



Absentee Shawnee Tribe of Oklahoma Tribal Gaming Commission

15700 East Hwy. 9
Norman, Oklahoma 73026

May 24, 2017

By email ([Vannice Doulou@nigc.gov](mailto:Vannice_Doulou@nigc.gov))

National Indian Gaming Commission

Attn: Vannice Doulou

1849 C Street NW

Mail Stop #1621

Washington, DC 20240

Re: Comments on Elimination of the Sunset Provision of 25 C.F.R. § 547.5 for Grandfathered Class II Gaming Systems

The Absentee Shawnee Tribal Gaming Commission ("ASTGC") is the primary regulator of Indian gaming within the Indian lands of the Absentee Shawnee Tribe of Oklahoma. As the regulatory body for one of the very first tribal gaming operations in Oklahoma, the ASTGC has been on the front lines of regulating gaming systems in Indian Country. The ASTGC respectfully submits the following comments on the Class II gaming systems' sunset provision, codified at 25 C.F.R. § 547.5 (b)(1), that would require tribal gaming facilities to remove from operation and replace their existing class II grandfathered gaming systems by November 10, 2018, unless the systems are brought into full compliance with all provisions of the minimum technical standards before that time. In short, the sunset provision is unnecessary, because the existing grandfathering rule, and the Commission's Minimum Internal Control Standards for Class II games, have proven adequate to protect the integrity of the gaming systems. Furthermore, retention and enforcement of the sunset provision will impose tens of millions of dollars in costs on tribal gaming facilities and tribal gaming regulatory bodies, including the ASTGC, impeding the primary goal of the Indian Gaming Regulatory Act to build strong tribal governments through the generation of tribal gaming revenues.

I. There has been no history of problems with grandfathered games

When the Commission amended the minimum technical standards rule in 2012 to extend the sunset period to November 2018, it acknowledged that there had been no "major incidents" due to the operation of grandfathered games. 77 Federal Register 58473, 58475 (Sept. 21, 2012). As the Commission stated: "The Commission acknowledges that grandfathered machines have, for the most part, continued to operate with relatively few problems to the patron or the gaming operations." *Id.*

This continues to be the case to the present. The ASTGC has not encountered any serious regulatory problems associated with any of the grandfathered gaming systems or corresponding games, nor are we aware that any of our fellow tribal gaming regulators have experienced any breaches or compromises of integrity of such systems. We fully endorse the

comments of the Oklahoma Tribal Gaming Regulators' Association and the similar comments of others echoing our experience with an absence of any serious compliance issues for these gaming systems over the last decade.

II. Existing Regulations Protect the Integrity of the Games

There is good reason that grandfathered gaming systems have not presented problems, given that they are highly regulated. As the NIGC has recognized during the recent face-to-face consultations, the existing minimum technical standards impose certain non-waivable standards even on grandfathered game systems. 25 C.F.R. § 547.5 (a)(4). Grandfathered game systems must be certified to comply with the technical standards for game initiation and play, 25 C.F.R. § 547.8 (b), software signature verification, 25 C.F.R. § 547.8 (f), and electronic number generators. 25 C.F.R. § 547.14. Modifications to the software or hardware of grandfathered game systems must meet certain standards, as determined by the Tribal Gaming Regulatory Authorities ("TGRA"). 25 C.F.R. § 547.5 (b) (5). In many instances, software or hardware modifications have advanced the overall compliance of grandfathered game systems with additional minimum technical standards TGRA like ourselves are also free to impose.

It is worth noting the substantial redundancy/overlap between the minimum technical standards and the Minimum Internal Control Standards ("MICS") applicable to class II games, that provide protection to the gaming public when engaging in gaming using grandfathered gaming systems, since those systems must comply with all of the MICS. The following chart illustrates this overlap.

Technical Standards	MICS
requires account access components to be located within a secure and locked area. 25 C.F.R. §§ 547.7(e).	requires controls and procedures to ensure adequate control of physical access to information technology environment and infrastructure. 25 C.F.R. § 543.20(c).
requires last game recall. 25 C.F.R. § 547.8 (d).	provides for verification of draws where prizes are over \$1,200 for a minimum of 24 hours. 25 C.F.R. § 543.8 (d).
each gaming system is required to maintain data for the total value of all financial instruments accepted and paid out. 25 C.F.R. §§ 547.9(a)(1) & (2).	Requires, inter alia, a drop and count procedure that records individually the financial instrument storage components and compares them against the currency counter/system. 25 C.F.R. §§ 543.17(g) (8) & (15)(i).
requires the recording of fault events, including malfunctions, and actions to be taken during certain faults to ensure integrity	requires procedures to document malfunctions, and verification of the integrity of the Class II gaming components before

