

physical connection to the computer system when the authorized user requires access to the system through remote access; and

(v) The agents involved and procedures performed to ensure the remote access connection is disconnected when the remote access is no longer required.

(2) In the event of remote access, the information technology employees shall prepare a complete record of the access to include:

(i) Name or identifier of the employee authorizing access;

(ii) Name or identifier of the authorized user accessing system;

(iii) Date, time, and duration of access; and

(iv) Description of work performed in adequate detail to include the old and new version numbers, if applicable of any software that was modified, and details regarding any other changes made to the system.

Dated: October 17, 2007.

Philip N. Hogen,
Chairman.

Norman H. DesRosiers,
Commissioner.

Cloyce V. Choney,
Commissioner.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 547

RIN 3141-AA29

Technical Standards for Electronic, Computer, or Other Technologic Aids Used in the Play of Class II Games

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would add a new part to the Commission's regulations establishing technical standards for Class II games—bingo, lotto, other games similar to bingo, pull tabs, or “instant bingo”—that are played using “electronic, computer, or other technologic aids.” The proposed rule would also establish a process for ensuring the integrity of such games and aids before their placement in a Class II tribal gaming operation. No such standards currently exist. The Commission proposes this action in order to assist tribal gaming regulatory authorities and operators in ensuring the integrity and security of Class II

games and the accountability of gaming revenue.

DATES: Submit comments on or before December 10, 2007.

ADDRESSES: Mail comments to “Comments on Technical Standards,” National Indian Gaming Commission, 1441 L Street, NW., Washington, DC 20005, Attn: Michael Gross, Associate General Counsel, General Law. Comments may be transmitted by facsimile to 202-632-7066, but the original also must be mailed or submitted to the above address. Comments may be sent electronically, instead of by mail or fax, to technical_standards@nigc.gov. Please indicate “Class II technical regulations” in the subject line.

FOR FURTHER INFORMATION CONTACT: Michael Gross, Associate General Counsel, General Law, Office of General Counsel, telephone: 202.632.7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 (“IGRA”), enacted by the Congress in 1988, establishes the National Indian Gaming Commission (“NIGC” or “Commission”) and sets out a comprehensive framework for the regulation of gaming on Indian lands. IGRA establishes three classes of Indian gaming.

“Class I gaming” means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.

“Class II gaming” means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, as well as various non-house-banked card games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming are banking card games such as blackjack, electronic or electromechanical facsimiles of any game of chance, and slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. Indian tribes can engage in Class II gaming without any state involvement.

“Class III gaming” includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including lotteries and most

forms of casino gaming, such as slot machines, roulette, and banking card games like blackjack. Class III gaming may be conducted lawfully only if the tribe and the state in which the tribe is located enter into a tribal-state compact for such gaming. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior. Because of the compact requirement, states, Indian tribes, and the NIGC possess regulatory authority over Class III gaming. In addition, the United States Department of Justice possesses exclusive criminal, and certain civil, jurisdiction over Class III gaming on Indian lands.

The Commission has determined that it is in the best interests of Indian gaming to adopt technical standards that govern the implementation of electronic, computer, and other technologic aids used in the play of Class II games because no such standards currently exist. The technical standards seek to provide a means for tribal gaming regulatory authorities and tribal operators to ensure that the integrity of Class II games played with the use of electronic, computer, or other technologic aids is maintained; that the games and aids are secure; and that the games and aids are fully auditable, *i.e.* that they provide a means for the gaming authority and gaming operation to account for all gaming revenue.

Development of the Proposed Rule

The development of the proposed rule began formally with the March 31, 2004, appointment of an advisory committee comprised of tribal government representatives with substantial experience and expertise in gaming regulation and operations, the Commission, and Commission staff. Although the Commission initially intended to develop one set of regulations, this committee's work ultimately resulted in the Commission's publication of a proposed rule for Class II classification standards, 71 FR 30238 (May 25, 2006), and a separate proposed rule for Class II technical standards, 71 FR 46336 (August 11, 2006). A detailed history of the advisory committee's work on the technical standards to that point, its meetings, the Commission's consultations with Indian tribes, and the contributions and participation of the interested general public is published in the preamble to that proposed rule. 71 FR 46336–46337.

The ultimate goal of that first set of technical standards was as it is here—to ensure the security and integrity of Class II games played with technologic aids and to ensure the auditability of the gaming revenue that those games earn.

It was also the intention of that first set of technical standards to allow for flexibility in the implementation of technology and not to prohibit the use of future technologies unforeseen and as yet undeveloped.

Given the importance of the regulations to the industry, the Commission, which had initially set a comment period of 45 days, reopened the comment period for an additional 76 days, from November 15, 2006, through January 31, 2007. 71 FR 71115 (December 8, 2006); 71 FR 76618 (December 21, 2006).

Public comments made it clear to the Commission that the first set of proposed technical standards fell short of its goal of technological flexibility. In particular, commenters stated that the first set of proposed technical standards would mandate particular implementations of technology and that some of those were not practical or feasible. Commenters suggested that rather than prescribe particular implementations of technology, the standards should describe the regulatory outcomes that the Commission desires and leave it to the manufacturers to develop ways of meeting those regulatory requirements.

At a December 5, 2006, advisory committee meeting in Washington, DC, the tribal representatives to the advisory committee strongly seconded this sentiment. The details of the solution, however, were not immediately apparent. Before providing further advice to the Commission, the tribal representatives wished to consult further with other tribal representatives and regulators, and with industry representatives. They therefore suggested that they assemble a working group made up of representatives from the Class II gaming industry—tribal operators, tribal regulators, and manufacturers alike—to assist it. Accepting the fundamental premise that the technical standards ought to be descriptive rather than prescriptive, the Commission agreed to allow the tribal representatives to work independently of the Commission to redraft the technical standards. Subsequently, the Commission withdrew the first proposed technical standards. 72 FR 7360 (February 15, 2007).

The tribal representatives to the advisory committee formed a working group, which met at various times, in person and telephonically, from the end of 2006 through the middle of 2007 to draft this new set of technical standards. The Commission did not participate in the establishment of this working group. On some occasions, the tribal representatives invited the participation

of Commission staff members to answer questions and to provide explanation about the Commission's regulatory goals. Commission staff participated in this capacity during in-person meetings on December 11–12, 2006, in Las Vegas, Nevada, and June 5, 2007, in Dallas, Texas.

The full advisory committee, including the Commission, met to discuss drafts of proposed technical standards on February 22, 2007, in Albuquerque, New Mexico, April 26, 2007, in Seattle, Washington, and May 22, 2007, in Bloomington, Minnesota. All of these meetings were open to the interested public.

The Commission is immensely grateful to the tribal representatives on the advisory committee and to those who assisted the tribal representatives for all of their hard work and for the high-quality draft regulations that resulted from their efforts. The proposed rule is largely adopted from the final draft of descriptive technical standards, which was delivered to the Commission by the tribal representatives to the advisory committee on June 18, 2006.

There are places, of course, where the Commission felt it could not accept the draft's recommendations and has proposed rules more stringent than the tribal representatives to the advisory committee would have preferred. One such area of disagreement concerns the recall and tracking of alternative displays.

It is a common practice for bingo games played using electronic player stations to provide alternative display of game results above and beyond the numbers marked and patterns obtained on a bingo card. Most frequently, these alternative displays take the form of spinning reels such as one would find on slot machines. A winning bingo pattern, for example, might also be displayed as a winning combination of symbols on the reels. The Commission regards such alternative displays as perfectly permissible, provided that it is the bingo game, and not the spinning reels, that determine the player's results.

The technical standards require a last game recall function to be able to display alternative results as well as the actual game results, if a Class II gaming system has a last game recall. The tribal representatives to the advisory committee have said that they regard the requirement as both unnecessary, since the alternative displays do not determine game results, and beyond the scope of the Commission's authority.

The Commission, however, regards recall of alternative displays as an important part of safeguarding the integrity of gaming, notwithstanding the

fact that alternate displays do not determine, and are not relevant to, the outcome of the game. The fact remains, however, that the alternative displays are the source of many patron disputes, and providing for their automatic recall provides to tribal gaming regulatory authorities information essential to resolving such disputes quickly, completely, and fairly. Over and above this, it is the Commission's understanding that many manufacturers already include alternative displays in their recall functions, or could easily do so.

Purpose and Scope

The proposed part 547 applies to all Class II games played using electronic, computer, or other technologic aids, or modifications of such games and aids. Class II games played through such technologic aids are widely used in Indian gaming operations, yet no uniform standards exist to govern their implementation. The proposed rule seeks to remedy that absence and create a regulatory structure under which tribal gaming regulatory authorities and tribal operators are able to ensure the integrity and security of Class II games played with the use of electronic, computer, or other technologic aids and the auditability of gaming revenue.

There is a great variety in the technologic aids used in the play of Class II games and, therefore, a great variety in the means used to play the games. An operation may, for example, play bingo using no aids at all. A caller may select numbers using ping pong balls taken from a hopper, and players purchase paper cards from an employee of the operation and mark them with an inked dauber. Alternatively, numbers may be selected randomly using an electronic random number generator, which in turn displays the selected number on a display board. Instead of paper, players may use electronic handheld devices to monitor and mark their cards. The handheld devices are purchased and have cards loaded on them at a point-of-sale retail terminal.

