



BULLETIN

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Subject: 25 C.F.R. Part 547 Grandfather Provision

Since the National Indian Gaming Commission (Commission) announced its regulatory review agenda in November of 2010, it has undertaken a comprehensive review of the Commission's regulations. As part of this review, the Commission proposed amendments to 25 C.F.R. Part 547 concerning minimum technical standards for Class II gaming. Part 547 went into effect in 2008 and contains a grandfathering provision which is substantively unchanged in the proposed rule.

The lack of changes to the grandfathering provision in the proposed rule has resulted in a number of comments on the need for changes to the provision and expressing the concern that once a Class II system is certified as grandfathered, it cannot be brought into compliance with the technical standards and will be required to be removed from the gaming floor at the end of the grandfather period. This is not correct.

It is, and has always been, the intent of the current technical standards to allow a grandfathered Class II system to be brought into compliance with all applicable standards so that it may continue to be played for as long as the Tribe wishes to keep it on the floor. The preamble to the current regulation, published in the Federal Register on October 10, 2008, and the subsequent NIGC Bulletin No. 2008-3 confirmed as much, stating that "[t]ribal gaming regulatory authorities may

permit modifications to gaming system software or hardware that increases compliance with the requirements of the technical standards, even if the modifications do not make the system wholly compliant." 73 F.R. 60511.

Part 547 currently allows software and hardware modifications that advance the Class II gaming system's overall compliance with IGRA. As this implies, gaming operations are encouraged to use the grandfather period to bring their systems into compliance with the standards, whether that be all at once, or gradually through modifications. Once a system is compliant, it ceases to require the grandfather certification as it has become a compliant system.

To ensure that there is no confusion concerning the current rule as tribes and other interested parties prepare comments to the proposed rule, the Commission wants to make clear that under the current regulation, systems that were previously certified as grandfathered may be used on a gaming floor after the grandfather period has passed so long as that system is made compliant with the applicable requirements of the technical standards prior to the expiration of the grandfather period.