

THE GRANDFATHER PROVISION

Current Text	Proposed Changes
<p>§ 547.4 How does a tribal government, tribal gaming regulatory authority, or tribal gaming operation comply with this part?</p> <p>(a) <i>Limited immediate compliance.</i> A tribal gaming regulatory authority shall:</p> <p>(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 within 120 days after November 10, 2008;</p> <p>***</p> <p>(b) <i>Grandfather provisions.</i> 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:</p> <p>(1) Grandfathered Class II gaming systems may continue in operation for a period of five years from November 10, 2008.</p>	<p>§ 547.4 How does a tribal government, tribalgaming regulatory authority TGRA, or tribal gaming operation comply with this part?</p> <p>(a) <u>(a)</u> <i>Limited immediate compliance.</i> A tribal gaming regulatory authority TGRA shall:</p> <p>(1) Require that all Class II gaming system software that affects the play of the Class II game <u>and were in operation prior to November 10, 2008</u> be submitted, together with the signature verification required by § 547.8(f), to a testing laboratory recognized pursuant to paragraph (f) of this section within 120 days after November 10, 2008.</p> <p>***</p> <p>(b) <u>(b)</u> <i>Grandfather provisions.</i> 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:</p> <p>(1) Grandfathered Class II gaming systems may continue in operation for a period of five years from November 10, 2008.</p>

EFFECT OF CURRENT PROVISION:

The grandfather provision addressed existing Class II systems that did not meet all of the requirements of the Technical Standards. TGRAs could grandfather existing systems if within 120 days after the effective date of the Technical Standards they were submitted to testing labs, and soon after were tested for compliance with certain basic fairness and integrity standards. Grandfathered systems can remain in use for five years.

EFFECT OF AMENDMENT:

The amendment appears to remove the five-year sunset provision and allow grandfathered games to remain in use indefinitely without having to comply with the Technical Standards. The amendment also appears to expand the existing set of grandfathered systems. Under the current regulations, if a system was in operation prior to the effective date of the Technical Standards, it had to be submitted to a testing laboratory by March 10, 2009, to be grandfathered. The amendment removes that time requirement. Under the proposal, it appears that a non-compliant system that was in use before November 2008 and that was not submitted for testing before March 10, 2009, could be submitted and grandfathered now. The number of grandfathered systems this change would make available for play is not known.

SEE PREAMBLE DISCUSSION OF GRANDFATHERING AT: 73 FR 60511, 60513, 60515, 60521.

ALSO SEE ATTACHMENT:

- NIGC bulletin 2008-3, Compliance guidance for new technical standards, 25 C.F.R. part 547

THE GRANDFATHER PROVISION (CONTINUED)

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: Submission under this provision was restricted to TGRAs and only provided for games in active operation on the effective date. Accordingly, manufacturers who may have had inactive games that would otherwise qualify for grandfather status would not have been able to qualify such games for grandfather status. To ensure that tribes are able to take advantage of all Class II systems eligible for grandfather status, we propose the foregoing revision to this sub-section. We further note that any concerns with system integrity are addressed by the non-waive able provision governing the integrity of the grandfathered systems set forth in subpart 547.4.

