economic factors considered by the Commission in 2008 and 2012 has decreased over time, economic factors remain applicable. As noted previously, 2008 Systems have generally been modified over time towards increased compliance with the standards for newer systems. Thus, the economic impact of the sunset provision, if left in place, is the cost of the remaining modifications needed to bring the system into compliance with the standards for newer systems. The Commission notes that tribes, as the customers of Class II gaming systems and equipment, will ultimately incur those costs.

The Commission also recognizes that the economic health of the Indian gaming industry as a whole, which includes both Class II and Class III gaming, is not representative of the economic health of individual Indian gaming operations that may be affected by the sunset provision. Indian gaming operations vary in size and measures of economic success. The Commission and staff engaged extensively with the tribal gaming industry on the continued use of 2008 Systems and heard the costs of complying with the sunset provision would fall primarily on the tribes least able to afford it. Additionally, the Commission received many comments asserting that failing to remove the sunset provision would cause significant economic harm to tribes.

*Comment:* A commenter suggests that removal of the sunset provision would have anti-competitive effects. The commenter suggests that manufacturers that maintain obsolete 2008 Systems are economically rewarded while new market entrants are punished.

*Response:* The Commission notes that IGRA, as informed by consultation with tribes, forms the basis for all Commission regulations. Nevertheless, the Commission does not agree that removal of the sunset provision has a significant anti-competitive effect. Importantly, the rule brings parity to the independent testing laboratory requirements for 2008 Systems and newer systems. All modifications to a Class II gaming systems are now required to be tested against the standards for newer systems. And, while TGRAs retain the authority to approve a modification to a 2008 System that maintains compliance with 2008 System standards, 2008 Systems are also subject to an additional annual review which is not applicable to newer systems.

In addition, the minimum technical standards are not intended to render any particular Class II gaming system technology “obsolete.” The minimum technical standards require the implementation of certain features which may be implemented by a wide array of technology. The minimum technical standards are intended to provide all manufacturers with the flexibility to implement technologies unforeseen and undeveloped when the rule was first promulgated. Importantly, the minimum technical standards allow Class II gaming systems to be modified over time as manufacturers innovate new implementations of the required features. Tribes and tribal gaming regulatory authorities may also add additional or more stringent requirements for manufacturers to implement. Finally, to the extent that a specific technical standard potentially impedes innovation, TGRAs and gaming operations are able to submit to the NIGC Chairman for approval an alternate minimum standard that accomplishes the same purpose.

*Comment:* A commenter suggests that removal of the sunset provision transforms the rule into a major rule having an effect on the economy of \$100 million or more because the 2008

System provisions were initially implemented to avoid up to \$3.7 billion in lost revenue in the industry.

*Response:* The Commission has determined that the commenter's assumptions are mistaken. The Commission found that the annual cost to the Indian gaming industry of the technical standards, considered alone, was \$3.1 million in 2008. 73 FR 60508, 60512. The figure cited by the commenter appears to have been inferred from a February 1, 2008 economic impact study which considered not only the potential economic impact of minimum technical standards (part 547) but also of the MICS (part 543) and game classification standards (proposed but not adopted). The Commission has determined that there is no plausible basis for finding that the removal of the sunset provision from the minimum technical standards approximately ten years after the standards were first promulgated could have an effect on the economy of \$100 million or more.

*Comment:* A commenter suggests that the 2008 System standards should meet the standards required for an alternate minimum standard for a newer system.

*Response:* The Commission's alternate minimum standard provisions recognize that there may be alternatives to the Commission's minimum standards that will "achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace." 25 CFR 547.17(a)(1). The 2008 System provisions are specific to systems manufactured before November 10, 2008. The alternate minimum standard provisions are equally applicable to 2008 Systems and to newer systems. In other words, the 2008 Systems standards are the standards against which an alternate minimum standard for a 2008 System would be evaluated against.

*2008 Systems Annual Review*

*Comment:* Commenters suggest that the NIGC has provided no compelling reason to change the existing reporting requirements. Commenters suggest that it would be redundant to

require annual re-review of testing laboratory reports which amounts to a restatement of certification opinions that have already been submitted to the NIGC.

*Response:* The Commission does not believe that the annual review requirement is unnecessary. First, the Commission believes that removal of the sunset provision warrants annual review specific to 2008 Systems. The annual review requirement will ensure that 2008 Systems are adequately monitored and that 2008 Systems that meet the standards applicable to newer systems are identified by the TGRA and gaming operation. In addition, the annual review requirement requires the TGRA to identify the components of the 2008 System that prevent the system from being approved as a newer system. The Commission believes this information will be useful to the Commission, TGRAs, and gaming operations in considering whether the applicable technical standards, in conjunction with applicable internal controls, continue to adequately protect the integrity and security of Class II gaming and accountability of Class II gaming revenue.

