



31 July 2017

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

Re: Comments on 25 C.F.R. Part 547.5 Discussion Draft

Chairman Chaudhuri:

The National Tribal Gaming Commissioners & Regulators (NTGCR) welcomes the opportunity to comment on the “25 C.F.R. Part 547.5 Discussion Draft” published by the National Indian Gaming Commission (NIGC) on 14 June 2017. As you are aware, the NTGCR is a non-profit organization representing over sixty (60) tribal gaming regulatory agencies across the country, dedicated to the advancement of tribal gaming regulators. As part of its purpose, the NTGCR promotes the exchange of thoughts, information and ideas which foster regulatory standards and enforcement that lead to consistent regulatory practices and methods of operations among the NTGCR members and may act as a gaming regulatory advisory group to tribal gaming organizations and others. It is under these auspices that the following comments are offered.

The NTGCR has provided the NIGC with oral remarks at consultation hearings held earlier this year on the subject of revisions to the grandfather provisions contained in Section 547.5(a). Upon reviewing the Discussion Draft, the NTGCR was pleased to see similar requirements across multiple sections being combined into more comprehensive standards, thus reducing the overall length of the regulation. The revised standards more clearly state the goals tribal gaming regulators and the NIGC seek to achieve.

These improvements are augmented by the NIGC’s decision to remove the sunset provision, which has been a source of concern for the Class II gaming industry. As noted in our oral presentation during the consultation held in March, the NTGCR is unaware of

any Class II gaming system being compromised in the past ten (10) years since the technical standards were adopted. This statement is extremely significant in that it covers the operation of tens of thousands of Class II gaming devices across all tribal jurisdictions and stands as testimony to the effective role tribal gaming regulators play in ensuring compliance with the established standards.

By eliminating the sunset provision, the NIGC will relieve all Class II gaming tribes of the considerable financial burden and negative economic impact that would have been associated with the removal of grandfathered systems. In doing so, the NIGC has helped tribes retain millions of dollars that would have otherwise been spent on resources to remove and replace machines, as well as lost revenue resulting from the conversion process. These funds can now be used for their intended purpose – to benefit of our respective tribal members.

The provision contained in Section 547.5 (a)(2)(iii), however, presents a challenge for tribal gaming regulators as it appears to require every Class II gaming system to be tested on an annual basis. This will require a dramatic increase in regulatory testing efforts and associated costs, the benefits of which cannot be determined by the existing language. The proposed language seems to contradict the past position of the NIGC wherein it recognized the industry standard of 10% annual testing to be sufficient to meet its standards.

Similarly, the annual reporting requirement creates an unnecessary administrative obligation on all tribal gaming regulators and the NIGC alike. Additionally, Tribes closely evaluate all activities associated with Class II gaming systems, including examining independent test laboratory certification letters that accompany a submission. Coupled with the record keeping requirements – for types of data and length of retention – contained in other portions of Section 547, the provisions of the NIGC Minimum Internal Control Standards, and the 10% annual testing, compliance with the technical standards can clearly be demonstrated.

Rather than increasing the administrative burden on both tribal gaming regulators and the NIGC, the NTGCR recommends the NIGC keep with its practice of accessing tribal gaming data via written request to the tribal gaming regulatory agency.

Further, the standard is confusing in that it could be interpreted to require tribes to recertify existing approved Class II gaming systems and to submit such recertification to the NIGC as a result of the revised rule. If this is, in fact, the intent, the standard should be more clearly stated and consideration given to the cost/benefit of such activity.

Finally, the NTGCR is concerned about the language contained in Section 547.5(g) – Records. The language added in this subsection is, at best, unnecessary as it is understood that the Indian Gaming Regulatory Act (IGRA) allows the NIGC to have access to Class II gaming information that tribes hold to be confidential and that it may only be used for lawful purposes – including assessing any future changes to technical standards. This information, which is available to the NIGC at any time upon request, is not generally made available to the public. It is, therefore, concerning that language is added to the statute to allow for “records or portions of records” that a tribe may deem sensitive to be publically disclosed, even after the NIGC exercises its best efforts to restrict access to such data under the Freedom of Information Act. To safeguard against the possibility of tribal specific proprietary information being disclosed, the NTGCR recommends removing the second and third sentences of this subsection.

The NTGRC appreciates the opportunity to provide comments on proposed rules that will affect tribes and the Class II gaming industry for years to come. Should you have any questions, please contact me directly at either 918.207.3848 or via e-mail at jhummingbird@cherokee.org.

Respectfully,


Jamie Hummingbird
Chairman