Still again, bingo may be implemented electronically on client-server architectures. A common arrangement, but by no means the only one possible, is to have client machines on the casino floor as electronic player stations. These display bingo cards, allow the players to cover numbers when drawn, and pay any prizes won. The server, usually located off the floor, draws random numbers and passes them along data communications lines to the client machines for game play. Credits may be placed on the electronic player station by inserting cash or

electronically drawing down an account separately established.

The challenge, then, for writing technical standards is to address all of the various ways that Class II games can be played. Central to the proposed rule, therefore, is the definition of "Class II gaming system," which refers to any given collection of components used in the play of a II game: "All components, whether or not technologic aids in electronic, computer, mechanical or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations." The notion of the "gaming system" thus encompasses bingo played in all of the implementations described above.

It is the "gaming system" that must meet the technical standards of the proposed part 547. Like the gaming system itself, the standards are conceived generally so that they may be met by a gaming system, regardless of the particular components that may comprise it. For example, the proposed rule does not refer to "bill validators," an electronic device into which a patron may insert a bill in order to place credits on a gaming machine. Instead, proposed part 547 describes "financial instrument acceptors" and the standards they must meet. "Financial instrument acceptor" is broad enough in meaning to encompass not only "bill validator" but also a cash drawer staffed by an employee of the gaming operation. Proposed part 547 provides minimum standards for the security of the "acceptors" and of the money or vouchers (generally, "financial instruments") they accept.

Further, because of the breadth of possible implementations for Class II gaming systems, proposed part 547 requires that gaming equipment and software used with Class II gaming systems meet the requirements of the part, but only those that are applicable to the system as implemented. This is, in short, a rule of construction of common sense. For example, if a system takes only cash and lacks the ability to print or accept vouchers, then any standards that apply to vouchers do not apply.

All of that said, the proposed rule deliberately provides only minimum standards. Tribes and tribal gaming regulatory authorities may add any additional requirements, or more stringent requirements, needed to suit their particular circumstances.

In order to ensure compliance with the technical standards, the proposed rule borrows from the established practices of tribal, state, and provincial

gaming jurisdictions across North America. The proposed rule establishes, as a necessary prerequisite to a gaming system being offered to the public for play in a Class II gaming operation, review of the system by a qualified, independent testing laboratory and approval by the tribal gaming regulatory authority.

Under the proposed rule, a tribe's gaming regulatory authority will require all Class II gaming systems, or modifications thereof, to be submitted to a testing laboratory for review and analysis. That submission includes a working prototype of the gaming system or modification, all pertinent software, and anything else the testing laboratory needs for its complete and thorough review. In turn, the laboratory will review whether the gaming system does or does not meet the requirements of the rule, as well as any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide a written report of its analysis and conclusions to the tribal gaming regulatory authority for approval or disapproval of the gaming system or modification. The tribal gaming regulatory authority will retain the report as long as the gaming system or modification in question remains available to the public for play.

The Commission understands that existing Class II gaming systems likely do not meet all of the requirements of the proposed rule. In order to avoid the potentially significant economic and practical consequences of requiring immediate compliance, the proposed rule implements a five-year "grandfather period" for existing gaming systems.

Existing gaming systems may be grandfathered and exempt from compliance with all of the requirements of the proposed rule if they are put through a similar review by a qualified independent testing laboratory and approved by a tribal gaming regulatory authority. Specifically, in order to be eligible for grandfathering, a gaming system must be submitted to a testing laboratory within 120 days of the proposed part 547 becoming final. The testing laboratory must review the gaming system for compliance with a specific, minimum set of requirements—random number generation, no reflexive or secondary decision-making after random numbers are drawn, the inability to change bingo cards during the play of a game, and a mechanism for verifying game software. The laboratory must issue a report on these issues to the tribal gaming regulatory authority, which must make a finding that the gaming system

qualifies for grandfather status. Once a gaming system is qualified, the manufacturer must label each player interface on the system with its date of manufacture and certify the same to the tribal gaming regulatory authority. This requirement effectively freezes the number of grandfathered interfaces in use.

This is not to say, however, that grandfathered gaming systems must remain entirely static. Tribal gaming regulatory authorities may permit modifications to gaming system software or hardware that increases compliance with the requirements of proposed part 547, even if the modifications do not make the system wholly compliant. Tribal gaming regulatory authorities may also authorize modifications to gaming system software that does not detract from, compromise, or prejudice the proper functioning, security or integrity of the Class II gaming system and the system's overall compliance with the requirements of proposed part 547. Changes such as new pay tables, new game themes, and new alternative displays fall within this latter category.

Finally, the Commission does not intend for proposed part 547 to stand alone. The advisory committee pointed out, and the Commission agrees, that many of the functions placed in the technical standards proposed on August 11, 2006, and now withdrawn, are more properly characterized as minimum internal control standards for a gaming operation. Accordingly, the Commission is simultaneously publishing, as a separate proposed rule, a set of minimum internal control standards for the play of bingo that is intended to be applied in conjunction with the standards set forth in this proposed rule. In short, game manufacturers and tribal gaming regulators must look to both sets of rules for applicable standards for the construction and operation of Class II gaming systems.

The Commission intends as well that these two parts be applied in conjunction with a third proposed rule, also published simultaneously, governing the classification of bingo and pull tabs and distinguishing these Class II games played with technological aids from Class III facsimiles of games of chance. References in the proposed part 547 to "minimum internal control standards" and "classification standards" refer to these two other sets of rules.

Regulatory Matters

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

It is not entirely clear whether the proposed rule, considered separately and apart from the Commission's proposed part 546, "Classification Standards for Bingo * * * Using 'Electronic, Computer, or Other Technologic Aids'," is a major rule under 5 U.S.C. 804.2, the Small Business Regulatory Enforcement Fairness Act. The NIGC has commissioned an economic impact study of the two proposals taken together. The study makes clear that the cost to the Indian gaming industry of complying with the two proposed rules will have an annual effect on the economy of \$100 million or more, at least for the first 5 years after adoption. Accordingly, the Commission treats the proposed rule as a major rule. The economic impact study is available for review at the Commission's Web site, <http://www.nigc.gov>, or by request using the addresses or telephone numbers, above.

Unfunded Mandates Reform Act

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

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed 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's Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule requires information collection under the Paperwork Reduction Act of 1995, 44

U.S.C. 3501, *et seq.*, and is subject to review by the Office of Management and Budget. The title, description, and respondent categories are discussed below, together with an estimate of the annual information collection burden.

With respect to the following collections of information, the Commission invites comments on: (1) Whether the proposed collections of information are necessary for proper performance of its functions, including whether the information would have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Process for Certification of Electronic, Computer, or other Technologic Aids used in the play of Class II games and process for qualification of independent testing laboratories, proposed 25 CFR 547.4.

Summary of information and description of need: This provision in the proposed rule establishes a process for ensuring that electronic, computer, or other technologic aids used with the play of Class II gaming systems have been reviewed and evaluated by a qualified, independent testing laboratory prior to their approval by a tribal gaming regulatory authority and their placement on the floor in a Class II tribal gaming operation. The process helps to ensure the proper functioning of the equipment and the integrity, fairness, and auditability of games played.

The process requires a tribe's gaming regulatory authority to require that all Class II gaming systems, or modifications thereto, be submitted to a qualified, independent testing laboratory for review and analysis. That submission includes a working prototype of the game and aid, all pertinent software, and complete documentation and descriptions of all functions and components. In turn, the laboratory will determine that the gaming system does or does not meet the requirements of the rule and any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide a written report of its analysis and conclusions to the tribal gaming regulatory authority for its approval or disapproval of the gaming system or modification. The tribal

gaming regulatory authority will retain the laboratory report as long as the gaming system or modification remains available to the public for play.

This process is necessary to ensure the security and integrity of Class II gaming. Technical standards such as those in the proposed rule are a fundamental part of Class III gaming and of non-Indian casino gaming throughout North America. No uniform standards exist for Class II gaming, however. The implementation of such standards will assist tribal gaming regulators in ensuring that games are implemented fairly, that all technologic aids are secure and function properly, and that the games and aids allow the tribe and the operator to properly account for gaming revenue.

This provision in the proposed rule also contemplates an analogous process for determining whether a Class II gaming system is eligible for the five-year grandfather period made available by the proposed rule. This process again requires a tribe's gaming regulatory authority to require that a Class II gaming system be submitted, within 120 days after the effective date of part 547, to a qualified, independent testing laboratory for review and analysis. The submission must include a working prototype of the game and aid, all pertinent software, and complete documentation and descriptions of all functions and components. In turn, the laboratory will determine that the gaming system does or does not meet a small set of certain specified requirements of the proposed rule. The laboratory will provide a written report of its analysis and conclusions to the tribal gaming regulatory authority for its finding that the gaming system is or is not eligible for grandfather status. Upon a finding of eligibility, the tribal gaming regulatory authority will issue a certificate to that effect to the gaming system manufacturer and a description of the grandfathered game to the Commission.