Second, the Commission does not believe that the annual review requirement is redundant. Existing 2008 System requirements require TGRAs to maintain records of all modifications so long as the Class II gaming system that is the subject of the modification remains available to the public for play. The rule adds as an additional requirement that TGRAs review the existing modification records annually to determine whether the 2008 Systems, as currently modified, may be approved pursuant to the provisions for newer systems. The required finding by the TGRA is based on its review of existing documentation and does not require TGRAs to obtain new testing laboratory reports. Components for which existing laboratory reports show that the component does not meet the standards for newer systems, as well as components for which laboratory reports have not been maintained, would be included in the required finding as components preventing approval of the system under the standards for newer

systems. To further assist TGRAs in conducting the required review and developing the findings, the Commission intends to issue guidance specific to the annual review requirement for 2008 Systems.

*Testing standards for all modifications*

*Comment:* Commenters suggest the new requirement that modifications to 2008 Systems be tested to the standards for newer systems is unnecessary and will only result in additional costs with no practical benefit. Commenters suggest that TGRAs should be able to determine whether to test a modification to the standards for newer systems or to 2008 System standards.

*Response:* The Commission believes the new requirement appropriately balances laboratory testing requirements with TGRA approval requirements without imposing unreasonable costs. The rule requires the testing laboratory to test all modifications to the technical standards for newer systems. The rule recognizes the primary regulator status of the TGRA by providing that the TGRA is required to determine, among other requirements, whether the modification will maintain the system's compliance or advance the system's compliance with the standards for newer systems. Testing all modifications to the standards for newer systems therefore ensures that TGRAs are provided with the information needed to make such a determination.

*Records*

*Comment:* Commenters expressed reluctance to expose sensitive testing and compliance records to possible public disclosure. Commenters suggest that records only be available for review on site by NIGC staff or on a government-to-government basis. Commenters request that the second and third sentence of paragraph (g) be removed.

*Response:* The Commission believes that paragraph (g) appropriately describes the Commission's obligations with regards to the inspection and release of records as set forth by

IGRA, the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a. The second sentence of paragraph (g), as limited by the third sentence, describes the Commission's intended internal use of such information.

## **Regulatory Matters**

### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian Tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes. As discussed above, the NIGC engaged in extensive consultation on this topic and received and considered comments in developing this rule.

### *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 section 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 (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141– 0007, which expired in August of 2011. The NIGC is in the process of reinstating that Control Number.

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

Gambling, Indian--lands, Indian--tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 547 is amended 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. Revise § 547.5 to read as follows:

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

(a) *Gaming systems manufactured before November 10, 2008.* (1) Any Class II gaming system manufactured before November 10, 2008, that is not compliant with paragraph (b) of this section may be made available for use at any tribal gaming operation if:

(i) The Class II gaming system software that affects the play of the Class II game, together with the signature verification required by § 547.8(f) was submitted to a testing laboratory within 120 days after November 10, 2008, or October 22, 2012;

(ii) The testing laboratory tested the submission to the standards established by § 547.8(b), § 547.8(f), and § 547.14;

(iii) The testing laboratory provided the TGRA with a formal written report setting forth and certifying to the findings and conclusions of the test;

(iv) The TGRA made a finding, in the form of a certificate provided to the supplier or manufacturer of the Class II gaming system, that the Class II gaming system is compliant with § 547.8(b), § 547.8(f), and § 547.14;

(v) The Class II gaming system is only used as approved by the TGRA and the TGRA transmitted its notice of that approval, identifying the Class II gaming system and its components, to the Commission;

(vi) Remote communications with the Class II gaming system are only allowed if authorized by the TGRA; and

(vii) Player interfaces of the Class II gaming system exhibit information consistent with §547.7(d) and any other information required by the TGRA.

(2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (a) the TGRA shall:

(i) Retain copies of the testing laboratory's report, the TGRA's compliance certificate, and the TGRA's approval of the use of the Class II gaming system;

(ii) Maintain records identifying the Class II gaming system and its current components; and

(iii) Annually review the testing laboratory reports associated with the Class II gaming system and its current components to determine whether the Class II gaming system may be approved pursuant to paragraph (b)(1)(v) of this section. The TGRA shall make a finding identifying the Class II gaming systems reviewed, the Class II gaming systems subsequently approved pursuant to paragraph (b)(1)(v), and, for Class II gaming systems that cannot be approved pursuant to paragraph (b)(1)(v), the components of the Class II gaming system preventing such approval.