MINIMUM PROBABILITY STANDARDS

Current Text	Proposed Changes
<p>§ 547.5 What are the rules of interpretation and of general application for this part? ***</p> <p>(c) <i>Fairness</i>. No Class II gaming system shall cheat or mislead users. All prizes advertised shall be available to win. No progressive prize shall have a probability of winning less than 1 in 100,000,000. No other prize shall have a probability of winning less than 1 in 50,000,000.</p> <p>§ 547.4 How does a tribal government, tribal gaming regulatory authority, or tribal gaming operation comply with this part? (a) <i>Limited immediate compliance</i>. A tribal gaming regulatory authority shall: ***</p> <p>(2) Require that the testing laboratory test the submission to the standards established by § 547.8(b), § 547.8(f), § 547.14, the minimum probability standards of § 547.5(c), and to any additional technical standards adopted by the tribal gaming regulatory authority;</p>	<p>§ 547.5 What are the rules of interpretation and of general application for this part? ***</p> <p>(c) <u>(c)</u> <i>Fairness</i>. No Class II gaming system shall cheat or mislead users. All prizes advertised shall be available to win <u>during the game</u>. No progressive prize shall have a probability of winning less than 1 in 100,000,000. No other prize shall have a probability of winning less than 1 in 50,000,000. <u>Test laboratory shall calculate and/or verify the mathematical expectations of game play, where applicable, in accordance with the manufacturer stated submission. The results shall be included in the test laboratory's report to the TGRA.</u></p> <p>§ 547.4 How does a tribal government, tribal gaming regulatory authority <u>TGRA</u>, or tribal gaming operation comply with this part? (a) <u>(a)</u> <i>Limited immediate compliance</i>. A tribal gaming regulatory authority <u>TGRA</u> shall: ***</p> <p>(2) <u>(2)</u> Require that the testing laboratory test the submission to the standards established by § 547.8(b), § 547.8(f), § 547.14, the minimum probability standards of § 547.5(c), and to any additional technical standards adopted by the tribal gaming regulatory authority <u>TGRA</u>;</p>

EFFECT OF CURRENT PROVISION:

Requires the chances of hitting any particular pattern or award be no less than 1 in 50,000,000. Requires the chances of hitting a progressive pattern or award be no less than 1 in 100,000,000. Prohibits, as a matter of fairness, advertising awards that will never be hit because the odds against are so great. Grandfathered systems must comply.

EFFECT OF AMENDMENT:

The amendment appears to remove the minimum probability requirement for individual awards on all new and grandfathered systems and appears to allow games to offer more patterns and more prizes, some of which may have odds above 1 in 100,000,000. This change appears to have no direct effect on payouts. However, because it appears that manufacturers could offer more low probability awards, they could offer games with more precise, less fluctuating payout percentages.

The amendment also appears to create a new requirement that manufacturer disclose to the testing laboratory a mathematical analysis showing the overall percentage return of game and that the lab verify the analysis. The lab must include the analysis and its verification in its report to the TGRA. Currently, TGRAs may not always receive this analysis.

PREAMBLE DISCUSSION OF MINIMUM PROBABILITY PROVISIONS AT: 73 FR 60522

MINIMUM PROBABILITY STANDARDS (CONTINUED)

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: This correctly states the terms applicable to the game of Bingo where use of the term mathematical probability standards is incorrect. In Bingo, it is appropriate to require the manufacturer to disclose to TGRA the mathematical expectations of the game and to have the laboratories such mathematical expectations. In the existing rule the NIGC included an admittedly arbitrary probability standard that unfairly operates to limit game design and is not consistent with the probability standards applicable to most, if not all, charitable bingo operations and state lotteries.

COMPLIANCE WITH FCC RADIO INTERFERENCE STANDARDS AND UL CERTIFICATION

Current Text	Proposed Changes
<p>§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems? (a) <i>General requirements.</i> (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 § 547.4I, 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.</p>	<p>§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems? (a) <i>General requirements.</i> (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 § 547.4I, 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.</p> <p>§ 547.4_ How does a tribal government, tribal gaming regulatory authority <u>TGRA</u>, or tribal gaming operation comply with this part? (a) (a) Limited immediate compliance. A tribal gaming regulatory authority <u>TGRA</u> shall:</p> <p>(3) (3) Require that the testing laboratory provide the tribal gaming regulatory authority <u>TGRA</u> with a formal written report setting forth and certifying to the findings and conclusions of the test; <u>(i) The testing laboratory's written report shall note the submission of any other compliance with applicable federal laws or regulations.</u></p>

EFFECT OF CURRENT PROVISION:

Requires gaming system to comply with FCC regulations concerning radio interference and have UL or equivalent safety certification.

