Morongo Gaming Agency

November 10, 2017

Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street Northwest
Washington, D.C. 20240

ATTN: 547.5_Comments@nigc.gov

Re: Proposed Rule, 82 CFR 187, 45228-45233 (September 28, 2017)
Amending 25 C.F.R. 547.5
2008 Class II Gaming Systems

Dear Chairman Chaudhuri:

The Morongo Gaming Agency on behalf of the Morongo Band of Mission Indians thanks NIGC for the opportunity to comment on the Proposed Rule. The effective regulation of Indian Gaming, and the success of the Indian Gaming industry is best served by the kind of government-to-government consultation that the NIGC has engaged in with the affected Tribes. To that end, the MGA offers the following substantive comments on the Proposed Rule.

First, the MGA welcomes the consolidation of "grandfathering" provisions and the elimination of the sunset provision in Subsection (a) of the Proposed Rule. As the NIGC notes in addressing comments on the Discussion Draft (82 CFR 187, 45,229), "the technical standards are intended to ensure the integrity and security of Class II gaming and the accountability of Class II gaming revenues. The MGA concurs, and observes that eliminating the Sunset Provision recognizes that over the 10-year grandfather period no compliance issues or incidents have been reported and that many, if not all, of the Class II Systems in operation today have been subject to system modifications under the provisions of the Class II technical standards, which allow for modifications designed to maintain or to advance the overall compliance and integrity of these systems. Under the rigorous oversight by tribal regulators, the previously-grandfathered Class II Systems have improved their performance and compliance over time. The Proposed Rule, therefore, achieves the intent of the technical standards of "providing a means for TGRA's and operators to ensure that the integrity and security of Class II games played with technologic aids are

maintained and that the games and aids are fully auditable." 73 Fed. Reg. 60,508, 60,509 (Oct. 10, 2008), while recognizing the important role of tribal regulators.

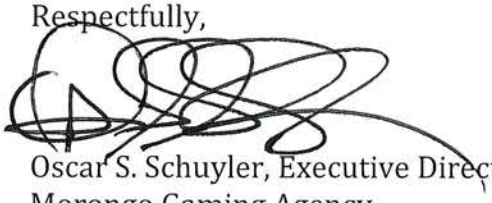
The amendment to Subsection (a) also appropriately balances the regulatory performance of these systems and the rigorous regulatory oversight of tribal regulators with the enormous potential economic impact of eliminating these systems, which total approximately 24,000 Class II Systems currently in operation, collectively comprising and estimated 41% of total units in play. The Proposed Rule achieves the NIGC's goal of seeking a "potential alternative that minimizes both the economic impact of the sunset provision and the risk to the gaming operation and the public of systems that are not compliant with the full set of technical standards." The NIGC states that it "understand...concerns over removing non-compliant Class II Gaming Systems from the gaming floor." 87 FR 187, 45229. However, the MGA observes that this response appears not to fully capture the potential adverse impact that would have resulted from removing what have indisputably been *compliant* Class II Gaming Systems from the gaming floor in the absence of any evidence of integrity or performance issues.

With respect to annual audit requirements, the MGA notes that the Proposed Rule subjects Class II Gaming Systems to compliance auditing that exceeds the industry standards for rolling compliance testing for all other gaming devices by a magnitude of 10. The MGA believes that this treatment is inconsistent with the NIGC's determination to remove the "grandfathered" label from Class II Systems and to eliminate the sunset provision, which collectively recognize that these Systems are compliant and the MGA believes that audit requirements for these systems should be subject to, among other things, a minimum rolling compliance certification of 10% of the electronic layer interfaces in operation at each facility where a Tribe has Class II Gaming Systems in operation. The Proposed Rule's annual testing and certification of pre-November 10, 2008 Class II Gaming Systems is a significant additional administrative burden imposed on TGRAs and maintains 547.5 as the only Section of the technical standards in which TGRAs are not the primary regulators of gaming. Nevertheless, the MGA appreciates the clarification that this audit requirement will not apply to Class II gaming systems that TGRAs have determined to meet all of the requirements of 547.5 and appreciates the NIGC's clarification of this issue at 547.5(a)(3), and is confident that TGRAs will meet this responsibility fully and completely, and will continue to regulate Indian Gaming at the very highest level of professionalism.

The MGA observes that the Proposed Rule continues to hedge on a clear statement that sensitive, confidential and proprietary information should be made available to but not turned over to the NIGC. The NIGC comments that "the Commission agrees that sensitive testing and compliance records should not be disclosed" (82 FR 187, 45230), and that "confidential commercial or financial information and law enforcement information exceptions to FOIA preclude the release of such information." 82 FR 187, 45231. But, these aspirational statements would be unnecessary if the Proposed Rule made clear that such records are subject to review but not submission to the NIGC. The MGA hopes that the final rule will provide such clear and certain protection, because experience demonstrates at both the state and federal level that the recipients of such information cannot always protect that information from disclosure once it is included in an agency's records.

MGA hopes that these comments are helpful to the NIGC and offers them with all due respect and, again, the MGA offers it's thanks to the NIGC for its engagement with Tribal regulators on this important issue. If you have any questions, please feel free to contact me at Oscar_Schuyler@Morongo.com and/or 1-800-252-4499 ext 23502

Respectfully,



Oscar S. Schuyler, Executive Director
Morongo Gaming Agency

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