



**Absentee Shawnee Tribe of Oklahoma  
Tribal Gaming Commission  
15700 East Hwy. 9  
Norman, OK 73026**

November 13, 2017

By email (547.5\_Comments@nigc.gov)  
National Indian Gaming Commission  
1849 C Street NW  
Mail Stop #1621  
Washington, D.C. 20240

Re: Comments on the NIGC's Proposed Rule Amending 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") Proposed Rule, *25 C.F.R. Part 547*, 82 Fed. Reg. 45228 (Sept. 28, 2017) ("Proposed Rule"), regulating 2008 ("grandfathered") gaming systems.

Previously, the ASTGC submitted comments regarding eliminating the sunset provision, codified at 25 C.F.R. Section 547.5(b)(1), because the current regulatory systems have proven adequate, and because the sunset provision is overly burdensome and costly for tribal gaming facilities and TGRAs, including the ASTGC. Grandfathered gaming systems have posed little to no regulatory issue, due to the fact that they are highly regulated by multiple bodies and multiple overlapping regulatory codes, including the minimum technical standards found in Part 547 ("Technical Standards") and the Minimum Internal Control Standards ("MICS") applicable to class II games, which provide protection to the gaming public when engaging in gaming using grandfathered gaming systems.<sup>1</sup> 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. The ASTGC is pleased to see that the NIGC agrees the sunset provision can and should be removed.

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<sup>1</sup> Compare the Technical Standards, 25 C.F.R. §§ 547.7(e), 547.8(d), 547.9(a)(1-2), 547.10(a)(1)(i-vii), 547.12, 547.12(b), 547.15, and 547.16(a-b), with the MICS, 25 C.F.R. §§ 543.20(c), 543.8(d), 543.17(g)(8) and (15)(i), 543.8(h)(1), 543.20(h, k-i), and 543.8(g)(6).

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While the ASTGC commends the NIGC for removing the sunset provision, the NIGC proposes to impose additional annual review and testing in lieu of the sunset provision, which poses an unnecessary regulatory and monetary burden on the ASTGC and similarly situated TGRAs and tribal gaming operations. The Proposed Rule requires that TGRAs annually review all grandfathered gaming systems to determine: (1) whether the grandfathered gaming system meets *all* requirements imposed by the Part 547 Technical Standards, and (2) what components of the grandfathered gaming system prevent the system from complying with the Technical Standards. Proposed Rule § 547.5(a)(2)(iii). This is both burdensome and unnecessary. First, it appears to require lab reports on all grandfathered systems annually, regardless of whether any changes have been made to the system. Second, it would require TGRAs to make technical determinations regarding grandfathered games and system modifications. Additionally, by imposing a duty to review *all* requirements imposed by the Technical Standards, and not simply those applicable to grandfathered games, the proposed change is overly broad, while providing little additional protections.

Moreover, the proposed changes would require TGRAs to submit *any* game modification for *all* games to a testing lab to be tested against the Part 547 Technical Standards, the Part 543 MICS, and any TGRA standards. Proposed Rule § 547.5(c)(2). As with the aforementioned proposed change, this is overly broad and burdensome, and will hinder efforts to quickly address regulatory issues involving component modifications. The ASTGC previously voiced its concerns regarding this provision and its potential to require TGRAs to rely on the Section 547.5(d) emergency provisions to implement needed modifications in a timely manner. Since the Section 547.5(d) emergency provisions are only available for "necessary" changes affecting the fairness, security, or integrity of the game, however, other changes outside of this narrow scope will likely be needlessly delayed. The NIGC's comment that it "believes that TGRAs will continue to utilize the emergency modification provisions for their intended purpose" (*see* Proposed Rule, at 45230) does not alleviate this concern, as TGRAs will be unable to quickly address regulatory issues involving component modifications outside of the scope of the emergency provision. The ASTGC would prefer that the NIGC preserve the current rule, which allows modifications which are compliant with the Technical Standards for grandfathered games.

The NIGC asserts that annual testing against all of the Part 547 Technical Standards is warranted given the removal of the sunset provision. However, it makes no sense to require that tribes test grandfathered games and game modifications to the Technical Standards that do not apply to grandfathered games, as this fails 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. Annual testing of grandfathered games against standards which are inapplicable to grandfathered games will simply confirm what is already known—that the grandfathered games do not meet standards which are not applicable to them. While there is little benefit provided by these changes, there is a substantial cost associated with annually testing each grandfathered gaming system and submitting each game modification to a testing lab to be tested against *all* applicable regulatory standards. The additional testing required by the Proposed Rule will impose 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.

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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 and TGRAs. Further, by requiring grandfathered 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

**F A X**



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RE: Comments on the NIGC's Proposed Rule  
Amending 25 C.F.R. § 547.5

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**Comments:**

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Thanks,

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