EFFECT OF AMENDMENT:

The amendment appears to remove these requirements from Technical Standards. As compliance is required by other federal law, however, the amendment would require a laboratory to note compliance in its report to the TGRA.

PREAMBLE DISCUSSION OF FCC AND UL STANDARDS AT: NONE

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: Other federal agencies are responsible for establishing and enforcing electrical product safety standards. Accordingly, promulgation of such standards is beyond the scope of NIGC jurisdiction. However, sub-part 547.4 (a)(3)(i) is proposed above to reflect that it is industry standard for the laboratories to make note or include other laboratory certifications as provided by the manufacturer in their report.

TESTING LABORATORIES

Current Text	Proposed Changes
<p>§ 547.4 How does a tribal government, tribal gaming regulatory authority, or tribal gaming operation comply with this part?</p> <p>***</p> <p>(f) <i>Testing laboratories.</i> (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:</p> <p>(i) It demonstrates its integrity, independence and financial stability to the tribal gaming regulatory authority.</p> <p>(ii) It demonstrates its technical skill and capability to the tribal gaming regulatory authority.</p> <p>(iii) It is not owned or operated by the same tribe or tribal gaming regulatory authority for whom it is providing the testing, evaluating, and reporting functions required by this section.</p> <p>***</p>	<p>§ 547.4 How does a tribal government, tribal gaming regulatory authority <u>TGRA</u>, or tribal gaming operation comply with this part?</p> <p>***</p> <p>(f) <i>Testing laboratories.</i> (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:</p> <p>(i) It demonstrates its integrity, independence and financial stability to the tribal gaming regulatory authority <u>TGRA</u>.</p> <p>(ii) It demonstrates its technical skill and capability to the tribal gaming regulatory authority <u>TGRA</u>.</p> <p>(iii) If the testing laboratory is not owned or operated by the same tribe or tribal gaming regulatory authority <u>tribe</u> <u>the testing laboratory must be independent from the manufacturer and gaming operator</u> for whom it is providing the testing, evaluating, and reporting functions required by this section.</p>

EFFECT OF CURRENT PROVISION:

Sets out standards for TGRA approval of testing laboratories. Contains a provision prohibiting a lab from testing for a tribe if the lab is owned by the tribe.

EFFECT OF AMENDMENT:

The amendment allows a tribally owned testing lab to test for its tribe so long as it is independent of the gaming operation and the manufacturer of the systems it tests. Some tribes have testing labs they use for internal testing and compliance of games and promotions, but we are not aware of whether they perform testing services for other jurisdictions.

PREAMBLE DISCUSSION OF TESTING LABORATORIES AT: 73 FR 60521-60522.

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: The existing rule improperly restricts tribes from owning or operating test laboratories. The proposed revision corrects this problem, while at the same time ensuring independence and the appropriate segregation of function.

MONEY HANDLING: ACCEPTORS, STORAGE, AND DISPENSERS

Current Text	Proposed Changes
<p>§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems? ***</p> <p>(g) <i>Financial instrument storage components.</i> 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 that is of a robust construction designed to resist determined illegal entry and to protect internal components.</p> <p>(h) <i>Financial instrument acceptors.</i> (1) Any Class II gaming system components that handle financial instruments and that are not operated under the direct control of an agent shall:</p> <p>(i) Be located within a secure, locked and tamper-evident area...</p> <p>***</p> <p>(i) <i>Financial instrument dispensers.</i> (1) Any Class II gaming system components that dispense financial instruments and that are not operated under the direct control of a gaming operation employee or agent shall:</p> <p>(i) Be located within a secure, locked and tamper-evident area...</p>	<p>§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems? ***</p> <p>(g) <u>(f)</u> <i>Financial instrument storage components.</i> Any Class II gaming system components that store financial instruments and that are not <u>designed to be</u> 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 that is of a robust construction designed to resist determined illegal entry and to protect internal components.</p> <p>(h) <u>(g)</u> <i>Financial instrument acceptors.</i> (1) Any Class II gaming system components that handle financial instruments and that are not <u>designed to be</u> operated under the direct control of an agent shall:</p> <p>(i) Be located within a secure, locked and tamper-evident area ...</p> <p>***</p> <p><u>(h)</u> <i>Financial instrument dispensers.</i> (1) Any Class II gaming system components that dispense financial instruments and that are not <u>designed to be</u> operated under the direct control of a gaming operation employee or agent shall: (i) Be located within a secure, locked and tamper-evident area ...</p>

