

participating State's performance in implementing the requirements of the Program at least once every 5 years.

(1) The Operating Administration must provide notice and an opportunity for public comment during the review.

(2) At the conclusion of its last review prior to the expiration of the term, the Operating Administration may extend a State's participation in the Program for an additional term of not more than 5 years (as long as such term does not extend beyond the termination date of the Program) or terminate the State's participation in the Program.

(c) *Early Termination.* (1) If the Operating Administration, in consultation with the Office of the Secretary and the Chair of CEQ, determines that a State is not administering the Program consistent with the terms of its written agreement, or the requirements of this part or 23 U.S.C. 330, the Operating Administration must provide the State notification of that determination.

(2) After notifying the State of its determination under paragraph (c)(1), the Operating Administration must provide the State a maximum of 90 days to take the appropriate corrective action. If the State fails to take such corrective action, the Operating Administration may terminate the State's participation in the Program.

#### Title 49—Transportation

### PART 264—PROGRAM FOR ELIMINATING DUPLICATION OF ENVIRONMENTAL REVIEWS AND THE SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM

■ 4. The authority citation for part 264 is revised to read as follows:

**Authority:** 23 U.S.C. 327; 49 CFR 1.81; 23 U.S.C. 330.

■ 5. Revise the heading for part 264 to read as set forth above.

■ 6. Revise § 264.101 to read as follows:

**§ 264.101 Procedures for complying with the surface transportation project delivery program application requirements and termination and the procedures for participating in and complying with the program for eliminating duplication of environmental reviews.**

The procedures for complying with the surface transportation project delivery program application requirements and termination are set forth in part 773 of title 23 of the Code of Federal Regulations. The procedures for participating in and complying with the program for eliminating duplication of environmental reviews are set forth in part 778 of title 23 of the Code of Federal Regulations.

### PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 7. The authority citation for part 622 is revised to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 5323(q); 23 U.S.C. 139, 326, 327, and 330; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316, 1317, and 1318; and Pub. L. 114–94, section 1309.

■ 8. Revise § 622.101 to read as follows:

#### § 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and orders are set forth in part 771 of title 23 of the Code of Federal Regulations. The procedures for complying with 49 U.S.C. 303, commonly known as “Section 4(f),” are set forth in part 774 of title 23 of the Code of Federal Regulations. The procedures for complying with the surface transportation project delivery program application requirements and termination are set forth in part 773 of title 23 of the Code of Federal Regulations. The procedures for participating and complying with the program for eliminating duplication of environmental reviews are set forth in part 778 of title 23 of the Code of Federal Regulations.

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### NATIONAL INDIAN GAMING COMMISSION

#### 25 CFR Part 547

RIN 3141-AA64

#### Technical Standards

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Indian Gaming Commission proposes to amend the minimum technical standards for Class II gaming systems and equipment. The proposed rule would amend regulations that describe how tribal governments, tribal gaming regulatory authorities, and tribal gaming operations comply with the technical standards. In particular, the proposed rule amends the requirement that gaming systems manufactured before November 10, 2008, be modified to meet standards applicable to gaming systems manufactured on or after November 10, 2008, or be removed from the gaming

floor by November 10, 2018. The Commission proposes this action to assist tribal governments, tribal gaming regulatory authorities, and operations in ensuring the integrity and security of Class II games and gaming revenue through minimum technical standards for Class II gaming systems and equipment.

**DATES:** The agency must receive comments on or before November 13, 2017.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** 547.5\_Comments@nigc.gov.
- **Fax:** 202–632–7066.
- **Mail:** National Indian Gaming Commission, 1849 C Street NW., MS 1621, Washington, DC 20240.
- **Hand Delivery:** National Indian Gaming Commission, 90 K Street NE., Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Badger, National Indian Gaming Commission; Telephone: 202–632–7003.

#### SUPPLEMENTARY INFORMATION:

#### I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

#### II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On October 8, 2008, the NIGC published a final rule in the **Federal Register** called *Technical Standards for Electronic, Computer, or Other Technologic Aids Used in the Play of Class II Games*. 73 FR 60508. The rule added a new part to the NIGC's regulations establishing a process for ensuring the integrity of electronic Class II games and aids. The standards were designed to assist tribal gaming regulatory authorities and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provide guidance to equipment manufacturers

and distributors of Class II gaming systems. The standards do not classify which games are class II and which games are class III.

When implemented in 2008, the part 547 technical standards introduced several new requirements for Class II gaming systems designed to protect the security and integrity of Class II gaming systems and tribal operations. The Commission understood, however, that some existing Class II gaming systems might not meet all of the requirements of the technical standards. Therefore, to avoid any potentially significant economic and practical consequences of requiring immediate compliance, the Commission implemented a five year sunset provision which allowed eligible gaming systems manufactured before November 10, 2008 (2008 Systems) to remain on the gaming floor. The Commission believed that a five year period was sufficient for market forces to move equipment toward compliance with the standards applicable to gaming systems manufactured on or after November 10, 2008.

