



# POARCH BAND OF CREEK INDIANS

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May 31, 2011

VIA EMAIL: [reg.review@NIGC.gov](mailto:reg.review@NIGC.gov)

Lael Echo-Hawk, Counselor to the Chair  
National Indian Gaming Commission  
1441 L Street, NW, Suite 9100  
Washington, DC 20005

Re: Comments to Draft Amendments to 25 CFR Part 514

Dear Commissioners:

On behalf of the Poarch Band of Creek Indians, I thank you for the opportunity to comment on the National Indian Gaming Commission's preliminary draft of amendments to 25 CFR Part 514 regarding annual fees paid by the gaming operations to the Commission and fingerprinting fees.

A. Calculation on Fiscal Year—Part 514.1(a)(1)

We are concerned about the issues created by a conversion from calendar year to fiscal year. The conversion from calendar year to fiscal year will inevitably lead to an overlap period that is not sufficiently addressed. It is unclear how the valid twelve month revenue period would be determined and the gaming operations may find themselves calculating fees for duplicate or overlapping periods. This would be a burden on some gaming operations, particularly those that are affected by seasonality. We would recommend allowing a gaming operation to elect payments based upon the actual quarterly revenues or annual audited revenues divided by 1/4. Giving gaming operations the option ensures fairness and addresses the concern about an overlap period.

B. Stub Period—Part 514.1(c)(7)

In the event of a change in fiscal year, we would recommend that the fees for the stub period be based upon the use of actual quarterly revenues.

C. Late Fee Process—Part 514.1(c)(9)-(13)

1. Revised Process

While we applaud the addition of the late fee process and agree that the issuance of a notice of violation should be a last resort, we believe that the proposed process may give the Chair too much discretion and open the Chair to criticisms regarding subjectivity. We understand that the Commission wants to take into account the circumstances surrounding the delinquency; however, we believe that the process could be revised to be uniform for all gaming operations, yet understanding of unforeseeable circumstances.

We suggest that a notice of delinquency shall be issued if the annual fee is not paid and/or the quarterly statement submitted within fifteen (15) calendar days of the due date. When the notice of delinquency is issued, the Chair shall also assess a late fee, which should be the lesser of a percentage of what is owed or a set fee. Another late fee shall be issued if payment is not made and/or the statement is not submitted within sixty (60) calendar days of the due date and ninety (90) calendar days of the due date. If the payment and/or the statement is over ninety-two (92) calendar days late, then the notice of violation shall issue. We would suggest a provision similar to Part 514.1(c)(11)(v) that allows the Chair to eliminate or adjust late fees based on the circumstances if the original annual fee is paid or the quarterly statement submitted. Late fees would be appealable under Part 577, but we would propose removing the word “[p]roposed” because late fees would be automatically applied.

1. Process in the Proposed Draft

If the Commission opts to continue under the process in the proposed draft of Part 514.1, we make the following recommendations:

a. More Specific Term Describing Notice—Part 514.1(c)(9)

Part 514.1(c)(9) refers to a “notice” to be issued in the event that the gaming operation fails to submit a fee payment or quarterly statement. We would suggest more particularly describing the “notice” so that it is not confused with a “notice of violation.” We offer the term “notice of delinquency” as a suggestion.

b. Mandatory Notice of Delinquency and Time Frame—Part 514.1(c)(9)

We believe that the Chair should always issue a notice of delinquency if the fee is not paid and/or the statement is not submitted. Therefore, we suggest changing the “may” in Part 514.1(c)(9) to “shall”. Furthermore, we believe that the notice should issue at a certain time (for example, 15 days after the failure to pay or submit the report).

c. Mandatory Assessment of Late Fee—Part 514.1(c)(11)

We would suggest that the “may” in Part 514.1(c)(11) be revised to “shall” so that the Chair must assess a late fee, subject to the Chair’s ability to adjust that fee in Part 514.1(c)(11)(v) and an appeal under Part 577. Accordingly, the term “proposed” would need to be deleted from Part 514.1(c)(11)(v) and Part 514.1(c)(13).

d. Calculation of Late Fee—Part 514.1(c)(11)

Counselor Echohawk

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The proposed draft regulation leaves the amount of the late fee blank. We have heard discussion about whether the late fee should be a percentage of what is owed or a set fee. We would propose that the late fee should either be the percentage of what is owed or a set fee, whichever is lesser.

I again thank you on behalf of the Poarch Band of Creek Indians for the opportunity to provide comment on the proposed changes to the fee regulation. We look forward to working with you as other proposed changes proceed.

Sincerely,



Stephanie A. Bryan

Vice-Chair

Poarch Band of Creek Indians

cc: Buford L. Rolin, Tribal Chairman  
Daniel K. McGhee, Tribal Gaming Commission Administrator  
Venus McGhee Prince, Tribal Attorney General