EFFECT OF CURRENT PROVISION:

Requires that a cash box, bill acceptor, ticket printer, cash drawer, or anything else that accepts, stores, or dispenses cash or a cash equivalent be within a secure, locked, tamper-evident enclosure if it is automated. If staffed, the security requirements are not as stringent. The effect is that bill acceptors and cash boxes have to be within a secure and locked compartment within a cabinet, but a cash drawer for a live bingo game does not.

EFFECT OF AMENDMENT:

The amendment requires that a component be within a secure, locked, tamper-evident enclosure if it is designed to be automated, regardless of how it is actually used. It requires lesser security requirements for cash drawers and the like if designed to be staffed.

PREAMBLE DISCUSSION OF MONEY ACCEPTORS, STORAGE UNITS, AND DISPENSER SECURITY AT: 73 FR 60523.

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: Technical Standards should only cover the design of the component; operation of the component should be covered in the MICS

ENTERTAINING DISPLAYS

Current Text	Proposed Changes
<p>§ 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) <i>Player interface displays.</i> *** (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: *** (ii) The final results for the last game played, including entertaining displays of results, if any; and... *** (d) <i>Last game recall.</i> The last game recall function shall: *** (2) Display the results of recalled games as originally displayed or in text representation, including entertaining 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. *** (4) Provide the following information for the current and previous four games played and shall display: *** (E) All prizes won by the player, including winning patterns and entertaining displays implemented in video, rather than electro-mechanical form, if any...</p>	<p>§ 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, <u>including where applicable games similar to bingo.</u> (a) <u>(a)</u> <i>Player interface displays.</i> *** <u>(2)</u> 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: *** (ii) The final results for the last game played, including entertaining displays of results, if any; *** (d) <u>(d)</u> <i>Last bingo game play recall.</i> The last <u>bingo game play</u> recall function shall: *** (2) <u>(2)</u> Display the results of recalled <u>bingo games play</u> as originally displayed or in text representation, including entertaining display results implemented in video, rather than electro-mechanical, form, if any, so as to enable the tribal gaming regulatory authority <u>TGRA</u> or operator to clearly identify the <u>bingo game play</u> sequences and results that occurred *** (4) <u>(4)</u> Provide the following information for the current and previous four <u>bingo games played plays</u> and shall display: *** (E) All prizes won by the player, including winning patterns and entertaining displays implemented in video, rather than electro-mechanical form, if any...</p>

EFFECT OF CURRENT PROVISION:

Entertaining displays are the symbols and reels displayed as adjuncts to bingo games and games similar to bingo. These sections require the system treat the results shown on entertaining displays as game results. They must be displayed as results between games like any other results, and they must be available to casino staff and regulators through game information recall for purposes of inspection and resolving disputes.

EFFECT OF AMENDMENT:

The amendment appears to eliminate all requirements to recall entertaining displays.

PREAMBLE DISCUSSION OF ENTERTAINING DISPLAYS AT: 73 FR 60523-24.

ENTERTAINING DISPLAYS (CONTINUED)

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: In Bingo gaming systems, game outcome is displayed on the bingo card located on the player interface which is independent of, and separate from, any entertaining display. Because an entertaining display cannot in anyway affect the player outcome of the game, it is irrelevant for regulatory purposes. Furthermore, inclusion of regulatory language concerning entertaining displays creates a false appearance of legal relevancy that enhances the potential for patron disputes. We, therefore, have proposed the removal of this language.