(3) If the Class II gaming system is subsequently approved by the TGRA pursuant to paragraph (b)(1)(v) as compliant with paragraph (b) of this section, this paragraph (a) no longer applies.

(b) *Gaming system submission, testing, and approval - generally.* (1) Except as provided in paragraph (a) of this section, a TGRA may not permit the use of any Class II gaming system in a tribal gaming operation unless:

(i) The Class II gaming system has been submitted to a testing laboratory;

(ii) The testing laboratory tests the submission to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA;

(iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (b)(1)(ii)(C) of this section;

(iv) The testing laboratory's written report confirms that the operation of a player interface prototype has been certified that it will not be compromised or affected by electrostatic discharge, liquid spills, electromagnetic interference, or any other tests required by the TGRA;

(v) Following receipt of the testing laboratory's report, the TGRA makes a finding that the Class II gaming system conforms to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA.

(2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (b) the TGRA shall:

(i) Retain a copy of the testing laboratory's report; and

(ii) Maintain records identifying the Class II gaming system and its current components.

(c) *Class II gaming system component repair, replacement, or modification.* (1) As permitted by the TGRA, individual hardware or software components of a Class II gaming system may be repaired or replaced to ensure proper functioning, security, or integrity of the Class II gaming system.

(2) A TGRA may not permit the modification of any Class II gaming system in a tribal gaming operation unless:

(i) The Class II gaming system modification has been submitted to a testing laboratory;

(ii) The testing laboratory tests the submission to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA;

(iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph

(c)(2)(ii)(C) of this section;

(iv) Following receipt of the testing laboratory's report, the TGRA makes a finding that the:

(A) The modification will maintain or advance the Class II gaming system's compliance with this part and any applicable provisions of part 543 of this chapter; and

(B) The modification will not detract from, compromise or prejudice the proper functioning, security, or integrity of the Class II gaming system;

(3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

(d) *Emergency Class II gaming system component modifications.* (1) A TGRA, in its discretion, may permit the modification of previously approved components to be made available for play without prior laboratory testing or review if the modified hardware or software is:

(i) Necessary to correct a problem affecting the fairness, security, or integrity of a game or accounting system or any cashless system, or voucher system; or

(ii) Unrelated to game play, an accounting system, a cashless system, or a voucher system.

(2) If a TGRA authorizes modified components to be made available for play or use without prior testing laboratory review, the TGRA must thereafter require the hardware or software manufacturer to:

(i) Immediately advise other users of the same components of the importance and availability of the update;

(ii) Immediately submit the new or modified components to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(iii) Immediately provide the TGRA with a software signature verification tool meeting the requirements of § 547.8(f) for any new or modified software component.

(3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

(e) *Compliance by charitable gaming operations.* This part does not apply to charitable gaming operations, provided that:

(1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;

(2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;

(3) The TGRA permits the charitable organization to be exempt from this part;

(4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and

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

(f) *Testing laboratories.* (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:

(i) It demonstrates its integrity, independence and financial stability to the TGRA.

(ii) It demonstrates its technical skill and capability to the TGRA.

(iii) If the testing laboratory is owned or operated by, or affiliated with, a tribe, it must be independent from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions required by this section.

(iv) The TGRA:

(A) Makes a suitability determination of the testing laboratory based upon standards no less stringent than those set out in § 533.6(b)(1)(ii) through (v) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or

(B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory authority in the United States.

(v) After reviewing the suitability determination and the information provided by the testing laboratory, the TGRA determines that the testing laboratory is qualified to test and evaluate Class II gaming systems.

(2) The TGRA must:

(i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iii) and (f)(1)(iv) of this section for a minimum of three years.

(ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.

(iii) Require the testing laboratory to provide notice of any material changes to the information provided to the TGRA.

(g) *Records.* Records required to be maintained under this section must be made available to the Commission upon request. The Commission may use the information derived therefrom for any lawful purpose including, without limitation, to monitor the use of Class II gaming systems, to assess the effectiveness of the standards required by this part, and to inform future amendments to this part. The Commission will only make available for public review records or portions of

records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

Dated: December 19, 2017.

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**Jonodev O. Chaudhuri,**  
*Chairman.*

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**Kathryn Isom-Clause,**  
*Vice Chair.*

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**E. Sequoyah Simermeyer,**  
*Associate Commissioner.*

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