



# Absentee Shawnee Tribe of Oklahoma Tribal Gaming Commission

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National Indian Gaming Commission  
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Re: Comments on the NIGC's Discussion Draft of Changes to 25 C.F.R. § 547.5

The Absentee Shawnee Tribal Gaming Commission ("ASTGC") is the primary tribal gaming regulatory authority ("TGRA") of Indian gaming within the Indian lands of the Absentee Shawnee Tribe of Oklahoma. As the TGRA 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 National Indian Gaming Commission's ("NIGC") discussion draft of proposed changes to 25 C.F.R. Section 547.5, regulating 2008 (grandfathered) gaming systems.

Previously, the ASTGC submitted comments regarding the sunset provision, codified at 25 C.F.R. § 547.5 (b)(1), asserting that the sunset provision is unnecessary because existing regulations have proven adequate to protect the integrity of the gaming systems, and because retention and enforcement of the sunset provision will impose tens of millions of dollars in costs on tribal gaming facilities and TGRAs, including the ASTGC. The ASTGC is pleased to see that the NIGC has taken these concerns seriously, as shown by the NIGC's efforts to "find a potential alternative which minimizes both the economic impact of the sunset provision and the risk to the gaming operation and the public." *Notice of Release of Discussion Draft, 25 C.F.R. Part 547 – 2008 (Grandfathered Systems)*, at 1-2 (June 14, 2017). While the ASTGC commends the NIGC for deleting the sunset provision from the discussion draft, it has included new requirements for grandfathered games that pose an unnecessary regulatory and monetary burden on ASTGC and similarly situated TGRAs and tribal gaming operations.

Grandfathered gaming systems have posed little to no regulatory issue, due to the fact that they are highly regulated by multiple bodies and multiple regulatory codes, including the minimum technical standards found in Part 547 and the Minimum Internal Control Standards ("MICS") applicable to class II games. There is already substantial redundancy and overlap between the minimum technical standards and the MICS applicable to class II games, which provide protection to the gaming public when engaging in gaming using grandfathered gaming systems. The necessary, and now proven, regulatory standards for grandfathered gaming systems that are currently in place are more than adequate to protect the integrity of gaming involving such systems.



However, the discussion draft proposes to add additional regulatory hurdles, which are duplicative and unnecessary given the current robust regulatory scheme. One such addition is a new requirement that all player interfaces of grandfathered games have a date of manufacture before November 10, 2008. Discussion Draft Section 547.5(a)(1)(viii). This new provision would prevent tribal gaming operators from using new player interfaces with grandfathered gaming systems, even though there is no risk to the integrity of grandfathered gaming systems caused by using new player interfaces. This appears to be an unnecessary regulatory burden that will impede operators from using grandfathered systems, without reducing any risk to the gaming operation or the public through the introduction of the new regulation.

Additionally, the discussion draft proposes changes to require that TGRAs annually review all grandfathered class II gaming systems, and report certain findings to the NIGC, including whether the grandfathered gaming system meets *all* requirements imposed by the technical standards in Part 547 and what modifications are necessary to meet those requirements. Discussion Draft Section 547.5(a)(2)(iii). This proposed change is both burdensome and unnecessary for three reasons: (1) It appears to require lab reports on all grandfathered systems annually, regardless of whether any changes have been made to the system; (2) it would require TGRAs to make technical determinations regarding grandfathered games and system modifications; and (3) it would require TGRAs to report to the NIGC. Additionally, by imposing a duty to review *all* requirements imposed by Part 547, and not simply those applicable to grandfathered games, the proposed change is overly broad, while providing little additional protection to the gaming operation and the public.

Moreover, the proposed changes would require TGRAs to submit *any* game modification for *all* games to a testing lab, where the game must be tested against the Part 547 Technical standards, the Part 543 MICS, and any TGRA standards. Discussion Draft Section 547.4(c)(2)(i). As with the aforementioned proposed change, this is overly broad and burdensome. It makes no sense to require that tribes test modifications for grandfathered games to the Part 547 standards that do not apply to grandfathered games. Further, this will hinder efforts to quickly address regulatory issues involving component modifications, requiring TGRAs to rely on the Section 547.5(d) emergency provisions to implement needed modifications in a timely manner. The emergency provisions are only available for "necessary" changes affecting the fairness, security, or integrity of the game, however, causing other changes to be unnecessarily delayed if they do not fit into the narrow class of modifications eligible under the emergency provisions. The current rule is narrower, and allows modifications to grandfathered games, provided that the modification is compliant with the technical standards for grandfathered games. The ASTGC would prefer that the NIGC preserve the current rule regarding modifications for grandfathered games.

Proposed revisions requiring grandfathered games to be regularly tested against standards that do not apply to grandfathered games fail to address the NIGC's goal of reducing risk to the gaming operation and the public caused by systems that are not in compliance with the full set of technical standards. While there is little benefit provided by these changes, there is a substantial



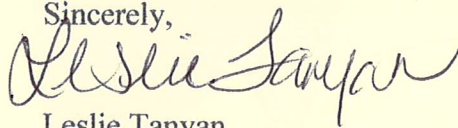
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cost. The additional testing required by the proposed regulations, including that grandfathered games be tested annually against *all* technical standards requirements (as opposed to only those which apply to grandfathered games) and that all game modifications be submitted to a testing lab to be tested against all applicable regulatory standards, imposes a significant burden and cost on the ASTGC and similarly situated TGRAs, through both the additional expense of obtaining unnecessary lab reports, and the time and personnel necessary to implement these proposed changes.

Grandfathered game systems represent a substantial amount of tribal gaming revenues for the Absentee Shawnee Tribe of Oklahoma. With the exception of the deletion of the sunset provision, the proposed changes impose significant costs on tribal gaming operations. Further, by requiring grandfather games to be tested against regulations that are not applicable to grandfathered games, these proposed changes do not promote the effective regulation of grandfathered games. In short, several of the proposed changes do not further the NIGC's goals to minimize both the economic impact of the sunset provision and the risk to the gaming operation and the public. For these reasons, the ASTGC requests the NIGC preserve deletion of the sunset provision and reconsider the other proposed changes consistent with our foregoing comments. Thank you for your consideration of this important issue.

Sincerely,



Leslie Tanyan

Executive Director

Absentee Shawnee Tribal Gaming Commission

cc: Roy Larney, Commissioner  
Eastman Switch, Commissioner  
Edwina Butler-Wolfe, Governor of the Absentee Shawnee Tribe  
William Norman, ASTGC Attorney