REFLEXIVE SOFTWARE

Current Text	Proposed Changes
<p>§ 547.3 What are the definitions for this part? For the purposes of this part, the following definitions apply: ***</p> <p><i>Reflexive software.</i> 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.</p> <p>§ 547.8 What are the minimum technical software standards applicable to Class II gaming systems? ***</p> <p>(b) <i>Game initiation and play.</i> (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.</p> <p>(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.</p>	<p>§ 547.3 What are the definitions for this part? ***</p> <p><i>Reflexive Software,software.</i> 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 <u>or deprives a player of a prize to which the player is otherwise entitled based on the random outcome of the game.</u></p> <p>§ 547.8 What are the minimum technical software standards applicable to Class II gaming systems? ***</p> <p>(b) (b) <i>Game initiation and play.</i> (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.</p> <p>(2) For bingo games and games similar to bingo, <u>The</u> 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.</p>

EFFECT OF CURRENT PROVISION:

These provisions were intended to address fairness. They require games to display exactly what the random number generator selects. This prevents two schemes. Games cannot detect a losing pattern and then, instead of just displaying it, deliberately change the display to show that the patron just missed a big prize. The provisions also provide that games cannot track a patron's performance and then, without telling the player, change the game to increase or decrease the available prizes or the chances of winning.

EFFECT OF AMENDMENT:

The amendment clarifies and strengthens the definition of *reflexive software* to prevent the first scheme. Section 547.8(b) can be, but is not necessarily, read to prevent the second scheme.

PREAMBLE DISCUSSION OF REFLEXIVE SOFTWARE: NONE

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: The added language makes this definition more consistent with the industry understanding of reflexive technology. The proposed language operates to clearly identify the harm the provision is intended to prevent

DOWNLOADABLE SOFTWARE

Current Text	Proposed Changes
<p>§ 547.12 What are the minimum technical standards for downloading on a Class II gaming system? ***</p> <p>(b) <i>Verifying downloads.</i> 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). Using any method it deems appropriate, the tribal gaming regulatory authority shall confirm the verification.</p>	<p>§ 547.12_ What are the minimum technical standards for downloading on a Class II gaming system? ***</p> <p>(b) <i>Verifying downloads.</i> Following download of any game<u>Downloaded</u> software,the on a Class II gaming system shall verify the downloaded software<u>be verified by the Class II gaming system</u> using a software signature verification method that meets the requirements of § 547.8(f). Using any method it deems appropriate, the tribal gaming regulatory authority shall confirm the verification.</p>

EFFECT OF CURRENT PROVISION:

Software download from a server to client machines is, by design, automatically tested for integrity by the system. The current provision requires the TGRA to check the system verification in a manner it deems appropriate.

EFFECT OF AMENDMENT:

The amendment would delete the requirement, presumably to place it within the Class II MICS [543.16]. As a requirement for TGRA checking is not something a laboratory can test, the requirement is appropriately placed within internal controls.

PREAMBLE DISCUSSION OF TGRA DOWNLOADABLE SOFTWARE CHECK AT: 73 FR 60525.

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: The last sentence was removed because it is a MICS issue and is addressed in the TGWG proposed draft part 543.