This process is necessary to ensure a certain minimum integrity and security for games while at the same time avoiding potentially significant economic and practical consequences of requiring immediate and complete compliance with the standards of the proposed rule.

Finally, the proposed rule establishes a process for testing laboratories to apply for eligibility to provide testing services under the proposed rule. The testing laboratories must submit to suitability determinations made by the tribes they serve, and these determinations include criminal background checks for the laboratories'

principals. These determinations are made according to the same standards used to license the primary management officials and key employees of Indian gaming operations under the Indian Gaming Regulatory Act. All of this requires the submission by the laboratory of corporate financial information; qualifications of the engineering staff; information (and inspections) of the available engineering facilities, and personal information for principals, including tax returns, bankruptcies and law suits, work histories and references.

Given the essential role accorded to laboratories in ensuring the integrity, security, and auditability of Class II games, this process is essential to ensuring the competence, integrity, and independence of the testing laboratories and the suitability of their decision makers, *i.e.* to ensure that undesirable elements are kept out of gaming.

Respondents: The respondents are independent testing laboratories, developers and manufacturers of Class II gaming systems, and Indian tribes. The Commission estimates that there are currently 20 such manufacturers, 5 such laboratories, and 226 gaming tribes. The frequency of responses to the information collection requirement will vary.

Information Collection Burden: In order to qualify under the grandfather provisions of the proposed rule, a gaming system must be submitted to a testing laboratory for review and analysis during the first 120 days after the effective date of the final rule. The Commission estimates that there are approximately 25 Class II gaming systems in existence and that all will be submitted during this period.

Following the initial 120-day period, the frequency of submissions of new gaming systems or of modifications to existing gaming systems will be entirely market driven. The Commission anticipates approximately a 20% turnover each year for the five-year grandfather period. Consequently, there should be approximately five submissions of new gaming systems each year.

Submissions of modifications are, as a matter of course, a more common practice. Software in particular commonly goes through many iterations in development and continues to be improved and revised even after sale and placement on a gaming operation's floor. That said, the submission of

modifications tends to be sporadic, with less frequent or occasional submissions punctuated by fairly steady periods of submissions when new systems or modifications are introduced. The NIGC anticipates there will be approximately 300 submissions of modifications and thus 300 reports produced by testing laboratories each year following the 120-day period that begins with the effective date of the final rule.

The preparation and submission of supporting documentation by manufacturers or a tribal gaming operation (as opposed to gaming system hardware and software *per se*) is an information collection burden under the Paperwork Reduction Act, as is the preparation of reports by the test laboratories or the preparation of a grandfather certificate and explanation of gaming system by a tribal gaming regulatory authority.

It is the existing practice in the gaming industry, both Indian and non-Indian alike, for the game manufacturer to submit a gaming system to a testing laboratory for review and analysis. The proposed rule leaves open the possibility that a tribal gaming regulatory authority may require the management of a gaming operation to make a required submission. The Commission anticipates, however, that it will be the responsibility of the gaming system manufacturers to make the submissions to testing laboratories.

The amount of documentation submitted by a manufacturer as part of a submission of a gaming system and the size of a laboratory report is a function of the complexity of the gaming system submitted for review. Submission for minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined will be a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform will be time consuming. The provision of a grandfather certificate and a description of a gaming systems component are small matters as that information can be taken directly from a testing laboratory's report.

The practice of submission and review set out in the proposed rule, however, is not new. It is already part of the regulatory requirements in tribal, state, and Canadian provincial gaming jurisdictions throughout North America. Manufacturers already have significant

compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements.

Accordingly, based upon the discussions with leading testing laboratories and with manufacturers for the Indian gaming and non-Indian gaming markets, the NIGC estimates that gathering and preparing documentation for a submission of a single, complete gaming system will require, on average, 8 hours for manufacturer's employee. Following examination and analysis, NIGC estimates that writing a report for a complete gaming system will require, on average, 10 hours of a laboratory engineer's time. For the submission of modifications to a gaming system, NIGC estimates 4 hours for a manufacturer's employee. For the report on a modification, NIGC estimates 5 hours for a laboratory engineer.

Thus, the information collection requirements will be a 200-hour burden on manufacturers industry-wide during the first 120 days after the final rule becomes effective and a 1200-hour burden industry-wide thereafter. The information collection requirements will be a 250-hour burden on laboratories for the grandfather submissions made during the first 120 days and a 1500-hour burden thereafter.

Next, the Commission anticipates that tribal gaming regulatory authorities will issue grandfather certificates to manufacturers and send a description of grandfathered systems to the Commission for all of the approximately 25 existing gaming systems. The preparation of these certificates and descriptions will be a small matter as all of the necessary information is contained in the testing laboratory reports and will take no more than 0.5 hours to prepare.

Finally, the proposed rule requires tribal gaming regulatory authorities to maintain laboratory reports as long as the game system or modification at issue is available for play. This, however, is a ministerial function that involves little more than filing, and occasionally retrieving, the report. As this is already common practice among tribal gaming regulatory authorities, the Commission estimates that 0.1 hours per report will be dedicated to these tasks.

The following table summarizes the annual hour burden:

Provision	Respondents	No. of respondents	Collections, 1st 120 days	Hours per collection	Total annual hours	Collections, day 121 forward, per annum	Hours per collection	Total annual hours
25 CFR 547.4	Laboratories	5	25	10	250	300	5	1500
25 CFR 547.4	Manufacturers.	20	25	8	200	300	4	1200
25 CFR 547.4	Tribal Gaming Operations.	226	0	0	0	0	0	0
25 CFR	Tribal Gaming regulatory Authorities.	226	25	.5	12.5	300	0.1	30

The proposed rule also requires a determination of suitability for each of the approximately 5 testing laboratories. The information required can be substantial: Corporate financial information; qualifications of the engineering staff; information (and inspections) of the engineering facilities available, and personal information for principals, including tax returns, bankruptcies and lawsuits, work histories and references.

However, the 5 existing testing laboratories have already collected and provided this information—multiple times—in order to be licensed in Tribal and non-Tribal gaming jurisdictions nationwide. The Commission estimates that the re-submission of such information would take the necessary laboratory employees 20 hours to accomplish once. As the gaming tribes typically use only one gaming laboratory, the submission of suitability determinations to 226 tribal gaming regulatory authorities would total 4,520 hours.

The Commission believes, however, that the hour burden is not likely to be this high. The proposed rule permits a tribal gaming regulatory authority to rely upon a suitability determination already made by another gaming jurisdiction in the United States, rather than require a new suitability determination for a testing laboratory. The existing testing laboratories are already licensed in numerous jurisdictions throughout the United States, and the Commission believes that approximately 90%—203 of 226—of the tribal gaming authorities will accept existing suitability determinations from other jurisdictions. The submission by a testing lab of an existing suitability determination amounts to the writing of a letter. The NIGC estimates that the submission of such letters will take the necessary laboratory employees 0.5 hours to accomplish once. As each of the gaming tribes typically uses only one gaming laboratory, the submission of suitability

determinations of up to 203 tribal gaming authorities would total 101.5 hours. For the remaining 10% or 23 tribal gaming regulatory authorities, the submission burden on laboratories is 20 hours per tribe or 460 hours. If every tribe requires annual re-licensing, the subsequent annual hours burden on the 5 laboratories is 561.5 hours.

Comments: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(d), the Commission has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding the burden, estimates, or any other aspect of the information collection, including suggestions for reducing the burden (1) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for National Indian Gaming Commission, 725 17th St., NW., Washington DC, 20503, and (2) to Michael Gross, Associate General Counsel, General Law, National Indian Gaming Commission, 1441 L Street, NW., Washington DC 20005.

National Environmental Policy Act

The Commission has determined that this proposed 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.*).

List of Subjects in 25 CFR Part 547

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

For the reasons set forth in the preamble, the Commission proposes to amend 25 CFR Chapter III by adding part 547 to read as follows:

PART 547—MINIMUM TECHNICAL STANDARDS FOR GAMING EQUIPMENT USED WITH THE PLAY OF CLASS II GAMES.

Sec.

- 547.1 What is the purpose of this part?
- 547.2 How do these regulations affect State jurisdiction?
- 547.3 What are the definitions for this part?
- 547.4 How do I comply with this part?
- 547.5 What are the rules of interpretation and of general application for this part?
- 547.6 What are the minimum technical standards for enrolling and enabling Class II gaming system components?
- 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems?
- 547.8 What are the minimum technical software standards applicable to Class II gaming systems?
- 547.9 What are the minimum technical standards for Class II gaming system accounting functions?
- 547.10 What are the minimum standards for Class II gaming system critical events?
- 547.11 What are the minimum technical standards for money and credit handling?
- 547.12 What are the minimum technical standards for downloading on a Class II gaming system?
- 547.13 What are the minimum technical standards for program storage media?
- 547.14 What are the minimum technical standards for electronic random number generation?
- 547.15 What are the minimum technical standards for electronic data communications between system components?
- 547.16 What are the minimum standards for game artwork, glass, and rules?
- 547.17 How does a gaming operation apply for a variance from these standards?

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

§ 547.1 What is the purpose of this part?

The Indian Gaming Regulatory Act, 25 U.S.C. 2703(7)(A)(i), permits the use of electronic, computer, or other technologic aids in connection with the play of Class II games. This part establishes the minimum technical standards governing the use of such aids.

