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VIA E-mail reg.review@nigc.gov

National Indian Gaming Commission
Attn: Regulatory Review
1441 L Street, Suite 9100
Washington, DC 20005

Re: Comments on Preliminary Draft of 25 CFR Part 547 – Minimum Technical Standards for Gaming Equipment Used in the Play of Class II Games

Dear Chairperson Stevens, Vice-Chairperson Cochran, and Commissioner Little:

On behalf of the Lytton Rancheria of California (Tribe), we hereby submit the following comments in response to the National Indian Gaming Commission's (Commission) Preliminary Draft of 25 CFR Part 547 – Technical Standards for Gaming Equipment Used in the Play of Class II Games. The Tribe appreciates the opportunity to submit comments on this proposed preliminary draft and welcomes the Commission's commitment to providing a comprehensive government-to-government consultation process. The Tribe supports the distribution of preliminary draft regulations as such supports a constructive government-to-government dialogue between tribes and the Commission, which ultimately will result in stronger and more effective regulations.

The Tribe is pleased to see that the Commission took many of the Tribal Gaming Working Group and Tribal Advisory Committee's recommended revisions and commends the Commission for improving many portions of Part 547. The Tribe supports most of the Commission's revisions; however, the Tribe feels that some areas of concern remain and thus provides the following comments:

General/Global Comments

1. The current layout of the regulation is quite confusing. Thus, consideration should be given to changing the format as follows:

Hardware (i.e. game artwork, glass rules, player interface, displays, all hardware associated with the play of bingo)
- Manufacturers' requirements
- Test lab requirements
- Tribal requirements

Software (i.e., storage media, RNG, communications, system critical events, all software associated with the play of bingo, enrolling/enabling)
- Manufacturer requirements
- Test lab requirements
- Tribal requirements

System Components (i.e. ticketing, accounting/meters, financial instrument storage components)
- Manufacturer requirements
- Test lab requirements
- Tribal requirements

Installation/Downloading
- Manufacturer requirements
- Tribal requirements

Grandfathering
- Manufacturer requirements
- Tribal Requirements

2. The Tribe has noticed a number of areas where the regulation mixes software and hardware requirements. For example, 547.7 (which is the hardware section) addresses requirements for accounting information, the recording of financial instrument transactions, communications, etc. As written, these requirements appear to be software issues and thus should not be in 547.7. The Commission should conduct a comprehensive review of the regulation to ensure that all requirements are in the appropriate section to avoid any confusion or unnecessary repetition.

3. The regulations are sometimes unnecessarily repetitive. For example, there are provisions for hardware components addressing, robust construction, tampering, etc. The Tribe believes that each of the components to which such requirements apply, are (and should be) designed/constructed in the same manner. Thus, the Commission should review the regulations and consider where and when it is necessary or appropriate to have separate provisions for requirements that are identical.

4. The term "wager" is used numerous times throughout the document. While we understand that this term has been issued in the document since its inception, the use of the term "wager" is really not appropriate for Class II gaming. Thus, consideration should be given to changing this term to "purchase" or "sale."

5. The Commission should ensure that all references to the Class II gaming system are consistent. Currently, a number of different terms are used, such as "Class II system," "grandfathered system," "system," etc. The proper defined term should be used in all instances to avoid any confusion.

6. All paragraph numbering (including all cross-references) should be reviewed for accuracy.

7. All references to tribal gaming regulatory authority should be changed to TGRA.

8. All references to "gaming operation employee or agent" should be changed to "agent" since "gaming operation employees" are included in the term "agent."

9. Consideration should be given to reinserting the term "e.g.," or a similar term, to parentheticals referencing examples. The deletion of this term infers that the item(s) listed in the parenthetical is/are the only authorized means to accomplish the given task.

10. The regulation (particularly the Section 547.8) often separates requirements by type of game (i.e., bingo, pull tabs). It appears that many of these requirements may be universally applicable. The Commission should thoroughly review the regulation to determine what, if any, requirements are applicable to all games.

11. The regulation appears to have a number of requirements that are internal controls, not technical standards (particularly Sections 547.8 and 547.9). The Commission should conduct a thorough review of the regulation and remove any provisions that are internal control standards.

