

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

- (a) *Gaming systems manufactured before November 10, 2008.*
- (1) A TGRA may not permit the use of any Class II gaming system manufactured before November 10, 2008 in a tribal gaming operation unless:
- (i) The Class II gaming system software that affects the play of the Class II game, together with the signature verification required by § 547.8(f) was submitted to a testing laboratory within 120 days after November 10, 2008, or October 22, 2012;
  - (ii) The testing laboratory tested the submission to the standards established by § 547.8(b), § 547.8(f), and § 547.14;
  - (iii) The testing laboratory provided the TGRA with a formal written report setting forth and certifying to the findings and conclusions of the test;
  - (iv) The TGRA made a finding, in the form of a certificate provided to the supplier or manufacturer of the Class II gaming system, that the Class II gaming system is compliant with § 547.8(b), § 547.8(f), and § 547.14;
  - (v) The Class II gaming system is only used as approved by the TGRA and the TGRA transmitted its notice of that approval, identifying the Class II gaming system and its components, to the Commission;
  - (vi) Remote communications with the Class II gaming system are only allowed if authorized by the TGRA;
  - (vii) Player interfaces of the Class II gaming system exhibit information consistent with §547.7(d) and any other information required by the TGRA; and
  - (viii) All player interfaces of the Class II gaming system have a date of manufacture before November 10, 2008.
- (2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (a) the TGRA shall:
- (i) Retain copies of the testing laboratory's report, the TGRA's compliance certificate, and the TGRA's approval of the use of the Class II gaming system;
  - (ii) Maintain records identifying the Class II gaming system and its current components; and
  - (iii) Annually review the Class II gaming system, its current components, and the associated testing laboratory reports to determine whether the Class II gaming system may be approved pursuant to paragraph (b) of this sub-section. The TGRA shall make a finding identifying the Class II gaming systems reviewed, the Class II gaming systems subsequently approved pursuant to paragraph (b), and, for Class II gaming systems that cannot be approved pursuant to paragraph (b), the modifications necessary for such approval. The TGRA shall transmit its findings to the Commission within 120 days of the gaming operation's fiscal year end.
- (3) If the Class II gaming system is subsequently approved pursuant to paragraph (b) of this section, this paragraph (a) no longer applies.

(b) *Gaming system submission, testing, and approval - generally.*

- (1) Except as provided in paragraph (a) and this section, a TGRA may not permit the use of any Class II gaming system in a tribal gaming operation unless:
  - (i) The Class II gaming system has been submitted to a testing laboratory;
  - (ii) The testing laboratory tests the submission to the standards established by:
    - (A) This part;
    - (B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and
    - (C) The TGRA;
  - (iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (b)(1)(ii)(C) of this section;
  - (iv) The testing laboratory's written report confirms that the operation of a player interface prototype has been certified that it will not be compromised or affected by electrostatic discharge, liquid spills, electromagnetic interference, or any other tests required by the TGRA;
  - (v) Following receipt of the testing laboratory's report, the TGRA makes a finding that the Class II gaming system conforms to the standards established by:
    - (A) This part;
    - (B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and
    - (C) The TGRA.
- (2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (b) the TGRA shall:
  - (i) Retain a copy of the testing laboratory's report; and
  - (ii) Maintain records identifying the Class II gaming system and its current components.

(c) *Class II gaming system component repair, replacement, or modification.*

- (1) As permitted by the TGRA, individual hardware or software components of a Class II gaming system may be repaired or replaced to ensure proper functioning, security, or integrity of the Class II gaming system.
- (2) A TGRA may not permit the modification of any Class II gaming system in a tribal gaming operation unless:
  - (i) The Class II gaming system modification has been submitted to a testing laboratory;
  - (ii) The testing laboratory tests the submission to the standards established by:
    - (A) This part;
    - (B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

- (C) The TGRA;
- (iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (c)(2)(ii)(C) of this section;
- (iv) Following receipt of the testing laboratory's report, the TGRA makes a finding that the:
  - (A) The modification will maintain or advance the Class II gaming system's compliance with this part and any applicable provisions of part 543 of this chapter; and
  - (B) The modification will not detract from, compromise or prejudice the proper functioning, security, or integrity of the Class II gaming system;
- (3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.
- (d) *Emergency Class II gaming system component modifications.*
  - (1) A TGRA, in its discretion, may permit the modification of previously approved components to be made available for play without prior laboratory testing or review if the modified hardware or software is:
    - (i) Necessary to correct a problem affecting the fairness, security, or integrity of a game or accounting system or any cashless system, or voucher system; or
    - (ii) Unrelated to game play, an accounting system, a cashless system, or a voucher system.
  - (2) If a TGRA authorizes modified components to be made available for play or use without prior testing laboratory review, the TGRA must thereafter require the hardware or software manufacturer to:
    - (i) Immediately advise other users of the same components of the importance and availability of the update;
    - (ii) Immediately submit the new or modified components to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and
    - (iii) Immediately provide the TGRA with a software signature verification tool meeting the requirements of § 547.8(f) for any new or modified software component.
  - (3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

- (e) *Compliance by charitable gaming operations.* This part does not apply to charitable gaming operations, provided that:
- (1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;
  - (2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;
  - (3) The TGRA permits the charitable organization to be exempt from this part;
  - (4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and
  - (5) The annual gross gaming revenue of the charitable gaming operation does not exceed \$3,000,000.
- (f) *Testing laboratories.*
- (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:
    - (i) It demonstrates its integrity, independence and financial stability to the TGRA.
    - (ii) It demonstrates its technical skill and capability to the TGRA.
    - (iii) If the testing laboratory is owned or operated by, or affiliated with, a tribe, it must be independent from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions required by this section.
    - (iv) The TGRA:
      - (A) Makes a suitability determination of the testing laboratory based upon standards no less stringent than those set out in § 533.6(b)(1)(ii) through (v) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or
      - (B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory authority in the United States.
    - (v) After reviewing the suitability determination and the information provided by the testing laboratory, the TGRA determines that the testing laboratory is qualified to test and evaluate Class II gaming systems.
  - (2) The TGRA must:
    - (i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iii) and (f)(1)(iv) of this section for a minimum of three years.
    - (ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.
    - (iii) Require the testing laboratory to provide notice of any material changes to the information provided to the TGRA.
- (g) *Records.* Records required to be maintained under this section must be made available to the Commission upon request. The Commission may use the information derived

therefrom for any lawful purpose including, without limitation, to monitor the use of Class II gaming systems, to assess the effectiveness of the standards required by this Part, and to inform future amendments to this Part. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).