§ 547.2 How do these regulations affect State jurisdiction?

Nothing in this part shall be construed to grant to a State jurisdiction in Class II gaming or to extend a State's jurisdiction in Class III gaming.

§ 547.3 What are the definitions for this part?

For the purposes of this part, the following definitions apply:

Account Access Component, a component within a Class II gaming system that reads or recognizes account access media and gives a patron the ability to interact with their account.

Account Access Medium, a magnetic stripe card or any other medium inserted into, or otherwise made to interact with, an account access component in order to give a patron the ability to interact with an account.

Audit Mode, the mode where it is possible to view Class II gaming system accounting functions, statistics, etc. and perform non-player related functions.

Agent, an employee or other person authorized by the gaming operation, as approved and licensed by the tribal gaming regulatory authority, designated for certain decisions, tasks and actions in the gaming operation.

Cancel Credit, an action initiated by the Class II gaming system where some or all of a player's credits are removed by an attendant and paid to the player.

Cashless System, a system that performs cashless transactions and maintains records of those cashless transactions.

Cashless Transaction, a movement of funds electronically from one component to another, often to or from a patron deposit account.

CD-ROM, Compact Disc—Read Only Memory.

Chairman, the Chairman of the National Indian Gaming Commission established by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*

Class II Game, the same as "class II gaming" in 25 U.S.C. 2703(7)(A).

Class II Gaming System, all components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations.

Commission, the National Indian Gaming Commission.

Coupon, a financial instrument of fixed wagering value, usually paper, that can only be used to acquire non-cashable credits through interaction with a voucher system. This does not include instruments such as printed advertising material that cannot be validated directly by a voucher system.

Critical Memory, memory locations storing data essential to the functionality of the Class II gaming system.

DLL, a Dynamic-Link Library file.

Download Package, approved data sent to a component of a Class II gaming system for such purposes as changing the component software.

DVD, Digital Video Disk or Digital Versatile Disk.

Electromagnetic Interference, the physical characteristic of an electronic component to emit electronic noise either into free air, onto the power lines, or onto communication cables.

Electrostatic Discharge, a single-event, rapid transfer of electrostatic charge between two objects, usually resulting when two objects at different potentials come into direct contact with each other.

EPROM, Erasable Programmable Read Only Memory—a storage area that may be filled with data and information, that once written is not modifiable, and that is retained even if there is no power applied to the machine.

Fault, an event that when detected by a Class II gaming system causes a discontinuance of game play or other component functions.

Financial Instrument, any tangible item of value tendered in Class II game play, including, but not limited to, bills, coins, vouchers and coupons.

Financial Instrument Acceptor, any component that accepts financial instruments.

Financial Instrument Dispenser, any component that dispenses financial instruments.

Financial Instrument Storage Component, any component that stores financial instruments.

Flash Memory, non-volatile memory that retains its data when the power is turned off and that can be electronically erased and reprogrammed without being removed from the circuit board.

Game Software, the operational program or programs that govern the play, display of results, and/or awarding of prizes or credits for Class II games.

Gaming Equipment, all electronic, electro-mechanical, mechanical, or other physical components utilized in the play of Class II games.

Hardware, gaming equipment.

Interruption, any form of misoperation, component failure, or interference to the Class II gaming equipment.

Modification, a revision to any hardware or software used in a Class II gaming system.

Non-cashable credit, credits given by an operator to a patron; placed on a Class II gaming system through a

coupon, cashless transaction or other approved means; and capable of activating play but not being converted to cash.

Patron Deposit Account, an account maintained on behalf of a patron, for the purpose of depositing and withdrawing cashable funds for the primary purpose of interacting with a gaming activity.

Player Interface, any component or components of a Class II gaming system, including an electronic or technologic aid (not limited to terminals, player stations, handhelds, fixed units, etc.), that directly enables player interaction in a Class II game.

Prize Schedule, the set of prizes available to players for achieving pre-designated patterns in the Class II game.

Program Storage Media, an electronic data storage component, such as a CD-ROM, EPROM, hard disk, or flash memory on which software is stored and from which software is read.

Progressive Prize, a prize that increases by a selectable or predefined amount based on play of a Class II game.

Random Number Generator (RNG), a software module, hardware component or combination of these designed to produce outputs that are effectively random.

Reflexive Software, any software that has the ability to manipulate and/or replace a randomly generated outcome for the purpose of changing the results of a Class II game.

Removable/Rewritable storage media, program or data storage components that can be removed from gaming equipment and be written to, or rewritten by, the gaming equipment or by other equipment designed for that purpose.

Server, a computer which controls one or more applications or environments within a Class II gaming system.

Test/Diagnostics Mode, a mode on a component that allows various tests to be performed on the Class II gaming system hardware and software.

Testing Laboratory, an organization recognized by a tribal gaming regulatory authority pursuant to § 547.4(f).

Tribal Gaming Regulatory Authority, the entity authorized by tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

Voucher, a financial instrument of fixed wagering value, usually paper, that can only be used to acquire an equivalent value of cashable credits or cash through interaction with a voucher system.

Voucher System, a component of the Class II gaming system or an external system that securely maintains records of vouchers and coupons; validates

payment of vouchers; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 547.4 How do I comply with this part?

(a) *Limited immediate compliance.* By 120 days after the effective date of this part, a tribal gaming regulatory authority shall:

(1) Require that all Class II gaming system software that affects the play of the Class II game be submitted, together with the signature verification required by § 547.8(f), to a testing laboratory recognized pursuant to paragraph (f) of this section;

(2) Require that the testing laboratory test the submission to the standards established by § 547.8(b), § 547.14, the minimum probability standards of § 547.5(c), and to any additional standards adopted by the tribal gaming regulatory authority;

(3) Require that the testing laboratory provide the tribal gaming regulatory authority with a formal written report setting forth and certifying to the findings and conclusions of the test;

(4) Make a finding, in the form of a certificate provided to the supplier, that the Class II gaming system qualifies for grandfather status under the provisions of this section, but only upon receipt of a testing laboratory's report that the Class II gaming system is compliant with § 547.8(b), § 547.8(f), the minimum probability standards of § 547.5(c), § 547.14, and any other standards adopted by the tribal gaming regulatory authority. If the tribal gaming regulatory authority does not issue the certificate, or if the testing laboratory finds that the Class II gaming system is not compliant with § 547.8(b), § 547.8(f), the minimum probability standards of § 547.5(c), § 547.14, or any other standards adopted by the tribal gaming regulatory authority, then the gaming system shall immediately be removed from play and not be utilized.

(5) Retain a copy of any testing laboratory's report so long as the Class II gaming system that is the subject of the report remains available to the public for play;

(6) Retain a copy of any certificate of grandfather status so long as the Class II gaming system that is the subject of the certificate remains available to the public for play; and

(7) Require the supplier of any player interface to designate with a permanently affixed label each player interface with an identifying number and the date of manufacture or a statement that the date of manufacture was on or before the effective date of this part. The tribal gaming regulatory

authority shall also require the supplier to provide a written declaration or affidavit affirming that the date of manufacture was on or before the effective date of this part.

(b) *Grandfather provisions.* All Class II gaming systems manufactured or placed in a tribal facility on or before the effective date of this part and certified pursuant to paragraph (a) of this section are grandfathered Class II gaming systems for which the following provisions apply:

(1) Grandfathered Class II gaming systems may continue in operation for a period of five years from the effective date of this part.

(2) Subject to the limitations in any applicable Commission regulations governing the classification of games, any grandfathered Class II gaming system shall be available for use at any tribal gaming facility subject to approval by the tribal gaming regulatory authority which shall transmit its notice of that approval, identifying the grandfathered components, to the NIGC.

(3) As permitted by the tribal gaming regulatory authority, individual hardware or software components may be repaired or replaced to ensure proper functioning, security, or integrity of the grandfathered Class II gaming system.

(4) All modifications that affect the play of a grandfathered Class II gaming system must be approved pursuant to paragraph (c) of this section, except for the following:

(i) Any software modifications that the tribal gaming regulatory authority finds will maintain or advance the system's overall compliance with this part or applicable provisions of Commission regulations governing minimum internal control standards, after receiving a new testing laboratory report that the modifications are compliant with the standards established by § 547.8(b), the minimum probability requirements of § 547.5(c), § 547.14, and any other standards adopted by the tribal gaming regulatory authority;

(ii) Any hardware modifications that the tribal gaming regulatory authority finds will maintain or advance the system's overall compliance with this part or applicable provisions of Commission regulations governing minimum internal control standards; and

(iii) Any other modification to the software of a grandfathered Class II gaming system that the tribal gaming regulatory authority finds will not detract from, compromise or prejudice:

(A) The proper functioning, security, or integrity of the Class II gaming system, and

(B) The gaming system's overall compliance with the requirements of this part or applicable provisions of Commission regulations governing minimum internal control standards.

(iv) No such modification may be implemented without the approval of the tribal gaming regulatory authority. The tribal gaming regulatory authority shall maintain a record of the modification so long as the Class II gaming system that is the subject of the modification remains available to the public for play and shall make the record available to the Commission upon request. 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).

