

KA.SN.KA
John D. Red Eagle
Principal Chief

Osage Nation
Office of the Principal Chief

KA.SN.KA O.HA.DZA
Scott N. BigHorse
Assistant Principal Chief



**COMMENTS OF THE OSAGE NATION ON THE
NATIONAL INDIAN GAMING COMMISSION'S
PROPOSED RULE OF 25 C.F.R. PART 547 – TECHNICAL
STANDARDS FOR CLASS II GAMING
AND 25 C.F.R PART 543
MINIMUM INTERNAL CONTROLS**

MARCH 14, 2013

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, D.C. 20005

Re: *Comments on proposed rule Part 547: Technical Standards for Class II Gaming,
and proposed rule Part 543: Minimum Internal Control Standards for Class II Gaming*

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

The Osage Nation ("Nation") appreciates the opportunity to submit the following comments on the National Indian Gaming Commission's ("NIGC") Proposed Rule amending the Class II Technical Standards, published in the *Federal Register* on February 23, 2013, 78 Fed. Reg. 11795-11796 (February 20, 2013), and for the Proposed Rule amending the Minimum Internal Control Standards to add standards for the drop and count and surveillance of kiosks, 78 Fed. Reg. 11793-11795. The Nation greatly values the Tribal consultation process instituted by the NIGC throughout this rulemaking. We appreciate your consideration of our comments and suggestions.

I. Technical Standards – Part 547

We note that the NIGC has proposed an amendment to the final rule to harmonize the charitable gaming exemptions in the Technical Standards and the Class II Minimum Internal Control Standards of NIGC regulations. The NIGC noted that the MICS exempt charitable gaming operations that earn less than the threshold amount of \$3,000,000. The proposed amendment to section 547.5(e)(5) will cause the technical standards to match that threshold amount of

\$3,000,000, rather than the current \$1,000,000. We feel that this change is fair and we approve the change.

II. The Minimum Internal Controls – Part 543

We recognize that the 2012 regulation provided general standards for kiosks. The proposed amendment adds additional standards for the drop and count and surveillance of kiosks to adequately protect against risk of loss. The proposed amendment adds a definition at section 543.2 for Currency Cassette. We agree with this definition. The proposed amendment amends section 543.17 by revising paragraphs (h) and (i) and adding paragraphs (j) Controlled Keys, which requires controls and procedures to safeguard the use, access and security of keys, and (k) Variances, which defers to the TGRA to determine the threshold level at which a variance must be reviewed to determine the cause. We agree with these proposed amendments. The proposed amendment to section 547.21 lists requirements for the surveillance system for monitoring and recording activities at each kiosk. We agree with this additional standard.

III. NIGC Regulation Authority

The IGRA sets out the NIGC “powers” in the regulation of Class II gaming at 25 U.S.C. 2706(a) and (b). The powers granted to the NIGC therein do not include powers that allow the NIGC to regulate activities that do not constitute Class II gaming. The current regulation and the proposed regulation purport to regulate kiosks. The regulation of this activity is outside the scope of NIGC authority. The Tribal Gaming Regulatory Authority (TGRA) is the appropriate authority for establishing and enforcing proper standards to govern these types of interaction with the patrons in the Nation’s governmental gaming locations. Ultimately, in accordance with the IGRA, the TGRA is the primary regulatory authority of Class II gaming. While we agree with the proposed amendments to existing regulations, we are compelled to recommend the NIGC delete these sections and allow the TGRA to regulate these matters consistent with the stated policy of IGRA.

CONCLUSION

We appreciate your consideration of our comments regarding the proposed regulations. The Nation commends this current Commission on its efforts to improve the existing regulations and the diligence with which you have undertaken in your efforts to consult with the Tribes on this matter. As noted above it is our opinion that your efforts have improved the proposed rule in many sections. Again, thank you for your time and consideration.

Kind Regards,



John D. Red Eagle
Principal Chief
Osage Nation

JDR/tmm/lt