On September 21, 2012, the NIGC published a final rule in the **Federal Register** which included an amendment delaying the sunset provision by an additional five years. 77 FR 58473. The Commission recognized that its prior analysis regarding the continued economic viability of the 2008 Systems had proven to be mistaken. The NIGC established the initial five year period in the midst of a much stronger economy. In the time that followed the economic downturn, many tribal gaming operations set new priorities that required keeping a 2008 System on the gaming floor for a longer period of time. Balancing the economic needs against a risk that potentially increases as technology advances and 2008 Systems remain static, the Commission determined that 2008 Systems could continue to be offered for play until November 10, 2018.

Now, with the November 10, 2018, sunset approaching, the Commission believed it appropriate to include the 2008 Systems and associated sunset provision of the part 547 technical standards as a topic for consultation. The topic was therefore included in a November 22, 2016, letter to tribal leaders introducing the Commission's 2017 consultation series.

### III. Development of the Proposed Rule

On March 23, 2017, in Tulsa, OK, and April 12, 2017, in San Diego, CA, the NIGC consulted on the 2008 Systems and associated sunset provision of part 547. The Commission also solicited written comments through May 31,

2017. In addition, NIGC staff attended several National Indian Gaming Association Class II Subcommittee meetings. The consultations and meetings, combined with the written comments, proved invaluable in the development of a discussion draft. On June 14, 2017, the Commission issued a discussion draft which, among other proposed amendments, proposed removing the November 10, 2018, sunset for 2008 Systems. Additional written comments responsive to the discussion draft were solicited through July 15, 2017.

Written comments received after the issuance of the discussion draft were generally supportive of the proposed removal of the November 10, 2018, sunset for 2008 Systems. Comments also indicated, however, several specific remaining areas of concern. The Commission developed the proposed rule after considering the comments received.

#### A. General Comments

Some commenters questioned the Commission's authority to implement technical standards and its authority to enforce the standards. IGRA gives the Commission the authority to adopt these technical standards. Congress was expressly concerned that gaming under IGRA be "conducted fairly and honestly by both the operator and players" and "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. 2702(2). The technical standards are designed to ensure that these concerns are addressed. These standards implement the authority granted the NIGC to monitor, inspect, and examine Class II gaming, 25 U.S.C. 2706(b)(1)–(4), and to promulgate such regulations as it deems appropriate to implement the provisions of IGRA. 25 U.S.C. 2706(b)(10). The Commission further reiterates that this rule does not classify games for purposes of IGRA. The rule assumes that the games played are Class II games. This rule establishes a process for ensuring the integrity and security of Class II games and an accounting of Class II revenue.

#### B. 2008 Systems, Pre-Discussion Draft

Many commenters requested that the November 10, 2018, sunset for 2008 Systems be removed. Commenters suggested that the existing sunset provision could not be justified because there has been no evidence that 2008 Systems represent a risk to the integrity and security of Class II gaming. Commenters noted that 2008 Systems appear to be protected by 26 out of 28 technical standards identified by

commenters as "high risk." In addition, commenters suggested that, even assuming additional risks are associated with 2008 Systems, such risks are mitigated by tribal gaming regulatory authorities (TGRAs) through internal control standards.

The Commission agrees that the 2008 sunset can be removed. The Commission disagrees, however, that evidence of risk forms the sole legal justification for the technical standards. The technical standards are intended to ensure the integrity and security of Class II gaming and the accountability of Class II gaming revenue. The technical standards include minimum requirements that the Commission believes, in its judgment, are appropriate and consistent with its Federal regulatory oversight mission. The Commission has, however, determined that removal of the sunset provision is justified provided that 2008 Systems are subject to additional annual review by TGRAs.

Commenters also suggested that the sunset provision threatens significant economic harm and the continued success and viability of the Class II gaming industry. Commenters suggested that the sunset provision is an unnecessary cost burden on manufacturers and tribes. Commenters further suggested that the sunset provision will cause tribes to lose leverage in compact negotiations with states.

The Commission understands the commenters' concerns over the economic impact of removing non-compliant Class II gaming systems from the gaming floor. The Commission notes, however, that part 547 as originally enacted and as amended only requires removal if the games are not made compliant with the testing standards for newer systems set forth in the regulation. The regulation initially provided the industry with five years to modify or replace 2008 Systems. The Commission subsequently granted an additional five years to bring the systems into compliance with the standards for newer systems. The Commission has now determined that removal of the sunset provision is justified provided that 2008 Systems are subject to additional annual review by the TGRA.