(c) *Submission, testing, and approval—generally.* Except as provided in paragraphs (b) and (d) of this section, no tribal gaming regulatory authority shall permit in a tribal gaming operation the use of any Class II gaming system, or any associated cashless system or voucher system or any modification thereto, unless:

(1) The Class II gaming system, cashless system, voucher payment system, or modification has been submitted to a testing laboratory;

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

(i) This part;

(ii) Applicable provisions of Commission regulations governing the classification of games and minimum internal controls; and

(iii) The tribal gaming regulatory authority; and the testing laboratory provides a formal written report to the party making the submission, setting forth and certifying to its findings and conclusions; and

(3) Following receipt of the testing laboratory's report, the tribal gaming regulatory authority makes a finding that the Class II gaming system, cashless system, or voucher system conforms to the standards established by:

(i) This part;

(ii) Applicable provisions of Commission regulations governing the classification of games and minimum internal controls; and

(iii) The tribal gaming regulatory authority.

The tribal gaming regulatory authority shall retain a copy of the testing laboratory's report so long as the Class II gaming system, cashless system, voucher system, or modification thereto that is the subject of the report remains

available to the public for play in its gaming operation.

(d) *Emergency hardware and software changes.* (1) A tribal gaming regulatory authority, in its discretion, may permit modified hardware or game software to be made available for play without prior laboratory review if the modified hardware or game 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 tribal gaming regulatory authority authorizes modified game software or hardware to be made available for play or use without prior laboratory review, the tribal gaming regulatory authority shall thereafter require the hardware or software manufacturer to:

(i) Immediately advise other users of the same hardware or software of the importance and availability of the update;

(ii) Immediately submit the new hardware or software to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of Commission regulations governing minimum internal control standards; and

(iii) Immediately provide the tribal gaming regulatory authority with a software signature verification tool meeting the requirements of § 547.8(f) for any new software.

(3) If a tribal gaming regulatory authority authorizes software or hardware modification under this paragraph, it shall 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 and shall make the record available to the Commission upon request. 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).

(e) *Compliance by charitable gaming operations.* This part shall 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 tribal gaming regulatory authority 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 \$1,000,000.

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

(i) The testing laboratory demonstrates its integrity, independence and financial stability to the tribal gaming regulatory authority.

(ii) The testing laboratory demonstrates its technical skill and capability to the tribal gaming regulatory authority.

(iii) The testing laboratory is not owned or operated by the tribe or tribal gaming regulatory authority.

(iv) The tribal gaming regulatory authority:

(A) Makes a suitability determination of the testing laboratories no less stringent than that required by § 533.6(b)(1)(ii) through (v) and 533.6(c) 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 jurisdiction in the United States.

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

(2) The tribal gaming regulatory authority shall:

(i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iv) and (f)(1)(v) of this section for a minimum of three years and shall make the records available to the Commission upon request. 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).

(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 tribal gaming regulatory authority.

§ 547.5 What are the rules of interpretation and of general application for this part?

(a) *Minimum standards.* A tribal gaming regulatory authority may establish and implement additional technical standards that are as stringent as, or more stringent than, those set out in this part.

(b) *Only applicable standards apply.* Gaming equipment and software used with Class II gaming systems shall meet all applicable requirements of this part and applicable requirements of Commission regulations governing the classification of games and minimum internal controls. For example, if a Class II gaming system lacks the ability to print or accept vouchers, then any standards that govern vouchers do not apply.

(c) *Fairness.* No Class II gaming system shall cheat, mislead, or disadvantage users. All prizes advertised shall be available to win. No progressive prize shall have a probability of winning of less than 1 in 50,000,000. No other prize shall have a probability of winning of less than 1 in 25,000,000.

(d) *Approved equipment and software only.* All gaming equipment and software used with Class II gaming systems shall be identical in all respects to a prototype reviewed and tested by a testing laboratory and approved for use by the tribal gaming regulatory authority pursuant to § 547.4(a) through (c). Unapproved software shall not be loaded onto or stored on any program storage medium used in a Class II gaming system, except as provided in § 547.4(d).

(e) *Proper functioning.* All gaming equipment and software used with Class II gaming systems shall perform according to the manufacturer's design and operating specifications.

(f) *No Limitation of Technology.* This part should not be interpreted to limit the use of technology or to preclude the use of technology not specifically referenced.

(g) *Severability.* If any provision of this part is declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this part.

§ 547.6 What are the minimum technical standards for enrolling and enabling Class II gaming system components?

(a) *General requirements.* Class II gaming systems shall provide a method to:

(1) Enroll and unenroll system components;

(2) Enable and disable specific system components.

(b) *Specific requirements.* Class II gaming systems shall:

(1) Ensure that only enrolled and enabled system components participate in gaming; and

(2) Ensure that the default condition for components shall be unenrolled and disabled.

§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems?

(a) *General requirements.* (1) The Class II gaming system shall operate in compliance with applicable regulations of the Federal Communications Commission.

(2) Prior to approval by the tribal gaming regulatory authority pursuant to § 547.4(d), the Class II gaming system shall have obtained from Underwriters' Laboratories, or its equivalent, relevant certification(s) required for equipment of its type, including but not limited to certifications for liquid spills, electromagnetic interference, etc.

(b) *Printed circuit boards.* (1) Printed circuit boards that have the potential to affect the outcome or integrity of the game, and are specially manufactured or proprietary and not off-the-shelf, shall display a unique identifier such as a part number and/or revision number, which shall be updated to reflect new revisions or modifications of the board.

(2) Switches or jumpers on all circuit boards that have the potential to affect the outcome or integrity of any game, progressive award, financial instrument, cashless transaction, voucher transaction, or accounting records shall be capable of being sealed.

(c) *Electrostatic discharge.* Class II gaming system components accessible to the public shall be constructed so that they exhibit immunity to human body electrostatic discharges on areas exposed to contact. Static discharges of ± 15 kV for air discharges and ± 7.5 kV for contact discharges may not cause damage, or inhibit operation or integrity of the Class II gaming system.

(d) *Physical enclosures.* Physical enclosures shall be of a robust construction designed to resist determined illegal entry. All protuberances and attachments such as buttons, identification plates, and labels shall be sufficiently robust to avoid unauthorized removal.

(e) *Player interface.* The player interface shall include a method or means to:

(1) Display information to a player; and

(2) Allow the player to interact with the Class II gaming system.

(f) *Account access components.* A Class II gaming system component that reads account access media shall be located within a secure, locked or tamper-evident area or in a cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components. In addition, the account access component:

(1) Shall be constructed so that physical tampering leaves evidence of such tampering; and

(2) Shall provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition.

(g) *Financial instrument storage components.* Any Class II gaming system components that store financial instruments and that are not operated under the direct control of a gaming operation employee or agent shall be located within a secure and locked area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components.

(h) *Financial instrument acceptors.* (1) Any Class II gaming system components that handle financial instruments and that are not operated under the direct control of an agent shall:

(i) Be located within a secure, locked and tamper-evident area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components;

(ii) Be able to detect the entry of valid or invalid financial instruments and to provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition; and

(iii) Be constructed to permit communication with the Class II gaming system of the accounting information required by § 547.9(a) and by applicable provisions of any Commission and tribal gaming regulatory regulations governing minimum internal control standards.

(2) Prior to completion of a valid financial instrument transaction by the Class II gaming system, no monetary amount related to that instrument shall be available for play. For example, credits shall not be available for play until currency or coupon inserted into an acceptor is secured in the storage component.

(3) The monetary amount related to all valid financial instrument transactions by the Class II gaming system shall be recorded as required by § 547.9(a) and the applicable provisions of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(i) *Financial instrument dispensers.*

(1) Any Class II gaming system components that dispense financial instruments and that are not designed to be operated under the direct control of a gaming operation employee or agent shall:

(i) Be located within a secure, locked and tamper-evident area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components;

(ii) Provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition; and

(iii) Be constructed to permit communication with the Class II gaming system of the accounting information required by § 547.9(a) and by applicable provisions of any Commission and tribal gaming regulatory regulations governing minimum internal control standards.

(2) The monetary amount related to all valid financial instrument transactions by the Class II gaming system shall be recorded as required by § 547.9(a) and the applicable provisions of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(j) *Game Outcome Determination Components.* Any Class II gaming system logic components that affect the game outcome and that are not designed to be operated under the direct control of a gaming operation employee or agent shall be located within a secure, locked and tamper-evident area or in a locked cabinet or housing which is of a robust construction designed to resist determined illegal entry and to protect internal components. DIP switches or jumpers that can affect the integrity of the Class II gaming system must be capable of being sealed by the tribal gaming regulatory authority.

(k) *Door access detection.* All components of the Class II gaming system that are locked in order to meet the requirements of this part shall include a sensor or other methods to monitor an open door. In addition:

(1) A door open sensor, and its components or cables, shall be secure against attempts to disable them or interfere with their normal mode of operation; and

(2) It shall not be possible to disable a door open sensor, or access components within, without first properly opening the door.

(l) *Separation of functions/no limitations on technology.* Nothing herein shall prohibit the account access component, financial instrument storage component, financial instrument acceptor, and financial instrument dispenser from being included within the same component, or separated into individual components.