RANDOM NUMBER GENERATION

Current Text	Proposed Changes
<p>§ 547.14 What are the minimum technical standards for electronic random number generation? ***</p> <p>(b) <i>Statistical Randomness.</i> ***</p> <p>(2) Numbers produced by an RNG shall pass the statistical tests for randomness to a 99% confidence level, which may include:</p> <p>(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.</p> <p>***</p> <p>(e) General requirements ***</p> <p>(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 entertaining displays. ***</p> <p>(f) <i>Scaling algorithms and scaled numbers.</i> An RNG that provides output scaled to given ranges shall: ***</p> <p>(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.</p>	<p>§ 547.14_ What are the minimum technical standards for electronic random number generation? ***</p> <p><u>(b)</u> <i>Statistical Randomness.</i> ***</p> <p><u>(2)</u> Numbers <u>or other designations</u> produced by an RNG shall pass the statistical tests for randomness to a 99% confidence level. which may include:</p> <p><u>(i) Mandatory statistical tests for randomness to include:</u> <u>(A)</u> Chi-square test; <u>(B)</u> Runs test (patterns of occurrences shall not be recurrent); and <u>(C)</u> Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game). <u>(ii) Optional statistical tests for randomness may include:</u> (ii) <u>(A)</u> Equi-distribution (frequency) test; (iii) <u>(B)</u> Gap test; (iv) <u>(C)</u> Poker test; (v) <u>(D)</u> Coupon collector’s test; (vi) <u>(E)</u> Permutation test; (vii) Run test (patterns of occurrences shall not be recurrent); (viii) <u>(F)</u> Spectral test; (ix) Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game); and (x) <u>(G)</u> Test on subsequences.</p> <p>***</p> <p>(e) General requirements ***</p> <p>(5) <u>(5)</u> 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 use any reflexive <u>software</u> or secondary decision that affects the results shown to the player or game outcome. <u>In no event shall the Class II gaming system deprive a player of a prize to which the player is otherwise entitled based on the random outcome of the game.</u> Nothing in this paragraph shall prohibit these of entertaining displays. ***</p> <p>(f) <u>(f)</u> <i>Scaling algorithms and scaled numbers.</i> An RNG that provides output scaled to given ranges shall: ***</p> <p>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.</p>

EFFECT OF CURRENT PROVISION:

Requires all numbers produced by the system to be statistically random. Leaves choice of randomness tests to discretion of the testing laboratory. Requires scaling algorithms to be unbiased, but measure of bias at 1 in 100 million is incorrect.

RANDOM NUMBER GENERATION (CONTINUED)

EFFECT OF AMENDMENT:

The amendment appears to strengthen RNG statistical testing requirements by mandating three industry-standard tests. It leaves the choice of other tests to the discretion of the testing laboratory. The amendment also adds a section on reflexive software to the RNG section, and it deletes without correcting a requirement that scaling algorithms be unbiased.

PREAMBLE DISCUSSION OF RANDOMNESS TESTING AT: 73 FR 60525

ATTACHMENT:

Bulletin 2008-4: Compliance with Technical Standards section 547.14(f)(4), scaling algorithms and scaled numbers for electronic random number generators.

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: TGWG wanted to ensure that industry standard RNG tests were mandated. Less commonly used tests were not considered adequate. See NIGC “Part 547 Bulletin 2008-4 Tech Stds RNG correction 110708”