Commenters suggested that the sunset provision is retroactive and that IGRA does not authorize the NIGC to promulgate regulations that have retroactive effect. The Commission disagrees that the proposed amendments are retroactive. The proposed amendments do not alter the

legal consequences of actions completed before their effective date.

A commenter suggested extending the sunset provision indefinitely, subject to the authority of TGRAs. A commenter submitted proposed language implementing an annual audit requirement for 2008 Systems. The Commission's subsequent discussion draft partially incorporated this recommendation.

#### C. 2008 Systems, Post-Discussion Draft

The discussion draft required TGRAs to: "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 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." Commenters suggested that the NIGC has provided no compelling reason to change the existing reporting requirements. Commenters further suggested that the annual reporting requirement appears to be unintentionally applicable to all Class II gaming systems.

Although the requirement does impose an additional requirement on TGRAs, the Commission believes that removal of the sunset provision warrants annual review specific to 2008 Systems. In addition, the annual reporting requirement is contained within § 547.5(a) and is therefore applicable only to 2008 Systems. The Commission has, however, revised and clarified the annual review and reporting procedures in the proposed rule to reduce the perceived burden on TGRAs. Pursuant to this proposed rule, TGRAs are not required to transmit its findings, but rather must maintain records and make them available to NIGC staff upon request.

The discussion draft further provided that "A TGRA may not permit the use of any Class II gaming system manufactured before November 10, 2008 in a tribal gaming operation unless: it meets requirements applicable to 2008 Systems. Discussion Draft § 547.5(a)(3) provides that "If the Class II gaming system is subsequently approved pursuant to paragraph (b) of this section, this paragraph (a) [2008 Systems] no longer applies." Commenters suggested

that the Discussion Draft could be misinterpreted to provide that all Class II gaming systems manufactured prior to November 10, 2008, including those that are now compliant with § 547.5(b), would be subject to the 2008 System provisions in § 547.5(a). Commenters further suggested that approving a 2008 System pursuant to § 547.5(b) requires a 2008 System to be resubmitted to a testing lab for full re-certification and/or requires TGRAs to make technical determinations.

The Commission believes that discussion draft § 547.5(a)(3) is clear that Class II gaming systems approved pursuant to § 547.5(b) are no longer 2008 Systems. The Commission has, however, clarified in the proposed rule that the use of the term "approved" is intended to reference TGRA approval based on review of existing testing lab reports for all current components of the Class II gaming system.

Finally, the discussion draft Discussion Draft § 547.5(a)(1)(viii) provides that "All player interfaces of the Class II gaming system have a date of manufacture before November 10, 2008." Commenters suggested that the requirement that all player interfaces of 2008 Systems have a date of manufacture before November 10, 2008, was a new requirement. Commenters further suggested that this requirement was unnecessary and would prevent use of newer player interfaces with 2008 Systems, contrary to provisions encouraging 2008 Systems to be modified to move towards compliance with standards for newer systems.

Although not included in the 2012 amendment to part 547, the date of manufacture requirement is not entirely new. The 2008 System provisions were originally intended to apply only to systems in play or manufactured by November 10, 2008. 73 FR 60508, 60510. Pursuant to the 2008 regulations, § 547.4(a)(7) required "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 November 10, 2008." 73 FR 60508, 60527 (October 10, 2008). The Commission agrees, however, that the date of manufacture requirement included in the discussion draft could be interpreted as preventing the use of newer player interfaces and has therefore removed the requirement from the proposed rule.

#### D. Class II Gaming System Component Repair, Replacement, or Modification

Discussion draft § 547.5(c)(2)(ii) provided that "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." Commenters suggested that the new requirement that modifications to 2008 Systems be tested to the standards applicable to newer systems is unnecessary and will only result in additional costs with no practical benefit. Commenters noted that laboratory reports are currently not required for all modifications to 2008 Systems, thereby providing TGRAs with greater flexibility and control over such modifications. Commenters suggested that this provision will force TGRAs to use the emergency modification procedures to avoid testing delays.

The Commission disagrees that the requirement that all modifications be tested to the standards applicable to newer systems is unnecessary. The current and proposed regulations require the TGRA to determine, among other requirements, whether a modification will maintain or advance the Class II gaming system's compliance with the technical standards. The new requirement ensures that TGRAs are provided with the information needed for the TGRA to make such a determination. In addition, the Commission believes that TGRAs will continue to utilize the emergency modification provisions for their intended purpose.

#### E. Records

Discussion draft § 547.5(g) provided that "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)." Commenters expressed reluctance to expose sensitive testing and compliance records to possible public disclosure. Commenters suggested that records only be available for review on site by NIGC staff.

The Commission agrees that sensitive testing and compliance records should not be disclosed. As cited in the

discussion draft, 25 U.S.C. 2716(a) states that “the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to” the confidential commercial or financial information and law enforcement information exceptions of the Freedom of Information Act. The Commission is therefore precluded from releasing such information.