§ 547.8 What are the minimum technical software standards applicable to Class II gaming systems?

This section provides general software standards for Class II gaming systems for the play of Class II games.

(a) *Player interface displays.* (1) If not otherwise provided to the player, the player interface shall display the following:

- (i) The purchase or wager amount;
- (ii) Game results; and
- (iii) Any player credit balance.

(2) Between plays of any game and until the start of the next play, or until the player selects a new game option such as purchase or wager amount or card selection, whichever is earlier, if not otherwise provided to the player, the player interface shall display:

- (i) The total purchase or wager amount and all prizes and total credits won for the last game played;
- (ii) The final results for the last game played, including alternate displays of results, if any; and
- (iii) Any default purchase or wager amount for the next play.

(b) *Game initiation and play.* (1) Each game played on the Class II gaming system shall follow and not deviate from a constant set of rules for each game provided to players pursuant to § 547.16. Any change in rules constitutes a different game. There shall be no automatic or undisclosed changes of rules.

(2) For bingo games and games similar to bingo, the Class II gaming system shall not alter or allow to be altered the card permutations or game rules used for play of a Class II game unless specifically chosen by the player prior to commitment to participate in the game. No duplicate cards shall be sold for any common draw.

(3) No game play shall commence and, no financial instrument or credit shall be accepted on the affected player interface, in the presence of any fault condition that affects the outcome of the game, open door, or while in test, audit, or lock-up mode.

(4) The player must choose to participate in the play of a game.

(c) *Audit Mode.* (1) If an audit mode is provided, the Class II gaming system shall provide, for those components actively involved in the audit:

(i) All accounting functions required by § 547.9, by applicable provisions of any Commission regulations governing minimum internal control standards, and by any internal controls adopted by the tribe or tribal gaming regulatory authority;

(ii) Display player interface identification; and

(iii) Display software version or game identification;

(2) Audit mode shall be accessible by a secure method.

(3) Accounting function data shall be accessible by an authorized person at any time, except during a payout, during a handpay, or during play.

(4) The Class II gaming system shall disable credit acceptance on the affected player interface while in audit mode, except during credit acceptance testing.

(d) *Last game recall.* The last game recall function shall:

(1) Be retrievable at all times, other than when the recall component is involved in the play of a game, upon the operation of an external key-switch, entry of an audit card, or a similar method;

(2) Display the results of recalled games as originally displayed or in text representation, including alternate display results implemented in video, rather than electro-mechanical, form, if any, so as to enable the tribal gaming regulatory authority or operator to clearly identify the game sequences and results that occurred;

(3) Allow the Class II gaming system component providing game recall, upon return to normal game play mode, to restore any affected display to the positions, forms and values displayed before access to the game recall information; and

(4) Provide the following information for the current and previous four games played and shall display:

- (i) Game start time, end time, and date;
- (ii) The total number of credits at the start of play, less the purchase or wager amount;
- (iii) The purchase or wager amount;
- (iv) The total number of credits at the end of play; and
- (v) The total number of credits won as a result of the game recalled, and the value in dollars and cents for progressive prizes, if different.

(vi) For bingo games and games similar to bingo only, also display:

- (A) The card(s) used by the player;
- (B) The identifier of the bingo game played;

(C) The numbers or other designations drawn, in the order that they were drawn;

(D) The numbers or other designations and prize patterns covered on each card;

(E) All prizes won by the player, including winning patterns and alternate displays implemented in video, rather than electro-mechanical form, if any; and

(F) The unique identifier of the card on which prizes were won;

(vii) For pull-tab games only, also display:

(A) The result(s) of each pull-tab, displayed in the same pattern as on the tangible pull-tab;

(B) All prizes won by the player;

(C) The unique identifier of each pull tab; and

(D) Any other information necessary to fully reconstruct the current and four previous plays.

(e) *Voucher and credit transfer recall.* Notwithstanding the requirements of any other section in this part, a Class II gaming system shall have the capacity to:

(1) Display the information specified in § 547.11(b)(5)(ii) through (vi) for the last five vouchers or coupons printed and the last five vouchers or coupons accepted; and

(2) Display a complete transaction history for the last five cashless transactions made and the last five cashless transactions accepted.

(f) *Software signature verification.* The manufacturer or developer of the Class II gaming system must provide to the testing laboratory and to the tribal gaming regulatory authority an industry-standard methodology, acceptable to the tribal gaming regulatory authority, for verifying the Class II gaming system game software. By way of illustration, for game software stored on rewritable media, such methodologies include signature algorithms and hashing formulas such as SHA-1.

(g) *Test, diagnostic, and demonstration modes.* If test, diagnostic, and/or demonstration modes are provided, the Class II gaming system shall, for those components actively involved in the test, diagnostic, or demonstration mode:

(1) Clearly indicate when that component is in the test, diagnostic, or demonstration mode;

(2) Not alter financial data on that component other than temporary data;

(3) Only be available after entering a specific mode;

(4) Disable credit acceptance and payment unless credit acceptance or payment is being tested; and

(5) Terminate all mode-specific functions upon exiting a mode.

(h) *Multi-game*. If multiple games are offered for player selection at the player interface, the player interface shall:

- (1) Provide a display of available games;
- (2) Provide the means of selecting among them;
- (3) Display the full amount of the player's credit balance;
- (4) Identify the game selected or being played; and
- (5) Not force the play of a game after its selection.

(i) *Program interruption and resumption*. The Class II gaming system software shall be designed so that upon resumption following any interruption, the system:

- (1) Is able to return to a known state;
- (2) Shall check for any fault condition upon resumption;
- (3) Shall verify the integrity of data stored in critical memory;
- (4) Shall return the purchase or wager amount to the player in accordance with the rules of the game; and
- (5) Shall detect any change or corruption in the Class II gaming system software.

(j) *Class II gaming system components acting as progressive controllers*. This paragraph applies to progressive controllers and components acting as progressive controllers in Class II gaming systems.

(1) Modification of progressive parameters shall be conducted in a secure manner approved by the tribal gaming regulatory authority. Such parameters may include:

- (i) Increment value;
- (ii) Secondary pool increment(s);
- (iii) Reset amount(s);
- (iv) Maximum value(s); and

(v) Identity of participating player interfaces.

(2) The Class II gaming system component or other progressive controller shall provide a means of creating a progressive balancing report for each progressive link it controls. At a minimum, that report shall provide balancing of the changes of the progressive amount, including progressive prizes won, for all participating player interfaces versus current progressive amount(s), plus progressive prizes. In addition, the report shall account for, and not be made inaccurate by, unusual events such as:

- (i) Class II gaming system critical memory clears;
- (ii) Modification, alteration, or deletion of progressive prizes;
- (iii) Offline equipment; or
- (iv) Multiple site progressive prizes.

(k) *Critical memory*. (1) Critical memory may be located anywhere within the Class II gaming system. Critical memory is any memory that maintains any of the following data:

- (i) Accounting data;
- (ii) Current credits;
- (iii) Configuration data;
- (iv) Last game recall information required by § 547.8(d);
- (v) Game recall information for the current game, if incomplete;
- (vi) Software state (the last normal state software was in before interruption);
- (vii) RNG seed(s), if necessary for maintaining integrity;
- (viii) Encryption keys, if necessary for maintaining integrity;
- (ix) Progressive prize parameters and current values;

(x) The five most recent financial instruments accepted by type, excluding coins and tokens;

(xi) The five most recent financial instruments dispensed by type, excluding coins and tokens; and

(xii) The five most recent cashless transactions paid and the five most recent cashless transactions accepted.

(2) Critical memory shall be maintained using a methodology that enables errors to be identified and acted upon. All accounting and recall functions shall be verified as necessary to ensure their ongoing integrity.

(3) The validity of affected data stored in critical memory shall be checked after each of the following events:

- (i) Every restart;
- (ii) Each attendant paid win;
- (iii) Each attendant paid progressive win;
- (iv) Each sensed door closure; and
- (v) Every reconfiguration, download, or change of prize schedule or denomination requiring operator intervention or action.

(l) Secured access. Class II gaming systems that use a logon or other means of secured access shall include a user account lockout after a predetermined number of consecutive failed attempts to access system.

§ 547.9 What are the minimum technical standards for Class II gaming system accounting functions?

This section provides standards for accounting functions used in Class II gaming systems.

(a) *Required accounting data*. The following minimum accounting data, however named, shall be maintained by the Class II gaming system.

Title	Description
(1) Amount In	The total value of all financial instruments and cashless transactions accepted by the Class II gaming system. Each type of financial instrument accepted by the Class II gaming system shall be tracked independently, and as required by applicable requirements of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.
(2) Amount Out	The total value of all financial instruments and cashless transactions paid by the Class II gaming system, plus the total value of attendant pay. Each type of financial instrument paid by the Class II Gaming System shall be tracked independently, and as required by applicable requirements of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(b) *Accounting data storage*. If the Class II gaming system electronically maintains accounting data:

(1) Accounting data shall be stored with at least eight decimal digits.

(2) Credit balances shall have sufficient digits to accommodate the design of the game.

(3) Accounting data displayed to the player may be incremented or decremented using visual effects, but

the internal storage of this data shall be immediately updated in full.

