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VIA E-mail reg.review@nigc.gov

National Indian Gaming Commission
Attn: Regulatory Review
1441 L Street, Suite 9100
Washington, DC 20005

Re: Comments on Proposed Rule - 25 CFR Part 547 – Minimum Technical Standards for Gaming Equipment Used in the Play of Class II Games

Dear Chairperson Stevens, Vice-Chairperson Cochran, and Commissioner Little:

On behalf of the Lytton Rancheria of California ("Tribe"), we hereby submit the following comments in response to the National Indian Gaming Commission's ("Commission") proposed revisions to 25 CFR Part 547 – Technical Standards for Gaming Equipment Used in the Play of Class II Games ("Proposed Rule"). The Tribe appreciates the opportunity to submit comments on the Proposed Rule and commends the Commission on its commitment to providing a comprehensive government-to-government consultation process. The Tribe is pleased with the positive changes made to the Proposed Rule and supports many of the Commission's amendments; however, the Tribe feels that some sections of the Proposed Rule need further modification.

Implementation of New Standards on Existing Class II Gaming Systems

The Tribe noted in its comments on the Commission's Preliminary Draft a concern regarding some of the Commission's proposed new standards. The Tribe is pleased to see that the Commission has removed the requirement that grandfathered systems conform to the new fairness standards set forth in Section 547.4(a) as such a requirement would disqualify all currently certified grandfathered systems. However, the Tribe believes that other new standards, that would jeopardize the certification of both grandfathered and fully compliant systems, remain in the Proposed Rule.

Most notably, are the changes made to Section 547.14(b)(2) regarding random number generation, which could negatively impact both grandfathered and fully compliant systems. The current rule permits the use of one of nine various statistical tests for RNGs. The Proposed Rule,

however, now mandates the use of three specific tests. In short, the Proposed Rule converts previously optional tests into mandatory tests. While many of the tests for current certifications (both for grandfathered and fully compliant systems) may have used some or all of the newly mandated statistical tests, some may not have since such tests were not previously required. If one of these three tests had not been used,[1] this provision would require (i) recertification of fully compliant systems, likely at substantial cost and inconvenience to gaming operators, and (ii) grandfathered systems to be removed from play since the current 120-day testing period limitation in Section 547.5 would prohibit any retesting. In light of these issues, the Tribe urges the Commission to restore the wording of the existing Section 547.14(b)(2) or, at the very least, include language in the Proposed Rule to clarify that these new requirements are not applicable to previously certified Class II gaming systems (both grandfathered and fully compliant).

Although it may be appropriate to require new Class II gaming systems to satisfy new standards, the Tribe believes it is inappropriate to require the same of existing equipment. Thus, the Tribe urges the Commission to revise the Proposed Rule to ensure that only equipment manufactured after the effective date of the new rule must comply with any new standards. This option seems the most fair and consistent with the general policy of the federal government.

Grandfather Provisions

In its Preamble, the Commission sought public input on a number of questions related to the grandfathering provisions in Section 547.5. In particular, the Commission requested specific facts and information on the impacts of the "sunset provision" in Section 547.5(b)(1). The Tribe does not currently operate any grandfathered systems and does not have access to any specific facts or data regarding the potential impacts of the "sunset provision." However, the Tribe does believe the current sunset provision should be deleted.[2]

The Tribe feels it is arbitrary for the Commission to say that one day a system or component is acceptable, but the next it is in some way unsuitable or deficient, unless there is evidence that such system or component presents some sort of danger or risk. Although the Tribe is hopeful that the need to retain grandfathered systems will decrease as time goes by, the Tribe does not believe that it is the Commission's place to decide that some systems, games, or components are unsuitable based on some arbitrary timeline, particularly not where the potential for negative economic impacts is present.[3] Decisions regarding the suitability, integrity, and viability of Class II games should, and will, be made by TGRAs and gaming operations. If there is truly

[1] Note that it is also unclear as to whether all three tests must be performed or whether just one of the tests is required.

[2] The Tribe supports the proposed changes to the grandfathering provisions submitted by the Tribal Gaming Working Group and hopes the Commission will give serious consideration to those proposals.

[3] The Tribe understands that grandfathered systems that are brought into full compliance before the sunset date can remain on the gaming floor. We do not believe this is the issue many are worried about. We believe the concern is about grandfathered systems that cannot, for economic or other reasons, be brought into full compliance. There are also concerns about grandfathered systems that do not meet proposed new standards and cannot be re-tested because of the limitations in Section 547.5(a)(1).

some hidden defect or danger, the Tribe is confident that TGRAs will take action to have any issue corrected or the offending systems/device removed from the gaming operation.

Miscellaneous Provisions

547.2 - Consideration should be given to changing the term "Financial Instrument Storage Component" to "Drop Box." The Tribe noted this issue in its comments on the Preliminary Draft and has read the Commission's response to those comments; however, the Tribe continues to believe that the term drop box is the more appropriate, and clearer, term. Thus, the Tribe urges the Commission to reconsider its position.

547.5(f)(2)(i) – The Commission should confirm that the references to paragraphs (f)(1)(iii) and (iv) in this paragraph are correct. The Tribe believes this reference should be changed to "pursuant to this paragraph (f)."