## Regulatory Matters

### Regulatory Flexibility Act

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

### Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

### Unfunded Mandate Reform Act

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

### Takings

In accordance with Executive Order 12630, the Commission has determined that the 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 has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

### National Environmental Policy Act

The Commission has determined that the 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.*

### Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0007, which expired in August of 2011. The NIGC is in the process of reinstating that Control Number.

### List of Subjects in 25 CFR Part 547

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

Therefore, for reasons stated in the preamble, 25 CFR part 547 is proposed to be amended as follows:

### PART 547—MINIMUM TECHNICAL STANDARDS FOR CLASS II GAMING SYSTEMS AND EQUIPMENT

■ 1. The authority citation for part 547 continues to read as follows:

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

■ 2. Revise § 547.5 to read as follows:

#### § 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) Any Class II gaming system manufactured before November 10, 2008, that is not compliant with paragraph (b) of this section may be made available for use at any tribal gaming operation if:

(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; and

(vii) Player interfaces of the Class II gaming system exhibit information consistent with § 547.7(d) and any other information required by 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 (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 testing laboratory reports associated with the Class II gaming system and its current components to determine whether the Class II gaming system may be approved pursuant to paragraph (b)(1)(v) of this 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)(1)(v), and, for Class II gaming systems that cannot be approved pursuant to paragraph (b)(1)(v), the components of the Class II gaming system preventing such approval.

(3) If the Class II gaming system is subsequently approved by the TGRA pursuant to paragraph (b)(1)(v) as compliant with 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) of 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).

Dated: September 19, 2017.

**Jonodev O. Chaudhuri,**  
Chairman.

**Kathryn Isom-Clause,**  
Vice Chair.

**E. Sequoyah Simermeyer,**  
Associate Commissioner.

[FR Doc. 2017-20635 Filed 9-27-17; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 5f

[REG-128841-07]

RIN 1545-BG91

#### Public Approval of Tax-Exempt Private Activity Bonds

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations to update and streamline the public approval requirement provided in section 147(f) of the Internal Revenue Code applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations would update the existing regulations on the public approval requirement to reflect statutory changes, to streamline the public approval process, and to reduce burden on State and local governments that issue tax-exempt private activity bonds. This document also withdraws two previous notices of proposed rulemaking on this topic. The proposed regulations affect State and local governments that issue tax-exempt private activity bonds.

**DATES:** Comments and requests for a public hearing must be received by December 27, 2017.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-128841-07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128841-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at

[www.regulations.gov](http://www.regulations.gov) (IRS REG-128841-07).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Spence Hanemann at (202) 317-6980; concerning submissions of comments and requesting a hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review under OMB Control Number 1545-2185 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in this proposed regulation is the requirement in § 1.147(f)-1 that certain information be contained in a public notice or public approval and, consequently, disclosed to the public. This information is required to meet the statutory public approval requirement provided in section 147(f). The likely respondents are the governmental units required to approve an issue of private activity bonds under section 147(f).

*Estimated total annual burden:* 2,600 hours.

*Estimated average annual burden per respondent:* 1.3 Hours.

*Estimated number of respondents:* 2,000.

*Estimated frequency of responses:* Annual.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 27, 2017.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection

techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

This document contains proposed amendments to 26 CFR part 1 under section 147(f) of the Internal Revenue Code of 1986 (the Code) and 26 CFR part 5f under section 103(k) of the Internal Revenue Code of 1954 (the 1954 Code). In the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, 96 Stat. 324, Congress added section 103(k) to the 1954 Code to impose a public approval requirement on tax-exempt industrial development bonds. On May 11, 1983, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (48 FR 21117) temporary regulations under section 103(k) of the 1954 Code (TD 7892) (the Existing Regulations). See § 5f.103-2. A notice of proposed rulemaking (LR-221-82) by cross-reference to the temporary regulations was published in the **Federal Register** (48 FR 21166) on the same day.

In the Tax Reform Act of 1986 (1986 Tax Act), Public Law 99-514, 100 Stat. 2085, Congress reorganized the tax-exempt bond provisions and carried forward the public approval requirement of section 103(k) of the 1954 Code in expanded form in section 147(f) of the Code. In section 147(f), Congress extended the public approval requirement to apply to all types of tax-exempt private activity bonds, as provided in section 141(e). The legislative history of the 1986 Tax Act indicates that “[t]he conferees intend that, to the extent not amended, all principles of present law continue to apply under the reorganized provisions.” H.R. Rep. No. 99-841, at II-686 (1986) (Conf. Rep.). Thus, the Existing Regulations in § 5f.103-2 remain in effect.

On September 9, 2008, the Treasury Department and the IRS published a