(4) Accounting data shall be updated upon the occurrence of the relevant accounting event.

(5) Modifications to accounting data shall be recorded, including the identity of the person(s) making the modifications, and be reportable by the Class II gaming system.

(c) *Rollover*. Accounting data that rolls over to zero shall not corrupt data.

(d) *Credit balance display and function*. (1) Any credit balance maintained at the player interface shall be prominently displayed at all times except:

(i) In audit, configuration, recall and test modes; or

(ii) Temporarily, during alternate displays of game results.

(2) Progressive prizes may be added to the player's credit balance provided:

- (i) The player credit balance is maintained in dollars and cents;
- (ii) The progressive accounting data is incremented in number of credits; or
- (iii) The prize in dollars and cents is converted to player credits or transferred to the player's credit balance in a manner that does not mislead the player or cause accounting imbalances.

(3) If the player credit balance displays in credits, but the actual balance includes fractional credits, the Class II gaming system shall display the fractional credit when the player credit balance drops below one credit.

§ 547.10 What are the minimum standards for Class II gaming system critical events?

This section provides standards for events such as system critical faults, deactivation, door open or other changes of states, and lockup within the Class II gaming system.

(a) *Fault events.* (1) The following events are to be treated as described below:

Events	Definition and action to be taken
(i) Component fault	Reported when a fault on a component is detected. When possible, this event message should indicate what the nature of the fault is.
(ii) Financial storage component full	Reported when a financial instrument acceptor or dispenser includes storage, and it becomes full. This event message should indicate what financial storage component is full.
(iii) Financial output component empty.	Reported when a financial instrument dispenser is empty. The event message should indicate which financial output component is affected, and whether it is empty.
(iv) Financial component fault	Reported when an occurrence on a financial component results in a known fault state.
(v) Critical memory error	Some critical memory error has occurred. When a non-correctable critical memory error has occurred, the data on the Class II gaming system component can no longer be considered reliable. Accordingly, any game play on the affected component shall cease immediately, and an appropriate message shall be displayed, if possible.
(vi) Progressive communication fault.	If applicable; when communications with a progressive controller component is in a known fault state.
(vii) Program storage medium fault	The software has failed its own internal security check or the medium itself has some fault. Any game play on the affected component shall cease immediately, and an appropriate message shall be displayed, if possible.

(2) The occurrence of any event identified in paragraph (a)(1) of this section shall be recorded.

(3) Upon clearing any event identified in paragraph (a)(1) of this section, the Class II gaming system shall:

- (i) Record that the fault condition has been cleared;
- (ii) Ensure the integrity of all related accounting data; and
- (iii) In the case of a malfunction, return a player's purchase or wager according to the rules of the game.

(b) *Door open/close events.* (1) In addition to the requirements of paragraph (a)(1) of this section, the Class II gaming system shall perform the following for any component affected by any sensed door open event:

- (i) Indicate that the state of a sensed door changes from closed to open or opened to closed;
- (ii) Disable all financial instrument acceptance, unless a test mode is entered;
- (iii) Disable game play on the affected player interface;

(iv) Disable player inputs on the affected player interface, unless test mode is entered; and

(v) Disable all financial instrument disbursement, unless a test mode is entered.

(2) The Class II gaming system may return the component to a ready to play state when all sensed doors are closed.

(c) *Non-fault events.* The following non-fault events are to be treated as described below, if applicable:

Event	Definition and action to be taken
(1) Player interface power off during play.	This condition is reported by the affected component(s) to indicate power has been lost during game play.
(2) Player interface power on	This condition is reported by the affected component(s) to indicate it has been turned on.
(3) Financial instrument storage component container/stacker removed.	This condition is reported when a financial instrument storage container has been removed. The event message should indicate which storage container was removed.

§ 547.11 What are the minimum technical standards for money and credit handling?

This section provides standards for money and credit handling by a Class II gaming system.

(a) *Credit acceptance, generally.* (1) Upon any credit acceptance, the Class II gaming system shall register the correct number of credits on the player's credit balance.

(2) The Class II gaming system shall reject financial instruments deemed invalid.

(b) *Credit redemption, generally.* (1) For cashable credits on a player

interface, players shall be allowed to cash out and/or redeem those credits at the player interface except when that player interface is:

- (i) Involved in the play of a game;
- (ii) In audit mode, recall mode or any test mode;
- (iii) Detecting any sensed door open condition;
- (iv) Updating the player credit balance or total win accounting data; or
- (v) Displaying a fault condition that would prevent cash-out or credit redemption. In this case a fault indication shall be displayed.

(2) For cashable credits not on a player interface, the player shall be allowed to cash out and/or redeem those credits at any time.

(3) A Class II gaming system shall not automatically pay an award subject to mandatory tax reporting or withholding.

(4) Credit redemption by voucher or coupon shall conform to the following:

(i) A Class II gaming system may redeem credits by issuing a voucher or coupon when it communicates with a voucher system that validates the voucher or coupon.

(ii) A Class II gaming system that redeems credits by issuing vouchers and coupons shall either:

(A) Maintain an electronic record of all information required by paragraphs (b)(5)(ii) through (vi) of this section; or

(B) Generate two identical copies of each voucher or coupon issued, one to be provided to the player and the other to be retained within the machine for audit purposes.

(5) Valid vouchers and coupons shall contain the following:

(i) Gaming operation name and location;

(ii) The identification number of the Class II gaming system component or the player interface number, as applicable;

(iii) Date and time of issuance;

(iv) Alpha and numeric dollar amount;

(v) A sequence number;

(vi) A validation number that:

(A) Is produced by a means specifically designed to prevent repetition of validation numbers; and

(B) Has some form of checkcode or other form of information redundancy to prevent prediction of subsequent validation numbers without knowledge of the checkcode algorithm and parameters;

(vii) For machine-readable vouchers and coupons, a bar code or other form of machine readable representation of the validation number, which shall have enough redundancy and error checking to ensure that 99.9% of all misreads are flagged as errors;

(viii) Transaction type or other method of differentiating voucher and coupon types; and

(ix) Expiration period or date.

(6) Transfers from an account may not exceed the balance of that account.

(7) For Class II gaming systems not using dollars and cents accounting and not having odd cents accounting, the Class II gaming system shall reject any transfers from voucher payment systems or cashless systems that are not even multiples of the Class II gaming system denomination.

(8) Voucher redemption systems shall include the ability to report redemptions per redemption location or user.

§ 547.12 What are the minimum technical standards for downloading on a Class II gaming system?

This section provides standards for downloading on a Class II gaming system.

(a) *Downloads.* (1) Downloads are an acceptable means of transporting approved content, including but not limited to software, files, data, and prize schedules.

(2) Downloads of software, games, prize schedules, or other download packages shall be conducted only as authorized by the tribal gaming regulatory authority.

(3) Downloads shall use secure methodologies that will deliver the download data without alteration or modification, in accordance with § 547.15(a).

(4) Downloads conducted during operational periods shall be performed in a manner that will not affect game play.

(5) Downloads shall not affect the integrity of accounting data.

(6) The Class II gaming system or the tribal gaming regulatory authority shall log each download of any download package. Each log record shall contain as a minimum:

(i) The time and date of the initiation of the download;

(ii) The time and date of the completion of the download;

(iii) The Class II gaming system components to which software was downloaded;

(iv) The version(s) of download package and any software downloaded. Logging of the unique software signature will satisfy this requirement;

(v) The outcome of any software verification following the download (success or failure); and

(vi) The name and identification number, or other unique identifier, of any individual(s) conducting or scheduling a download.

(b) *Verifying downloads.* Following download of any game software, the Class II gaming system shall verify the downloaded software using a software signature verification method that meets the requirements of § 547.8(f). The tribal gaming regulatory authority shall confirm the verification.

§ 547.13 What are the minimum technical standards for program storage media?

This section provides minimum standards for removable, (re-)writable, and non-writable storage media in Class II gaming systems.

(a) *Removable program storage media.* All removable program storage media shall maintain an internal checksum or signature of its contents. Verification of this checksum or signature is to be performed after every restart. If the verification fails, the affected Class II gaming system component(s) shall lock up and enter a fault state.

(b) *Non-rewritable program storage media.* (1) All EPROMs and Programmable Logic Devices (PLDs) that have erasure windows shall be fitted with covers over their erasure windows.

(2) All unused areas of EPROMs shall be written with the inverse of the erased

state (e.g., zero bits (00 hex) for most EPROMs), random data, or repeats of the program data.

(3) Flash memory storage components intended to have the same logical function as ROM, i.e. not to be dynamically written, shall be write-protected or otherwise protected from unauthorized modification.

(4) The write cycle shall be closed or finished for all CD-ROMs such that it is not possible to write any further data to the CD.

(5) Write protected hard disks are permitted if the means of enabling the write protect is easily viewable and can be sealed in place.

(c) *Writable and rewritable program storage media.* (1) Writable and rewritable program storage, such as hard disk drives, Flash memory, writable CD-ROMs, and writable DVDs, may be used provided that the software stored thereon may be verified using the mechanism provided pursuant to § 547.8(f).

(2) Program storage shall be structured so there is a verifiable separation of fixed data (e.g. program, fixed parameters, DLLs) and variable data.

