



May 31, 2017

By email ([Vannice Doulou@nigc.gov](mailto:Vannice.Doulou@nigc.gov))

National Indian Gaming Commission

Attn: Vannice Doulou

1849 C Street NW

Mail Stop #1621

Washington, DC 20240

Re: Comments on Elimination of the Sunset Provision in 25 C.F.R. § 547.5

Dear Ms. Doulou,

This constitutes the comments of Navajo Nation Gaming Enterprise (NNGE) on the sunset provision, codified at 25 C.F.R. § 547.5 (b)(1), that 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. The sunset provision is unnecessary, because the existing grandfathering rule, and the Commission's Minimum Internal Control Standards for Class II games, have proven adequate to protect the integrity of the games. Further, the sunset provision will impose tens of millions of dollars in costs on tribal gaming facilities.

The NNGE operates Class II gaming machines at both our Flowing Water Navajo Casino in New Mexico and our Twin Arrows Navajo Casino Resort in Arizona. We also offer Class III gaming at these facilities, and because of this our operations maintain full compliance with all Class III Minimum Internal Control Standards (MICS). We want to continue to operate our Class II games as we currently do and to continue to offer them since they are appealing to our customers and we have had success with them.

I. There has been no history of problems with grandfathered games

When the Commission amended the minimum technical standards rule in 2012 to extend the sunset period to November 2018, it acknowledged that there had been no "major incidents" due to the operation of grandfathered games. 77 Federal Register 58473, 58475 (Sept. 21, 2012). As the Commission stated: "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." *Id.* This continues to be the case to the present. We are not aware of any serious problems with any grandfathered games. The

National Indian Gaming Association (NIGA)'s Class II Gaming Subcommittee with the assistance of the research firm KlasRobinson conducted a survey across Indian Country to determine the quantitative impact of the sunset provision and the level of risk, if any, posed by grandfathered systems on the integrity and security of Class II gaming. NIGA's survey found no evidence to indicate or suggest that grandfathered Class II gaming systems are any less secure or more susceptible to a breach than their fully compliant counterparts.

II. Existing Regulations Protect the Integrity of the Games

That grandfathered gaming systems have not presented problems is hardly surprising, given that they are highly regulated. The Commission's minimum technical standards impose certain non-waivable standards even on grandfathered games. 25 C.F.R. § 547.5 (a)(4). Grandfathered games must be certified to comply with the technical standards for game initiation and play, 25 C.F.R. § 547.8 (b), software signature verification, 25 C.F.R. § 547.8 (f), and electronic number generators. 25 C.F.R. § 547.14. Modifications to the software or hardware of grandfathered games must meet certain standards, as determined by the TGRA. 25 C.F.R. § 547.5 (b) (5). In many instances, software or hardware modifications have advanced the overall compliance of grandfathered games with the minimum technical standards and TGRAs are also free to impose additional standards.

Significantly, there is substantial redundancy or overlap between the minimum technical standards and the Minimum Internal Control Standards ("MICS") applicable to class II games so that the gaming public is protected by the MICS when engaging in gaming using grandfathered gaming systems as grandfathered games must comply with all of the MICS. The following chart illustrates this overlap.

Technical Standards	MICS
requires account access components to be located within a secure and locked area. 25 C.F.R. §§ 547.7(e).	requires controls and procedures to ensure adequate control of physical access to information technology environment and infrastructure. 25 C.F.R. § 543.20(c).
requires last game recall. 25 C.F.R. § 547.8 (d).	provides for verification of draws where prizes are over \$1,200 for a minimum of 24 hours. 25 C.F.R. § 543.8 (d).
each gaming system is required to maintain data for the total value of all financial instruments accepted and paid out. 25 C.F.R. §§ 547.9(a)(1) & (2).	Requires, inter alia, a drop and count procedure that records individually the financial instrument storage components and compares them against the currency counter/system. 25 C.F.R. §§ 543.17(g) (8) & (15)(i).
requires the recording of fault events,	requires procedures to document

including malfunctions, and actions to be taken during certain faults to ensure integrity of the machines. 25 C.F.R. §§ 547.10(a)(1)(i) - (vii).	malfunctions, and verification of the integrity of the Class II gaming components before restoring it to operation. 25 C.F.R. § 543.8(h)(1).
Sets technical standards for downloads to gaming machines. 25 C.F.R. § 547.12.	requires that downloads be performed in accordance with 25 C.F.R. § 547.12. 25 C.F.R. § 543.20(k).
requires downloaded software on a Class II gaming system must be capable of being verified by the using a software signature verification method. 25 C.F.R. § 547.12(b).	requires verification by using a software verification method. 25 C.F.R. § 543.20(l).
allows remote communications between system components if authorized by TGRA and the access is secure from eavesdropping and unauthorized access. 25 C.F.R. § 547.15.	allows remote access provided that it is preformed via a secure method. 25 C.F.R. § 543.20(h).
requires display of game rules and disclaimers. 25 C.F.R. § 547.16 (a) & (b).	requires display of game rules and disclaimers. 25 C.F.R. § 543.8 (g)(6).

The MICs also contain other provisions that require or enable the TGRAs to protect the integrity of class II gaming. The MICS require controls to be established and procedures implemented to safeguard the integrity of technologic aids to the play of bingo. 25 C.F.R. § 543.8 (g). In addition, the MICS provide minimum standards for surveillance, 25 C.F.R. § 543.21, and TGRAs and tribal gaming facilities employ surveillance as an important tool in maintaining game security.

III. The Sunset Provision Will Cost Tribes Tens of Millions of Dollars

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. 77 Federal Register 58475. We understand that this estimated amount, if not more due to the passage of time, would still be the case.

Conclusion

The Commission should delete the sunset provision in 25 C.F.R. § 547.5 (b)(1) because it is unnecessary and it will impose tens of millions of dollars in costs on tribal gaming facilities. We also agree with the comments put forth by NIGA on the Class II

Gaming Systems Sunset Provision. Thank you for your consideration of this important issue. Please do not hesitate to contact me if you have questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "B. D. Parrish". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian D. Parrish
Chief Executive Officer