of the machines. 25 C.F.R. §§ 547.10(a)(1)(i) - (vii).	restoring it to operation. 25 C.F.R. § 543.8(h)(1).
sets technical standards for downloads to gaming machines. 25 C.F.R. § 547.12.	requires that downloads be performed in accordance with 25 C.F.R. § 547.12. 25 C.F.R. § 543.20(k).
requires downloaded software on a Class II gaming system must be capable of being verified by the using a software signature verification method. 25 C.F.R. § 547.12(b).	requires verification by using a software verification method. 25 C.F.R. § 543.20(l).
allows remote communications between system components if authorized by TGRA and the access is secure from eavesdropping and unauthorized access. 25 C.F.R. § 547.15.	allows remote access provided that it is preformed via a secure method. 25 C.F.R. § 543.20(h).
requires display of game rules and disclaimers. 25 C.F.R. § 547.16 (a) & (b).	requires display of game rules and disclaimers. 25 C.F.R. § 543.8 (g)(6).

The MICS also contain other provisions that require or enable the TGRA to protect the integrity of class II gaming. The MICS require controls to be established and procedures implemented to safeguard the integrity of technologic aids to the play of bingo. 25 C.F.R. § 543.8 (g). In addition, the MICS provide minimum standards for surveillance, 25 C.F.R. § 543.21, and TGRA and tribal gaming facilities employ surveillance as an important tool in maintaining game security. Thus, the necessary, and now proven, regulatory standards for grandfathered gaming systems are more than adequate to protect the integrity of gaming involving such systems.

III. The Sunset Provision Will Cost the Absentee Shawnee Tribe of Oklahoma and other Tribes Tens of Millions of Dollars in Unnecessary Regulatory Activities and Lost Revenues

The sunset provision would require tribal gaming facilities to remove from operation and replace their existing class II grandfathered game systems by November 10, 2018, unless the games are brought into full compliance with all provisions of the minimum technical standards before that time. During consultation with tribes in 2012 concerning the technical standards, tribes submitted information showing that replacement of the systems would cost tribes tens of millions of dollars, as the Commission noted in the notice announcing the final rule. 77 Federal Register 58475 (noting that one commenter asserted that replacing grandfather systems could cost Oklahoma tribes alone \$82 million, while other estimates for replacing grandfathered systems ranged from \$46 million to \$65.5 million). This is still the case. If anything, the cost of replacing grandfathered games with fully compliant game systems has increased.

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The Absentee Shawnee Tribe is a small tribe near central Oklahoma, bracketed by large tribes with enormous revenues and resources. In comparison, the Tribe's two modest facilities generate the overwhelming majority of their class II gaming revenues from grandfathered gaming systems, which have proven wildly popular in our market over the years. There is a reasonable expectation of reduced tribal gaming revenues accompanying any removal of those systems as players migrate away from less popular class II products to class III games for which the Tribe is responsible to pay the State of Oklahoma an exclusivity fee. In addition, if the anticipated migration from class II to class III takes place, all Oklahoma tribes will be vulnerable to the State in upcoming compact negotiations.

Conclusion

Grandfathered game systems represent a substantial amount of tribal gaming revenues for the Absentee Shawnee Tribe of Oklahoma. The grandfathered systems are highly regulated and have an unmatched track record of stability. It would be patently unfair to the Tribe for the NIGC to remove the Tribe's main source of tribal gaming revenue and its key leverage against the State of Oklahoma as the State looks to resolve a nearly impossible budget crisis of its own making on the backs of tribes. Therefore, the ASTGC strongly urges the NIGC to delete the sunset provision in 25 C.F.R. § 547.5 (b)(1) because it is unnecessary and it will impose tens of millions of dollars in costs on tribal gaming facilities such as ours. Thank you for your consideration of this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Leslie Tanyan". The signature is fluid and cursive, with the first name "Leslie" being larger and more prominent than the last name "Tanyan".

Leslie Tanyan
Executive Director
Absentee Shawnee Tribe Gaming Commission

cc: Eastman Switch, ASTGC Deputy Commissioner
Roy Larney, ASTGC Commissioner
Governor Edwina Butler-Wolfe, Absentee Shawnee Tribe of Oklahoma