



**OFFICE OF THE GOVERNOR**

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BILL ANOATUBBY  
GOVERNOR

July 28, 2017

Mr. Jonodev Chaudhuri, Chairman  
National Indian Gaming Commission  
1849 C Street NW  
Mail Stop #1621  
Washington, DC 20240

Dear Chairman Chaudhuri:

Included with this letter are the Chickasaw Nation's comments regarding the grandfathered Class II gaming systems.

Thank you for your consideration of our comments. If you have any questions please contact Mr. Bill Lance, Secretary, Department of Commerce at (580) 421-9500.

Sincerely,

Bill Anoatubby, Governor  
The Chickasaw Nation

**COMMENTS OF THE CHICKASAW NATION ON THE  
NATIONAL INDIAN GAMING COMMISSION'S  
PROPOSED RULE OF 25 C.F.R. PART 547 –  
TECHNICAL STANDARDS FOR CLASS II GAMING**

The Chickasaw Nation (“Nation”) is pleased to submit comments to the National Indian Gaming Commission (“NIGC”) on the Part 547 Discussion Draft, which revises Part 547.5 by creating an alternate framework to the existing grandfather/sunset provision. First, the Nation commends the NIGC for exploring alternatives to the hard sunset date entailing the removal of those Class II gaming systems manufactured prior to November 10, 2008

As we have indicated in our prior comments pertaining to Part 547, Class II gaming remains an important component of the Nations gaming activities. Class II gaming provides the Nation significant revenues critical to the health and well-being of the Chickasaw Nation. These dollars enable the Nation to take care of its elders, educate its children, attend to the health and welfare of our people, and improve the overall quality of life not only for the Nation’s citizenry, but for the community at large as well. Thanks to the income we derive from gaming, we are able to help those in need, employ the able-bodied, and create economic opportunities that would not otherwise be available without the successes we have achieved in the gaming arena. These are the interests that are served by our gaming activities and impel us to pay particular attention to anything that does or could affect them.

Until 2004, when the State of Oklahoma agreed to enter into Class III gaming compacts with tribal governments in Oklahoma, Class II gaming comprised the totality of the Nation’s gaming activities. The importance of Class II gaming, both historically and currently, cannot be overemphasized. Without a viable Class II gaming alternative, the interests and economic well-being of the Nation and all tribal governments are compromised. Accordingly, the Nation has and continues to make significant investments in Class II gaming technology, which makes up a significant percentage of the Nation’s gaming activities today.

When the NIGC first proposed the promulgation of Class II technical standards, we were concerned foremost that any such rule, unless carefully crafted, could operate to undermine the viability and profitability of Class II gaming. We were particularly concerned that a poorly drafted or improperly applied regulation would deprive tribal governments of the full benefit of the law as set forth in the Indian Gaming Regulatory Act. Neither were we clear on the question of agency authority to promulgate such standards. Our concerns deepened when early drafts of the now existing Part 547 contained unreasonable and objectionable provisions which indeed would have had a severe adverse financial impact on Class II gaming revenue if promulgated. Finally, by virtue of the fact that the agency did not provide evidence or data indicating that the promulgation of such federal regulation was supported by objective facts and data, we were not convinced of the need for such regulations.

The technical standards were ultimately promulgated on November 10, 2008, and while many of our concerns in relation to the language were accommodated, many remained. When the NIGC revised Part 547 in 2013, most of our remaining concerns were accommodated, except in relation to the sunset provision, which the NIGC now addresses in its discussion draft.

While we appreciate the NIGC's efforts to respond to the concerns the Nation and other tribal governments have expressed in relation to the grandfather and sunset provisions, particularly its willingness to consider removal of the sunset provision, we are concerned that the proposed revisions to Part 547.5 create a process that will prove expensive, onerous, and burdensome. Moreover, we are not convinced that such process will meaningfully enhance the integrity of grandfathered Class II gaming systems.

As proposed, the Discussion Draft amendments creates extraordinarily burdensome auditing and reporting requirements for Tribal Gaming Regulatory Authorities ("TGRAs") that are more stringent than those imposed under the existing Grandfathering provisions of 547.5. The resulting cost of compliance will potentially prove to be cost prohibitive to small gaming facilities, ultimately outweighing the economic benefit of excising the "sunset" provision from the regulation. We find the additional amendments to the regulation unnecessary as the remaining provisions of Part 547.5 provide a sufficient framework for the testing and evaluation of Grandfathered gaming systems.