(d) *Identification of program storage media.* (1) All program storage media that is not re-writable in circuit, (e.g. EPROM, CD-ROM) shall be uniquely identified, displaying:

(i) Manufacturer;

(ii) Program identifier;

(iii) Program version number(s); and

(iv) Location information, if critical (e.g. socket position 3 on the printed circuit board).

§ 547.14 What are the minimum technical standards for electronic random number generation?

This section provides minimum standards for electronic RNGs in Class II gaming systems.

(a) *Properties.* (1) All RNGs shall produce output having the following properties:

(i) Statistical randomness;

(ii) Unpredictability; and

(iii) Non-repeatability.

(b) *Statistical Randomness.* (1) Numbers produced by an RNG shall be statistically random individually and in the permutations and combinations used in the application under the rules of the game. For example, if a bingo game with 75 objects with numbers or other designations has a progressive winning pattern of the five numbers or other designations on the bottom of the card and the winning of this prize is defined to be the five numbers or other designations are matched in the first five objects drawn, the likelihood of each of the 75C5 combinations are to be verified to be statistically equal.

(2) Numbers produced by an RNG shall pass the statistical tests for randomness to a 99% confidence level, which may include:

- (i) Chi-square test;
- (ii) Equi-distribution (frequency) test;
- (iii) Gap test;
- (iv) Poker test;
- (v) Coupon collector's test;
- (vi) Permutation test;
- (vii) Run test (patterns of occurrences shall not be recurrent);
- (viii) Spectral test;
- (ix) Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game); and
- (x) Test on subsequences.

(c) *Unpredictability.* (1) It shall not be feasible to predict future outputs of an RNG, even if the algorithm and the past sequence of outputs are known.

(2) Unpredictability shall be ensured by re-seeding or by continuously cycling the RNG, and by providing a sufficient number of RNG states for the applications supported.

(3) Re-seeding may be used where the re-seeding input is at least as statistically random as, and independent of, the output of the RNG being re-seeded.

(d) *Non-repeatability.* The RNG shall not be initialized to reproduce the same output stream that it has produced before, nor shall any two instances of an RNG produce the same stream as each other. This property shall be ensured by initial seeding that comes from:

- (1) A source of "true" randomness, such as a hardware random noise generator; or
- (2) A combination of timestamps, parameters unique to a Class II gaming system, previous RNG outputs, or other, similar method.

(e) *General requirements.* (1) Software that calls an RNG to derive game outcome events shall immediately use the output returned in accordance with the game rules.

(2) The use of multiple RNGs is permitted as long as they operate in accordance with this section.

(3) RNG outputs shall not be arbitrarily discarded or selected.

(4) Where a sequence of outputs is required, the whole of the sequence in the order generated shall be used in accordance with the game rules.

(5) The Class II gaming system shall neither adjust the RNG process or game outcomes based on the history of prizes obtained in previous games nor make any reflexive or secondary decision that affects the results shown to the player or game outcome. Nothing in this paragraph shall prohibit the use of alternative displays.

(f) *Scaling algorithms and scaled numbers.* An RNG that provides output scaled to given ranges shall:

- (1) Be independent and uniform over the range;
- (2) Provide numbers scaled to the ranges required by game rules, and notwithstanding the requirements of paragraph (e)(3) of this section, may discard numbers that do not map uniformly onto the required range but shall use the first number in sequence which does map correctly to the range;
- (3) Be capable of producing every possible outcome of a game according to its rules; and

(4) Use an unbiased algorithm. A scaling algorithm is considered to be unbiased if the measured bias is no greater than 1 in 100 million.

§ 547.15 What are the minimum technical standards for electronic data communications between system components?

This section provides minimum standards for electronic data communications with gaming equipment or components used with Class II gaming systems.

(a) *Sensitive data.* Communication of sensitive data shall be secure from eavesdropping, access, tampering, intrusion or alteration unauthorized by the tribal gaming regulatory authority. Sensitive data shall include, but not be limited to:

- (1) RNG seeds and outcomes;
- (2) Encryption keys, where the implementation chosen requires transmission of keys;
- (3) PINs;
- (4) Passwords;
- (5) Financial instrument transactions;
- (6) Transfers of funds;
- (7) Player tracking information;
- (8) Download Packages; and
- (9) Any information that affects game outcome.

(b) *Wireless communications.* (1) Wireless access points shall not be accessible to the general public.

(2) Open or unsecured wireless communications are prohibited.

(3) Wireless communications shall be secured using a methodology that makes eavesdropping, access, tampering, intrusion or alteration impractical. By way of illustration, such methodologies include encryption, frequency hopping, and code division multiplex access (as in cell phone technology).

(c) Methodologies shall be used that will ensure the reliable transfer of data and provide a reasonable ability to detect and act upon any corruption of the data.

(d) Class II gaming systems shall record detectable, unauthorized access or intrusion attempts.

(e) Remote communications shall only be allowed if authorized by the tribal gaming regulatory authority. Class II gaming systems shall have the ability to enable or disable remote access, and the default state shall be set to disabled.

(f) Failure of data communications shall not affect the integrity of critical memory.

(g) The Class II gaming system shall log the establishment, loss, and re-establishment of data communications between sensitive Class II gaming system components.

§ 547.16 What are the minimum standards for game artwork, glass, and rules?

This section provides standards for the display of game artwork, the displays on belly or top glass, and the display and disclosure of game rules, whether in physical or electronic form.

(a) *Rules, instructions, and prize schedules, generally.* The following shall at all times be displayed or made readily available to the player upon request:

(1) Game name, rules, and options such as the purchase or wager amount stated clearly and unambiguously;

(2) Denomination;

(3) Instructions for play on, and use of, the player interface, including the functions of all buttons; and

(4) A prize schedule or other explanation, sufficient to allow a player to determine the correctness of all prizes awarded, including:

(i) The range and values obtainable for any variable prize;

(ii) Whether the value of a prize depends on the purchase or wager amount; and

(iii) The means of division of any pari-mutuel prizes; but

(iv) For bingo and games similar to bingo, the prize schedule or other explanation need not state that subsets of winning patterns are not awarded as additional prizes (e.g. five in a row does not also pay three in a row or four in a row), unless there are exceptions, which shall be clearly stated.

(b) *Disclaimers.* The Class II gaming system shall continually display:

(1) "Malfunctions void all prizes and plays" or equivalent; and

(2) "Actual Prizes Determined by Bingo [or other applicable Class II game] Play. Other Displays for Entertainment Only." or equivalent.

§ 547.17 How does a gaming operation apply for a variance from these standards?

(a) *Tribal Gaming Regulatory Authority approval.* (1) A tribal gaming regulatory authority may approve a variance from the requirements of this part if it has determined that the

variance will achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the tribal gaming regulatory authority approves a variance, it shall submit to the Chairman within 30 days, a detailed report, which shall include the following:

(i) An explanation of how the variance achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and

(ii) The variance as granted and the record on which it is based.

(3) In the event that the tribal gaming regulatory authority or the tribe's government chooses to submit a variance request directly to the Chairman for joint government to government review, the tribal gaming regulatory authority or tribal government may do so without the approval requirement set forth in paragraph (a) (1) of this section.

(b) *Chairman Review.* (1) The Chairman may approve or object to a variance granted by a tribal gaming regulatory authority.

(2) Any objection by the Chairman shall be in written form with an explanation why the variance as approved by the tribal gaming regulatory authority does not provide a level of security or integrity sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to approve or object in writing within 60 days after the date of receipt of a complete submission, the variance shall be considered approved by the Chairman. The Chairman and the tribal gaming regulatory authority may, by agreement, extend this deadline an additional 60 days.

(4) No variance may be implemented until approved by the tribal gaming regulatory authority pursuant to paragraph (a)(1) of this section or the Chairman has approved pursuant to paragraph (b)(1) of this section.

(c) *Commission Review.* (1) Should the tribal gaming regulatory authority elect to maintain its approval after written objection by the Chairman, the tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(i) Within 60 days of receiving an objection, the tribal gaming regulatory authority shall file a written notice of appeal with the Commission which may include a request for an oral hearing or it may request that the matter be decided upon written submissions.

(ii) Within 10 days after filing a notice of appeal the tribal gaming regulatory authority shall file a supplemental statement specifying the reasons why the tribal gaming regulatory authority believes the Chairman's objection should be reviewed, and shall include supporting documentation, if any.

(iii) Failure to file an appeal or submit the supplemental statement within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iv) If an oral hearing is requested it shall take place within 30 days of the notice of appeal and a record shall be made.

(v) If the tribal gaming regulatory authority requests that the appeal be decided on the basis of written submission, the Commission shall issue a written decision within 30 days of receiving the supplemental statement

(vi) The Commission shall issue a decision within 30 days of the oral hearing. The Commission shall uphold the objection of the Chairman, only if, upon de novo review of the record upon which the Chairman's decision is based, the Commission determines that the variance approved by the tribal gaming regulatory authority does not achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(vii) The Commission's decision shall constitute final agency action.

Dated: October 17, 2007.

Philip N. Hogen,
Chairman

Cloyce V. Choney,
Vice Chairman

Norman H. DesRosiers
Commissioner.

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