



Navajo Nation Gaming Enterprise

Ph: 505.905.7100 Fax: 505.905.7240

Post Office Box 1700 Church Rock, NM 87311 • Shipping Address: 249 E. NM 118 St. Hwy • Church Rock, NM 87311

April 26, 2012

VIA E-mail to reg.review@nigc.gov

Tracie L. Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairperson
Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Re: Comments on Preliminary Discussion Draft of 25 C.F.R. Part 547 – Minimum Technical Standards For Gaming Equipment Used With The Play Of Class II Games.

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

On behalf of the Navajo Nation Gaming Enterprise (NNGE), we offer the following comments in response to the National Indian Gaming Commission's (NIGC or Commission) Preliminary Discussion Draft of 25 C.F.R. Part 547 - *Minimum Technical Standards For Gaming Equipment Used With The Play Of Class II Games*.

Discussion Draft 25 C.F.R. § 547.2 –Definitions

The NIGC's Discussion Draft adds a new definition of *Proprietary Class II System Component*, however, the Draft does not use this term. If this definition was created to address a particular issue, we ask the NIGC to provide more information so we can determine whether the definition of the term is accurate or needs changes. If the definition is not intended to be used, we recommend deleting it since it does not clarify the technical standards.

Discussion Draft 25 C.F.R. § 547.3 – Implementation

The NNGE objects to the wording in the Discussion Draft at § 547.3(a) *Minimum Standards* which states that "[t]hese are minimum standards and, recognizing that TGRAs also

regulate Class II gaming, a TGRA may establish and implement additional technical standards that do not conflict with the standards set out in this Part." (Emphasis added). The underlined language is inconsistent with Section 2701(5) of the Indian Gaming Regulatory Act (IGRA) which states that "Indian tribes have the *exclusive right to regulate* gaming activity on Indian lands" (Emphasis added). Tribal regulators have the primary role in enforcing the MICS and regulating Class II gaming in their casino operations. The language is also inconsistent with the NIGC's recognition in the preamble to the current Technical Standards rule that tribes are the primary regulators of Class II gaming. The NIGC should not change its position in this Discussion Draft. The language in § 547.3(a) of the Discussion Draft must be changed to reflect that tribes are the primary regulators of Class II gaming.

Discussion Draft 25 C.F.R. § 547.5 – Compliance

The Discussion Draft at § 547.5(a)(6) requires an "identifying plate" to be affixed to the player interface consistent with existing § 547.7(d). We are not sure what is meant by "identifying plate," and the Draft does not include a definition. We, therefore, suggest that this Draft section simply require the supplier of any player interface to designate each player interface with a label with information consistent with § 547.7(d).

We have concerns that the standard to be met in Discussion Draft § 547.5(c)(4) might be unworkable. This section would require 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." We wonder whether a testing laboratory would be able to "certify" that the player interface will not be compromised by "*any other risk* identified by the TGRA." (Emphasis added). While we understand the significance of the intent and objective, this draft section must be reviewed, specifically to clarify the scope of the certification.

The Discussion Draft at § 547.5(f)(1)(iii) provides that a tribe may use its own testing laboratory but "it must be independent from the manufacturer and gaming operator" This is an improvement over § 547.4(f) of the current regulations.

Discussion Draft 25 C.F.R. § 547.6 –Enrolling and Enabling Class II gaming systems.

We believe it would be helpful to define the terms "enroll" and "unenroll."

Discussion Draft 25 C.F.R. § 547.7 –Minimum Technical Hardware Standards.

The language in Discussion Draft §547.7(f) discussing *financial instrument storage components* could be construed to be an operational control which should be a minimum internal control standard rather than a technical standard. With this, we recommend amending the section so that it reads "Any Class II gaming system components that store financial instruments and that are not *designed to be operated*"

Discussion Draft 25 C.F.R. § 547.8 – Minimum Technical Software Standards.

The alternative display is not relevant to the game of bingo being played or the outcome of the game being played. With this, we agree with the change made in Discussion Draft §547.8(d) - *Last game recall* which would delete the current requirement that the Class II gaming system be able to recall any alternative display ("entertaining display").

Discussion Draft 25 C.F.R. §§ 547.12- Downloading on a Class II Gaming System.

Discussion Draft § 547.12(a)(2) would no longer require that any downloads be authorized by the TGRA. For clarity, there should be a statement that this deletion does not limit a TGRA from imposing its own requirement for pre-approval of any downloads.

Discussion Draft 25 C.F.R. § 547.14 – Minimum Technical Standards for Electronic Random Number Generation.

We are concerned with the change set forth in Discussion Draft § 547.14(f) – *Scaling algorithms and scaled numbers* which would remove the current "1 in 100 million" algorithm bias measurement and require that any bias in the algorithm be reported to the TGRA. Without a range for measured bias, requiring any bias to be reported could be an unworkable standard. This language deserves additional consideration.

Discussion Draft 25 C.F.R. § 547.16 – Minimum Standards for Game Artwork, Glass, and Rules.

We are concerned with the requirement in Discussion Draft § 547.16(c) – *Odds notification* which states that "[i]f the odds of hitting any advertised top prize exceeds 100 million to one, the Player Interface must continually display 'Odds of winning the advertised top prize exceeds 100 million to one' or equivalent." We do not think this requirement is necessary. The current and Draft § 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"

We believe the NIGC should clarify that the change made to § 547.16(b) –*Disclaimers*, which would require the player interface rather than the Class II Gaming System to continuously display the disclaimers set forth in the section, is not intended to require that the disclaimers be on the video screen. This provision should be clarified to ensure that the disclaimers can be displayed elsewhere on the player interface.

Discussion Draft 25 C.F.R. § 547.17 –Alternate Standard.

We support removing the appeals procedure from § 547.17 and, instead, providing that an appeal of the Chair's decision concerning an alternate standard may be appealed through the process set forth in 25 C.F.R. Subchapter H. We believe the NIGC's objective to consolidate all appeals procedures throughout the regulations into 25 C.F.R. Subchapter H makes for a more streamlined and user-friendly appeals process.

We appreciate the opportunity to comment on the Discussion Draft of Part 547. We look forward to continuing to work with the NIGC as its regulatory review moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Etcitty", is written over a horizontal line.

Raymond C. Etcitty
General Counsel/Acting COO