



November 13, 2017

By email (547.5_Comments@nigc.gov) & mail
National Indian Gaming Commission
1849 C Street NW
MS 1621
Washington, DC 20240

Re: Comments on Discussion Proposed Rule 25 C.F.R. § 547—Technical Standards, 82 Federal Register 45288 (Sept. 28, 2017)

This constitutes the comments of Miami Tribe of Oklahoma Business Development Authority on the proposed rule to amend 25 C.F.R. Part 547 published in 82 Federal Register 45288 (Sept. 28, 2017). We are pleased that the proposed rule will remove the sunset provision that is in the current rule 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. We write in support of this rule change. Removal of the sunset provision is justified because it is unnecessary: there has been no history of problems with the grandfathered games, and the existing grandfathering rule, along with the Commission's Minimum Internal Control Standards for Class II games, has proven adequate to protect the integrity of the games. Further, the sunset provision would impose tens of millions of dollars in costs on tribal gaming facilities. These reasons supporting the removal of the sunset provision are further set out below.

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 offered by MBDA. The gaming tribes that we provide games to would certainly have made us aware of any serious problems, as would the Tribal Gaming Regulatory Authorities (TGRAs) regulating those games. Many of our customers are in Oklahoma, and we are aware that the Oklahoma Tribal Gaming Regulators Association previously provided the Commission with comments on the discussion draft of a rule change that led to this proposed rule that state that there have been no reported compliance issues or incidents in ten years.



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 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 some areas of 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, 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).	requires procedures to document 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 (noting that one commenter asserted that replacing grandfather systems could cost Oklahoma tribes alone \$82 million, while other estimates for replacing grandfathered systems ranged from \$46 million to \$65.5 million). We understand that this is still the case. If anything, the cost of replacing grandfathered games with fully compliant games has increased.

Conclusion

In 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 have no comments on the other changes proposed.

Sincerely,

Gerald L. Danforth, Chairman
Miami Tribe of Oklahoma Business Development Authority