Section 547.2 – Definitions

Cashless System – The Tribe is concerned about the Commission's insertion of the term "proprietary" into this definition. It is unclear what possible value this term adds, but the use of this term can lead to confusion and potential unintended negative consequences. Therefore, consideration should be given to deleting this term.

Class II Gaming – The Tribe is pleased to see that the use of the term "must" has been made consistent throughout the document. In this case, however, the use of the term "must" is inappropriate and we suggest changing the term to "shall" or "has."

Critical Memory – It appears that the term "critical memory" is, in some instances, used in a manner that is different from its definition. The Commission should review all instances where this term is used to ensure that it is used in the manner intended by its definition.

Electromagnetic Interference – This definition is inaccurate. Consideration should be given to using the definition recommended by the testing laboratory, Gaming Laboratories International.

Electrostatic Discharge – This term is still used in the document. Thus, the Tribe is unclear as to why this definition was deleted.

Proprietary Class II System Component – The Tribe is very concerned about this newly added definition. The term "proprietary" is used in a couple of definitions, but the term "Proprietary Class II System Component" is not used anywhere in the regulations. Moreover, we fail to see how this term adds any value to the regulations. Operators and manufacturers integrate and support a multitude of components including those developed by Tribes and entities outside of the gaming industry so it is unclear as to why the Commission would include such a limiting term. Consideration should be given to removing the definition in its entirety since the term is not used, does not add clarity to the regulations, and could create unintended negative results.

Voucher System – The Tribe notes the same comments as on "Cashless System" and "Proprietary Class II System Component." In addition, consideration should be given to re-inserting the phrase "or an external system." Voucher systems can be external to the Class II gaming system.

The Commission should consider adding definitions for card permutations and download package.

Section 547.3 – Who is responsible for implementing these standards?

547.3(a) – The Tribe objects to the phrase "recognizing that TGRAs also regulate Class II gaming." This is inconsistent with the IGRA and with the Commission's prior position on this issue. The IGRA specifically states that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands...." Thus, tribes are considered the primary regulators of Class II gaming. The Commission repeatedly recognized that tribes are the primary regulators of Class II gaming in the preamble to the current Technical Standards and, we believe, in its Preliminary Draft of the Minimum Internal Control Standards for Class II Gaming. Thus, the Commission should revise this section 547.3(a) accordingly.

547.4 –What are the rules of general application for this part?

547.4(b) – This paragraph provides that "[a]ll 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 §547.5(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 §547.5(e)." The Tribe has a number of issues with this paragraph. First, the use of the phrase "identical in all respects" is problematic and creates unnecessary compliance issues. For example, if a player interface is tested in a black cabinet, but was received in a brown cabinet, it would not comply with this standard. Second, the phrase "unapproved software" is unnecessary and incorrect (pursuant to 547.5(d) the software is "untested" not "unapproved"). Finally, it seems somewhat odd to place this language before provisions addressing the standards for approval. Thus, consideration should be given to revising and moving this provision.

547.4(c) - This provision requires that "[a]ll gaming equipment and software must perform according to the manufacturer's design and operating specifications." This provision is somewhat odd given that there is no requirement that either the TGRA or the testing laboratory be provided with this information.

547.5 – How does a TGRA or tribal gaming operation comply with this part?

547.5(a) – Consideration should be given to changing the phrase "tribal gaming facility" to "tribal gaming operation" (or changing the term "tribal gaming operation" used in other sections to "tribal gaming facility") for consistency purposes.

547.5(a)(2) and (4) – As proposed, these paragraphs would require the testing laboratory to have previously tested "grandfathered systems" to the standards of 547.4(a). This is problematic for two reasons. First, the regulations did not previously require grandfathered systems to be tested to the requirements of 547.4(a). Second, even if the previous regulation had required such, the Commission has substantially changed the requirements of 547.4(a). It is safe to say that no TGRA would have required the testing laboratory to test to previously non-existent standards. Thus, the Commission has set a standard for which it is impossible to comply. The Commission should thoroughly review its revisions to ensure that currently grandfathered systems are not inadvertently pushed into non-compliance.