VARIANCES

Current Text	Proposed Changes
<p>§ 547.17 How does a tribal gaming regulatory authority apply for a variance from these standards?</p> <p>(a) <i>Tribal Gaming Regulatory Authority approval.</i> (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.</p> <p>(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:</p> <p>(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</p> <p>(ii) The variance as granted and the record on which it is based.</p> <p>(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.</p> <p>(b) <i>Chairman Review.</i> (1) The Chairman may approve or object to a variance granted by a tribal gaming regulatory authority.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(c) <i>Commission Review.</i> 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:</p> <p>(1) Within 60 days of receiving an objection, the tribal gaming regulatory authority shall file a written notice of appeal with the Commission that may include a request for an oral hearing or it may request that the matter be decided upon written submissions.</p> <p>(2) 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.</p> <p>(3) Failure to file an appeal or submit the supplemental</p>	<p>§ 547.17 How does a tribal gaming regulatory authority apply for a variance from these the standards of this part?</p> <p><u>(a) Variance. (1) Should a TGRA grant a variance to any provision of these standards, the TGRA shall deliver a notice of the same to the Commission within ten (10) days of such approval.</u></p> <p><u>(i) The notice shall contain a complete copy of the information presented to the TGRA and the variance as granted.</u></p> <p><u>(ii) The notice shall be forwarded to the Commission within ten (10) days of the granting of the Variance.</u></p> <p><u>(2) During a thirty (30) day period when the Commission first receives the notice required by this subpart, the Chairman may request additional information from the TGRA concerning the subject of variance. Such request shall suspend the thirty (30) day period until the Chairman receives the TGRA response.</u></p> <p><u>(b) Commission Review.</u></p> <p><u>(1) Within the thirty (30) day review period, the Commission may:</u></p> <p><u>(i) Advise the TGRA, in writing, that it has no objection.</u></p> <p><u>(ii) Provide the TGRA a written statement itemizing its objections.</u></p> <p><u>(iii) Take no action, in which case, the TGRA’s variance shall be final.</u></p> <p><u>(2) If the Commission has provided the TGRA a statement itemizing objections to the variance:</u></p> <p><u>(i) The TGRA shall reconsider the variance taking into account the objections itemized by the Commission.</u></p> <p><u>(ii) The TGRA may seek reconsideration by submitting a request to the Chairman and members of the Commission.</u></p> <p><u>(iii) Upon receipt of a request for reconsideration, the Commission shall conduct an informal hearing with the TGRA within 30 days, which may be conducted in person or through the exchange of documents, as requested by the TGRA.</u></p> <p><u>(iv) After the informal hearing, the Commission must issue a written decision within 14 days. If the Commission disapproves the variance, such written decision must include an explanation of why the requested variance creates an imminent threat to the integrity of the tribal gaming operation.</u></p>

VARIANCES (CONTINUED)

<p>statement within the time provided by this section shall result in a waiver of the opportunity for an appeal.</p> <p>(4) If an oral hearing is requested it shall take place within 30 days of the notice of appeal and a record shall be made.</p> <p>(5) 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.</p> <p>(6) 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.</p> <p>(7) The Commission shall issue a decision within 30 days of the oral hearing unless the tribal gaming regulatory authority elects to provide the Commission additional time, not to exceed an additional 30 days, to issue a decision. In the absence of a decision by the Commission within the time provided, the decision of the tribal gaming regulatory authority shall be deemed affirmed.</p> <p>(8) The Commission's decision shall constitute final agency action.</p>	
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EFFECT OF CURRENT PROVISION:

Creates a formal procedure for TGRA to seek variance from Technical Standards modeled on variance procedure set out in part 542. After granting variance, within 30 days, TGRA submits to NIGC Chair, who has 60 days to approve or object (120 days if the Chairman and TGRA agree). Objections may be appealed to full Commission within 60 days of Chair's objection. Commission affirms or reverses within 30 days (plus 30 more by agreement). Decisions of the Commission are appealable to federal court.

EFFECT OF AMENDMENT:

The amendment would replace the current variance provision in its entirety with a more streamlined and less formal provision. After granting a variance, a TGRA has 10 days to submit, and the Commission has 30 days to review. If the Commission objects, TGRA must reconsider and may seek reconsideration from the Commission, which will review the matter by hearing or on the papers. Commission has 14 days after a rehearing to issue a decision and may only disapprove if "the requested variance creates an imminent threat to the integrity of the tribal gaming operation."

PREAMBLE DISCUSSION OF VARIANCES AT: 73 FR 60525

(AS OF 5/13/2011) TRIBAL ALTERNATIVE TECHNICAL STANDARDS JUSTIFICATION FOR UPDATE:

Remark: Please see transmittal memorandum. (Below)

VARIANCES (CONTINUED)

“...the TGWG has proposed inclusion of a variance subpart, clarifying procedures and timeframes for the granting of a variance by tribal gaming regulatory authorities, including a mechanism for NIGC concurrence. This subpart is identical to the revision proposed in the TGWG’s revised MICS. The TGWG is confident that the approach proposed captures both the tribal interest as the primary regulator of its gaming activities and the federal interest in providing regulatory oversight in a manner that is effective and efficient as well as timely.”