547.5(b)(2) – This provision states that grandfathered systems "shall be available for use at any tribal gaming facility…" The use of the term "shall" is inappropriate in this context, as it infers that gaming operations are required to make the grandfathered system available for use, which we are certain is not the intent. Thus, the Commission should consider changing the word "shall" to "may."

547.5(c)(4) – This provision requires that "[t]he testing laboratory's written report certifies that the operation of each player interface must not be compromised or affected by electrostatic discharge, liquid spills, electromagnetic interference, or any other risk identified by the TGRA." The Tribe has a number of concerns regarding this provision. We believe the intent of this provision is to protect the integrity of the play of the game and the safety of the player. While we are obviously supportive of protecting game integrity and player safety, as written, this provision requires that the operation of the player interface can never be comprised or affected by spills, interference, etc. This is impossible. For example, if a patron poured a drink in the player interface, the operation of the player interface would, of course, be compromised or affected. Thus, the language should be modified to limit this provision accordingly. Second, this paragraph would require the testing laboratory to certify with absolute certainty that a player interface could never be compromised or affected by spills, etc.; the Tribe does not believe that a testing laboratory can certify anything "absolutely."

547.7(g)(2) – The reference to "currency and coupons" should be changed to "financial instruments." The term currency is never used in the Technical Standards (or the MICS) and using the phrase "currency and coupons," excludes other items, such as vouchers, that should be included in this standard.

547.14(f)(4) – After discussions with Commission staff, we understand that this provision does not mandate that there be absolutely no bias (which is impossible), but merely requires that bias be reported to the TGRA so that the TGRA can make a decision on whether such bias is, or is not, acceptable. The Tribe appreciates this clarification and urges the Commission to consider revising the language of this provision to avoid potential misunderstandings or confusion.

Terminology

In reviewing both the Preliminary Draft and the Proposed Rule, the Tribe has noted a number of inconsistencies in terminology. While these inconsistencies may not rise to the level of some other issues, such inconsistencies create the potential for confusion and misunderstanding. In addition, the Tribe believes that such inconsistencies should be resolved for the sake of clean and clear regulations, particularly since such inconsistencies can easily be resolved by conducting a global search and replace.

1. "Game software" is a defined term. However, the body of the Proposed Rule does not use this term consistently. While the Tribe understands that in some areas, the term "software"[4] is appropriate to refer to software other than that included in the defined term, the Tribe believes that there are instances where the term "software" may not be the correct term. The Tribe urges the Commission to conduct a global review to ensure the correct terminology is used. See for example, the definitions of "Download Package," "Modifications," "Program storage media," "Test/diagnostic mode"; Sections 547.3(c), 547.4(b) and (c), 547.5(b)(3), 547.5(b)(4)(i) and (iii), 547.12, and the heading for Section 547.8.

2. "Game equipment." The Tribe believes that the potential issues mentioned above regarding "game software" also apply to game equipment. See for example, 547.3(c) and 547.8(j)(2)(ii).

3. "Class II gaming system" is a defined term. The body of the Proposed Rule often uses the term "system" or "gaming system." Again, the Tribe understands that in some areas, the term "system" may be appropriate. However, the Tribe believes there are many instances where the term "system" is used to refer to the Class II gaming system. To avoid potential confusion and misunderstandings, the Tribe urges the Commission to conduct a global review to ensure the correct terminology is used. See for example, Sections 547.5(a)(4), 547.5(b)(4)(ii), and 547.8(i).

4. Class II gaming system component. The body of the Proposed Rule uses numerous terms – "Class II gaming system component," "system component," and "component." The Tribe urges the Commission to ensure these various terms are being used correctly as there may be references to components that are not necessarily part of the Class II gaming system. See for example, 547.6(b)(2), 547.10(a)(1), and 547.15.

5. "Voucher system" is a defined term. The body of the Proposed Rule, however, also uses the terms "voucher payment system" and "voucher redemption system." The Commission should consider using only the defined term. See, for example, 547.5(c)(1), 547.11(b)(7) and (8).

6. The phrase "gaming operation employee or agent" is used in a number of places. See, for example, 547.7(f) and (h). By definition, a gaming operation employee is an agent. Thus, using this phrase is unnecessary and could lead to an inference that somehow something different is

[4] In some instances the term "Class II gaming system software" is also used. The Tribe assumes this is intended to refer to "game software," but such is not entirely clear.

required by these two sections. Thus, the Commission should consider using just the term "agent."

7. The Proposed rule refers to casinos as "tribal gaming facility," "tribal gaming operation," and "gaming operation." One term should be used for consistency purposes.

8. The Tribe notes that the Commission has corrected most of the inconsistencies with the terms "must" and "shall." It appears that the Commission has decided on the term "must," but we still note the existence of a number of "shalls."

9. All references to tribal gaming regulatory authority should be changed to TGRA. See, for example, 547.5(a) and 547.5(a)(7).

CONCLUSION

On behalf of the Lytton Rancheria of California, we appreciate the opportunity to comment on the Commission's proposed revisions to Part 547 and look forward to the implementation of a new and improved Part 547 in the near future.

Sincerely,

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