547.5(b) –Consideration should be given to changing the phrase "tribal facility" to "tribal gaming operation" or "tribal gaming facility" for consistency purposes.

547.5(b)(2) – As currently written this provision makes it sound like grandfathered systems can only be played at "approved" tribal gaming operations. We believe the intent is that only Class II gaming systems approved by the TGRA may be used. Thus, consideration should be given to revising this provision to make it clear that it is the Class II Gaming System, not the tribal gaming operation, which requires TGRA approval.

547.5(b)(3) – The Tribe is concerned about the addition of this provision for a number of reasons. First, we do not believe that the Class II gaming system itself has the ability to "enable or disable" remote access. Second, even if it does, placing this new requirement on grandfathered systems makes it impossible for tribes to continue operating their currently grandfathered systems. Finally, if this provision is retained, consideration should be given to adding the phrase "to and from the Class II gaming system" to the first sentence for clarification purposes.

547.5(b)(4) – As currently written, this provision permits only the repair or replacement of individual components of the gaming system to ensure proper functioning, security or integrity of the Class II gaming system. It is our understanding that \the Commission's position is that it is permissible to add grandfathered components to a fully compliant system without it affecting the overall status (i.e., compliance) of the Class II Gaming system. If this is indeed, the case, consideration should be given adding language to the regulation to clarify this matter.

547.5(c) – The reference to paragraph (d) should be changed to (e).

547.5(c)(2)(ii) – This provision, which requires the testing laboratory to test to any applicable provisions of Part 543, should be deleted in its entirety for a number of reasons. First, it is too vague. Who decides what is and is not testable in Part 543? Second, Part 543 addresses Minimum Internal Control Standards, not Technical Standards. Thus, if there are any provisions

in Part 543 that are technical standards and/or "testable," such provisions should be moved to these regulations.

547.5(c)(4) – This provision requires that "[t]he testing laboratory's written report certifies that the operation of each player interface must not be compromised or affected by electrostatic discharge, liquid spills, electromagnetic interference, or any other risk identified by the TGRA." The Tribe has a number of concerns regarding this provision. We believe the intent of this provision is to protect the integrity of the play of the game. As written, however, this provision requires that the operation of the player interface can never be comprised or affected by spills, interference, etc. This is impossible. For example, if a patron poured a drink in the player interface, the operation of the player interface would, of course, be compromised or affected. Thus, the language should be modified to limit this provision accordingly. Second, this paragraph would require the testing lab to certify with absolute certainty that a player interface could never be compromised or affected by spills, etc.; we do not believe that a testing lab can certify anything "absolutely." Finally, we do not believe this is the appropriate place or format for this requirement. As written and placed, it is not a substantive requirement, but merely a "reporting" requirement. Thus, if this provision is retained in any form, consideration should be given to combining it with the existing requirements relating to electrostatic discharge in 547.7(b).

547.5(e)(2)(i)-(iii) – These provisions address "new" software or hardware. This is somewhat confusing given that the title of this section is "Emergency hardware and software modifications." Consideration should be given to either deleting all references to "new" or modifying the entire 547.5(e) to address "new" software or hardware rather than just "modifications."

547.7 – What are the minimum technical hardware standards?

547.7(b) – The Tribe believes the standards relating to electrostatic discharge are far too specific. Consideration should be given to revising this provision to make it a more general safety requirement. For example: "A Class II gaming system must not present a mechanical, electrical, or fire hazard when used in its intended mode of operation."

547.7(d) – The Tribe does not oppose the Commission's addition of language requiring that player interfaces show a serial number and date. However, we believe this requirement should be added as (d)(3) rather than placed in the introductory paragraph so that it is clear that there are numerous ways to "display" this information, rather than implying that such must be displayed on the player interface's video screen

547.7(g)(2) – The term "must" on the second line should be changed to "shall" or "can."

547.7(k) – The phrase "Nothing herein must prohibit…" should be changed to "Nothing herein prohibits…."

547.8 – What are the minimum technical software standards?

