

**QUAPAW TRIBAL GAMING AGENCY**

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November 9, 2017

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

Re: Proposed Rule 25 C.F.R. § 547.5

Dear Chairman Chaudhuri and Members of the Commission:

On behalf of the Quapaw Tribal Gaming Agency ("QTGA"), I am pleased to offer these comments in response to the National Indian Gaming Commission's ("NIGC" or "Commission") proposed revisions to 25 C.F.R. § 547.5 regarding Class II gaming systems manufactured before November 10, 2008 ("2008 Systems"). As the tribal gaming regulatory authority ("TGRA") of the Quapaw Tribe of Oklahoma ("Tribe"), the QTGA has a vested interest in ensuring that the regulatory framework governing Class II gaming is fair, reasonable, and consistent with the Indian Gaming Regulatory Act's goal of promoting tribal economic development, self-sufficiency, and strong tribal government. The QTGA appreciates the opportunity to review and provide comment on the Proposed Rule and hopes they prove useful to the NIGC as it considers further revisions to this important regulation.

1. The QTGA Fully Supports the Removal of the Sunset Clause.

The QTGA fully supports the NIGC's decision to remove the Sunset Clause from the current regulation, which requires all 2008 Systems to fully comply with the technical standards appearing in Part 547 by November 10, 2018, or be discontinued from use and taken off the gaming floor. At the time the rule was promulgated nearly a decade ago, it was the NIGC's opinion that the economic viability of Class II gaming systems would diminish over time because Class III compacted games would increasingly overtake the Indian gaming market. This prediction has proven to be wrong. Class II gaming systems, including 2008 Systems, continue to draw broad participation in the Indian gaming market and remain as popular and profitable today as they have ever been. The 2008 Systems continue to be a vital source of revenue for the Quapaw Tribe, and help to provide much needed jobs, programs and services not only to Quapaw tribal members, but to the larger community as well.

The QTGA appreciates the NIGC's acknowledgement of these facts and we applaud the proposed decision to remove the Sunset Clause. We agree that the Sunset Clause should be replaced with a

proper and lasting alternative technical standard that provides for the continued operation of 2008 Systems, while ensuring technical compliance and effective regulatory oversight.

2. The Annual Review Requirement Should Be Removed Because It Is Overly Burdensome and Will Result in Little Regulatory Benefit.

While we support the NIGC's proposal to remove the Sunset Clause from Part 547.5, we urge the NIGC to reconsider the annual review requirement appearing in § 547.5(a)(2)(iii) of the Proposed Rule. We respectfully remind the NIGC that under both the current and proposed versions of § 547.5, TGRAs are already required to review testing lab reports associated with all 2008 Systems and their current components, render findings, issue certification determinations, and transmit this information to the NIGC. An annual review requirement would unnecessarily require TGRAs to regularly duplicate and re-document regulatory processes that are already performed on an ongoing basis.

In the Preamble to the Proposed Rule, the NIGC provides no clear justification for this other than asserting "the removal of the sunset provision warrants annual review specific to 2008 systems." Nothing in this statement explains why or how the removal of the Sunset Clause, in itself, creates any new regulatory vulnerabilities, or how such vulnerabilities would be mitigated through the above described annual review. Should the NIGC develop concerns regarding any particular 2008 System, its components, or its certification by a TGRA, the NIGC could perform an on-site review of all documents and materials associated with a TGRA's certification of that system, including all testing lab reports and a list of current components.

In our view, the annual review requirement does not constitute a regulatory process or control that will ultimately strengthen the integrity of gaming. Instead, it will impose substantial costs on a Tribe in terms of the time and labor required to conduct this duplicative review each year, as well as tax a TGRA's effectiveness by diverting often-scarce regulatory resources away from more necessary and pressing regulatory oversight demands.

If the purpose of the annual review is to enable the NIGC to assess and monitor the scope of 2008 Systems being operated in Indian Country generally, we feel the existing reporting requirements provide the Commission with sufficient data to accomplish this goal.

3. The Requirement that All 2008 System Modifications Be Tested for Compliance with All of Part 547 Should Be Removed Because It Creates no Regulatory Benefit and Undermines the QTGA's Primary Regulatory Authority.

We further urge the NIGC to remove the proposed requirement that all modifications to a 2008 System must be laboratory tested for compliance with *all* technical standards of Part 547, not just those standards provided for 2008 Systems. To require *all* component modifications for 2008 Systems to be tested to the full technical standards is inconsistent with the actual processes for testing and certifying gaming systems.

In practice, TGRAs test modifications to the standard consistent with the certification the TGRA has already rendered for that system, as provided under the current Rule and preserved in § 547.5(a)(1)(iv-v) of the Proposed Rule. The compliance standard of a component does not, individually or collectively, define the certification standard of the Class II gaming system as a whole; only the TGRA, as the primary regulatory authority, may do this by affirmative regulatory action. It is within the TGRA's discretion to determine whether a modification warrants testing as a recertified 2008 system or testing as a newly certified fully compliant system.

Our concern is that this proposed requirement assumes that a TGRA will not already have the information as to whether a modification is intended to change the compliance standard of the overall system. However, there are many instances where both the TGRA and the game manufacturer know conclusively that a specific component replacement or modification will have no impact as far as compliance with 547.5(b) is concerned. Under such circumstances, it would be unreasonable to require additional testing for compliance with § 547.5(b), particularly when it will likely create additional costs and burdens with no clear regulatory benefit.

Determining the appropriate testing standards should, therefore, remain within the discretion of the TGRA. This is, indeed, consistent with the primary role of TGRAs in ensuring the security and integrity of Class II gaming. We question the need for this proposed change given that the existing system for approving modifications has worked well without any significant problems or risks to the integrity of the game.

Conclusion

In closing, we would like to thank the NIGC for this opportunity to share our views and comments on the Proposed Rule of 25 C.F.R. § 547.5. We respectfully seek your favorable consideration of our comments and ask that you carefully consider our views and concerns as you move through the rulemaking process.

Sincerely,



Barbara Kyser-Collier
Director, Quapaw Tribal Gaming Agency



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FAX FORM

DATE: 11/13/17

TO: NIGC – COMMENTS FAX #: 202/632-7066

ATTN: COMMENTS to NIGC RE: Proposed Rule of Part 547.5
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FROM: **Barbara Kyser Collier, Executive Director**

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NUMBER OF PAGES (including cover) 4

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