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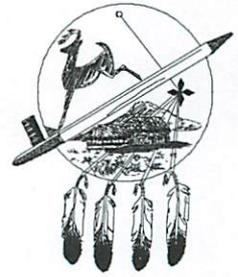
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**TRADITIONAL
TRIBE OF TEXAS**



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Re: Discussion Draft of Changes to 25 C.F.R. § 547.5 -- 2008 (Grandfathered) Gaming Systems

The Kickapoo Traditional Tribe of Texas (KTTT) submits these comments concerning the “Discussion Draft 25 C.F.R. Part 547 – 2008 (Grandfathered) Systems” (Draft) circulated by Dear Tribal Leader letter dated June 14, 2017. As you are aware, the State of Texas will not negotiate a compact with KTTT and the KTTT operates a Class II-only gaming facility. We are very interested in the removal from current regulations of the so-called sunset provision, as proposed in the Draft. At the same time, however, the Draft imposes new requirements on grandfathered game that are not necessary to protect the Class II operations or our customers and they should not be adopted in the final rule.

1. The Sunset Provision Should be Removed

The sunset provision in the current regulations codified at 25 C.F.R. § 547.5 (b)(1) is unnecessary and it should be eliminated.

The sunset provision is unnecessary, because the existing grandfathering rule, along with the Commission’s Minimum Internal Control Standards for Class II games, has proven adequate to protect the integrity of the games. The Commission acknowledged as much when it amended the minimum technical standards in 2012 to extend the sunset period to November 2018, stating that there had been no “major incidents” due to the operation of grandfathered games, and that “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.” 77 Federal Register 58473, 58475, 58476 (Sept. 21, 2012).

Further, the sunset provision would impose tens of millions of dollars in costs on tribal gaming facilities. The sunset provision would require tribal gaming facilities to remove from operation and to replace their existing Class II grandfathered games 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 games

would cost tribes tens of millions of dollars, as the Commission noted in the notice announcing the final rule. Id. at 58475 (estimates for replacing grandfathered systems ranged from \$46 million to \$65.5 million, to \$82 million for Oklahoma tribes alone). We believe that this remains true. In fact, replacing grandfathered games with fully compliant games would cost more today than at that time.

2. New Requirements Proposed for Grandfathered Games Are Excessive and Unnecessary

Although the Draft proposes to remove the sunset provision, it then imposes new and onerous provisions that would be impossible or prohibitively expensive to meet. We oppose these provisions. The NIGC should simply remove the unnecessary grandfathering provision without the other changes. Class II gaming operations will gradually remove grandfathered games as they become obsolete or for competitive reasons. There is no need to force the issue.

Below we comment briefly on some of the objectionable new provisions.

- a. The requirement that all player interfaces of grandfathered games have a date of manufacture before November 10, 2008. Sec. 547.5 (a)(1)(viii).

Although grandfathered systems had to be certified at one time as having been manufactured prior to November 10, 2008, nothing in the regulations has ever prohibited player interfaces used in grandfathered systems from being replaced with interfaces manufactured after November 10, 2008. Provisions in the regulations allow modifications to grandfathered systems, including in circumstances where the modifications would maintain or advance the system's overall compliance with the technical standards or the minimum internal control standards (MICS). 25 C.F.R. § 547.5 (b)(5)(ii)). See also 25 C.F.R. § 547.5 (b)(4)

Contrary to existing regulations, the Draft would prevent Class II operations from using new player interfaces with grandfathered systems. This could even prevent operators from using new player interfaces with grandfathered games where they have already introduced them under the existing regulations. This proposed change is unnecessary for the protection of gaming operations or the public. It would place gaming operators in a bind, were they to have to choose between using older grandfathered player interfaces with a grandfathered system, or use a new player interface but also have to switch to a fully-compliant system. Under current regulations, tribal operators may use a new player interface with a grandfathered gaming system where it would maintain or advance the system's overall compliance with the technical standards or the MICS. 25 C.F.R. § 547.5 (b)(5)(ii)).

- b. Requirements Governing Modifications of Games

The Draft requires TGRAs to submit any game modification—not just grandfathered games—to a testing lab, and also that modifications to grandfathered games be tested for compliance with all technical standards. Sec. 547.5 (c)(2)(i). This requirement would be expensive, and is unnecessary. There is no need to test all games, and no need to test grandfathered games against standards that do not apply to them

- c. Annual Review of Grandfathered Systems (Sec. 547.5(a)(2)(iii))

The proposed requirement for annual review of all grandfathered Class II gaming systems and reports to the NIGC are onerous and unnecessary. As the primary regulators of tribal gaming under IGRA, TGRAs should not have to submit these annual reports to the NIGC. In addition, TGRAs may not have the capacity to make the required technical determinations regarding game and system modifications. Finally, to require lab reports of all grandfathered systems annually, regardless of whether the systems have been modified, is unnecessary and wasteful.

Conclusion

In conclusion, the Commission should delete the sunset provision in the technical standards regulations because it is unnecessary and it will impose tens of millions of dollars in costs on tribal gaming facilities. The remaining regulations should not be changed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Elizondo, Sr.', written in a cursive style.

Estavio M. Elizondo, Sr.
Chairman