This section contains an introductory sentence that states "[t]his section provides general software standards for Class II gaming systems for the play of Class II games." This is the only section in the regulation that begins with this introductory sentence. Thus, the inclusion of this sentence suggests that there are other "specific standards" elsewhere in the regulation. Consideration should be given to deleting this introductory sentence as it is unnecessary and potentially confusing.

547.8(b)(2) – The term "must" on the last line should be changed to "shall" or "can."

547.8(b)(4) – This paragraph provides that "[t]he player must choose to participate in the play of a game." As written, this standard is vague, not a technical standard, and cannot be tested. Thus, consideration should be given to rewriting this requirement so that it is clear as to what exactly it is requiring a Class II gaming system to do.

547.8(i) – The Tribe believes that many of the requirements in this section cannot be accomplished by the Class II gaming system, but in fact, require human intervention. Thus, the Commission should review subparagraphs (1)-(5) to determine whether the Class II gaming system is capable of performing the required tasks.

547.8(k)(3)(iii) – Consider deleting this paragraph in its entirety as "each attendant paid progressive win" is just a subset of "each attendant paid win," which is already noted in subparagraph (ii).

547.8(l) – Add "the" before the word "system" on the last line and clarify to what "system" this provision is referring.

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

547.10(a)((1)(ii) – Unless an operation is using "smart cans," the "system" does not show a message indicating which financial storage component is full. To meet this standard would require substantial financial investment to change software and hardware to smart can technology. The Tribe does not believe this is a critical event as there is no risk associated with a can being full. Thus, consideration should be given to deleting this requirement.

547.10(c)(i) – The "Definition and Action to be Taken" portion of this provision now reads "…to indicate it has been turned on." Since this provision is about the player interface being off during play, we believe that the original language "power has been lost during game play" was appropriate and certainly the reference to being "turned on" is not appropriate at all. Thus, consideration should be given to changing this back to the original language.

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

547.11(b)(4)(ii)(B) – the use of the term "machine" is not appropriate for Class II gaming. Thus, consideration should be given to using a more appropriate term.

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

547.13(b)(5) – A period needs to be added after the word "place" on the second line.

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

547.14(c)(1) – The term "possible" on the first line should be changed back to "feasible." It may be possible, given the required skills, data, and knowledge of the algorithm, to predict outcomes. However, the likelihood of anyone having all of the required skills and knowledge to make such prediction is not feasible given regulations and industry standards.

547.14(d) – The word "must" on the second line should be changed to "shall" or "can."

547.14(f)(4) – This provision should be given further consideration as the current language may be unworkable or simply impractical. It is unclear as to how bias would be determined; without a range for measured bias it seems that requiring any bias to be reported would be an unworkable standard that is not a minimum technical standard.

547.16 – What are the minimum standards of game artwork, glass and rules?

547.16(c) - Although the Tribe is pleased with the removal of the minimum probability standards in 547.5(c), it is concerned with the new odds display requirements of this provision for a number of reasons. First, since there is no longer a substantive requirement relating to odds, it is inappropriate to then require a player interface to continually display a randomly chosen set of odds. Second, the Tribe is unaware of any existing player interface that conforms to this requirement. Thus, this new requirement would make all existing Class II gaming systems non-compliant. Such a result is simply untenable. Finally, this requirement is redundant as the existing 547.16(a) already requires that the game rules and prize schedules be displayed "at all times" or be "made readily available to the player upon request ...."

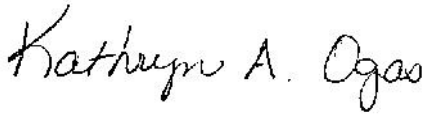
547.17 – How does a TGRA apply to implement an alternate standard to those required by this part?

Although the Tribe is pleased that the Commission has substantially improved the section regulations relating to "alternate standards," consideration should be given to clarifying that the TGRA/operation can implement an alternate standard as soon as the TGRA approves such alternate standard (i.e., that approval of both the TGRA and the Commission is not required).

CONCLUSION

On behalf of the Lytton Rancheria of California, we appreciate the opportunity to comment on the Commission's proposed revisions to Part 547. The Tribe looks forward to future discussions and/or consultations with representatives of Commission regarding these regulations.

Sincerely,



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