In our view, the proposed amendments contained within the NIGC Discussion Draft are not only unnecessary additions to 547.5, but the suggested amendments also result in confusing, inconsistent requirements within the rule. For example, the 547.5 (a) amendment expands the scope of the rule to encompass *all* Class II gaming systems manufactured prior to November 10, 2008. Inherent in the newly proposed language of 547.5 is an unsupported presumption that all gaming systems manufactured prior to November 10, 2008, did not comply with the Part 547 Technical Standards. Likewise, the discussion draft fails take into account those Class II gaming systems manufactured prior to November 10, 2008, which have since been brought into full compliance. Consequently, there is a high likelihood that a significant number of Class II gaming systems would be subject to the requirements of 547.5, thereby increasing the already significant cost of compliance with the proposed rule.

Further inconsistencies are created by the NIGC proposed draft amendments at § 547.5(a)(1)(viii), wherein the language appears to bar Class II gaming systems manufactured prior to November 10, 2008 from play unless it utilizes a player interface manufactured before November 10, 2008. Obviously, such requirement thwarts the goal of the standards relating to Grandfathered gaming systems. Furthermore, there is no evidence to suggest that a legacy Class II gaming system cannot operate properly utilizing player interfaces manufactured at a later time.

The Nation is further concerned that the Discussion Draft fails to acknowledge the respective roles of the NIGC and the TGRAs. As discussed in our earlier comments, TGRAs are the primary regulators of Class II gaming.<sup>1</sup> Under the Discussion Draft, the TGRAs are accorded no role in developing an appropriate regulatory scheme to monitor the Grandfathered games. Consistent with the mandate of IGRA, TGRAs should continue to exercise their primary

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<sup>1</sup> 25 U.S.C. § 2710(a)(2).

regulatory role in the regulation of Grandfathered gaming systems. TRGAs have a significant interest in protecting the integrity of tribal gaming operations, and have the expertise to craft appropriate regulations to ensure that Grandfathered games are adequately monitored.

An additional concern is the new requirement that all modifications be tested for compliance with Part 547. Simply put, the existing system for approval of modifications to Grandfathered systems has worked well. The current rule includes an important exception to the testing requirement for modifications. This exception allows TGRAs to approve a modification without testing as long as the modification maintains and advances the overall compliance of the system. It also provides TGRAs the necessary flexibility and control over Grandfathered systems in a manner that permits modifications to be approved much more quickly and at a lower cost. This important exception is eliminated in the Discussion Draft.

Finally, we find a mandatory annual review and reporting requirement to be unreasonably burdensome on TGRAs and inconsistent with the NIGC's oversight function. All gaming systems are inventoried, periodically tested, and subject to recordation requirements. Such requirements can be found in the Nation's internal control standards. We find it much more reasonable for the NIGC to perform a records review during its on-site compliance monitoring activities than for the agency to impose new reporting requirements.

## **Conclusion**

In closing, we appreciate the opportunity to provide comments regarding the proposed amendments to 547.5. In our previous comments, the Nation has advocated that the proper approach to framing of the Technical Standards, as well as other gaming regulation, should be a collaborative effort. The Nation commends the NIGC's efforts to engage Tribal governments and solicit comments on the draft amendments prior to the implementation of a final rule.

We urge the NIGC to fully consider the concerns presented in our comments. As currently drafted, the Discussion Draft is vulnerable to a number of potential unintended consequences. It is our hope that the agency finds our comments constructive, which is our intent. Please note that we share the NIGC's interest in safeguarding the safety and integrity of all games and gaming systems offered for play on our gaming floors. We also have an interest in fair and reasonable regulations that ensure that tribal governments receive the full benefit of the law.

We believe that the Nation's interests as well as those of the NIGC are achievable if we continue to engage in meaningful discussion in an open and candid manner. We are pleased to continue to engage with the NIGC on this and other regulatory matters and appreciate your willingness to work through the issues and concerns of importance to the Nation and all of Indian Country.