

1 **Subchapter H – Proceedings before the Commission**

2 **Part 580 – Rules of General Application in proceedings before the Commission**

3

4 **§ 580.1 What definitions apply?**

5 **§ 580.2 When may the Commission suspend, revoke, amend, or waive its rules**  
6 **governing proceedings before the Commission?**

7 **§ 580.3 Who may appear before the Commission?**

8 **§ 580.4 How do I effect service?**

9 **§ 580.5. What ex parte communications are prohibited?**

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11 **§ 580.1 What definitions apply?**

12 (a) *Day*: A calendar day.

13 (b) *De novo review*: A standard of review where the Commission reviews the matter  
14 anew, as if it had not been reviewed by the Chair.

15 (c) *Preponderance of the evidence*: The degree of relevant evidence that a  
16 reasonable person, considering the record as a whole, would accept as sufficient  
17 to find that a contested fact is more likely to be true than untrue.

18 (d) *Summary proceeding*: A proceeding in which the appeal is on paper only, with  
19 no hearing. In these proceedings, no motions are permitted except motions for  
20 limited participation under § 581.2, motions to supplement the record under  
21 § 581.5, and motions for reconsideration under § 581.6.

22 (e) *Ex parte communication*: A communication, directly or indirectly, regarding any  
23 issue in the proceeding, (other than communications necessary to procedural

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1 aspects of maintaining an orderly process), with any person employed by the  
2 agency without notice and opportunity for all parties to participate.  
3

4 **§ 580.2 When may the Commission suspend, revoke, amend, or waive its rules**  
5 **governing proceedings before the Commission?**

6 The provisions of parts 580 – 585 that further the orderly transaction of Commission  
7 business may be suspended, revoked, amended, or waived for good cause shown, in  
8 whole or in part, on motion to the Commission, or on its own motion, if the interest of  
9 justice so requires.

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11 **§ 580.3 Who may appear before the Commission?**

12 In any proceeding under parts 581 – 585, a party or limited participant may appear in  
13 person or by an attorney. An attorney must be in good standing and admitted to practice  
14 before any Court of the United States, the District of Columbia, or the highest court of  
15 any state, territory, or possession of the United States. Any person appearing in a  
16 representative capacity shall file with the Commission a written notice of appearance.

17 The notice must state his or her name, address, telephone number, facsimile number and  
18 email address, if any; and the name and address of the person or entity on whose behalf  
19 he or she appears.  
20

21 **§ 580.4 How do I effect service?**

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1 (a) An appellant shall serve its notice of appeal and appeal brief on the  
2 Commission at the address indicated in the decision or notice that is the subject of the  
3 appeal.

4 (b) Copies of the notice of appeal and appeal brief shall be filed personally or by  
5 registered or certified mail, return receipt requested. All subsequent documents shall be  
6 served personally, by facsimile, by e-mail to an address designated by a Commission  
7 employee, or by first class mail. In matters where a hearing has been requested, all  
8 filings shall be made with the Commission until a presiding official is designated and the  
9 parties are so notified, after which all filings shall be made with the presiding official.

10 (c) All documents filed after the notice of appeal and appeal brief shall be served  
11 on the Commission and copies simultaneously served on all others involved in the matter.

12 (d) Service of copies of all documents is complete at the time of personal service  
13 or, if service is made by mail, facsimile, or e-mail, upon transmittal.

14 (e) When a representative (including an attorney) has entered an appearance for a  
15 party or limited participant, or intervenor in a proceeding initiated under any provision of  
16 parts 581 through 585, service thereafter shall be made upon the representative.

17 (f) In computing any period of time prescribed for filing and serving a document,  
18 the first day of the period so computed shall not be included. The last day shall be  
19 included unless it is a Saturday, Sunday, or federal legal holiday, in which case the period  
20 shall run until the end of the next business day.

21 (g) The Commission may extend the time for filing or serving any document  
22 except a notice of appeal and appeal brief.

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1 (1) A request for an extension of time must be filed within the time  
2 originally allowed for filing.

3 (2) For good cause, the Commission may grant an extension of time on its  
4 own motion.

5 (h) Rules governing service of documents by the Chair or Commission are  
6 governed by part 519 of this chapter.

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8 **§ 580.5 What ex parte communications are prohibited?**

9 In any proceeding under parts 581 — 585:

10 (a) Parties, limited participants, their representatives, or persons outside the  
11 agency may not make or knowingly cause to be made to any Commission member or  
12 employee, any ex parte communication in connection with any issue of fact, law, or  
13 discretion relevant to the proceedings.

14 (b) No member of the Commission or Commission employee shall make or  
15 knowingly cause to be made to any tribe, management contractor, limited participant, or  
16 representative, any ex parte communication in connection with any issue of fact or law  
17 relevant to the proceedings.

18 (c) This section shall not preclude a tribe, management contractor, limited  
19 participant, or representative from conferring with the Commission or a Commission  
20 employee concerning procedural matters that do not involved issues of fact, law, or  
21 discretion related to the proceeding.

22 (d) Any Commission member or employee who receives, makes, or knowingly  
23 causes to be made a communication prohibited by this section shall ensure that it, and any

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1 responses to the communication, are promptly served on the parties and placed in the  
2 record of the proceeding. In the case of oral communications, a written summary must be  
3 served on the parties and placed in the record of the proceeding.

4 (e) Upon receipt of a communication knowingly made or knowingly caused to be  
5 made by a tribe or management contractor in violation of this section, the Commission  
6 may, to the extent consistent with the interests of justice and the policies of the Indian  
7 Gaming Regulatory Act, require the tribe or management contractor to show cause why  
8 its appeal, claim, or interest in the proceeding should not be dismissed, denied,  
9 disregarded, or otherwise adversely affected on account of the violation.

10

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2 **Subchapter H: Proceedings before the Commission**

3 **Part 581 – Motions in Appellate Proceedings before the Commission**

4

5 § 581.1 – What is the scope of this part?

6 § 581.2 How do I file a motion for limited participation in ordinance appeals?

7 § 581.3 How do I file a motion to intervene in appeals before a presiding official?

8 §581.4 How do I file a motion in an appeal on written submissions before the

9 Commission?

10 § 581.5 How do I file a motion before a Presiding Official?

11 § 581.6 How do I file a motion to supplement the record?

12 § 581.7 How do I file a motion for reconsideration?

13

14 **§ 581.1 – What is the scope of this part?**

15 (a) This part governs motion practice under:

16 (1) Part 582 of this chapter, appeals of disapprovals of gaming ordinances,  
17 resolutions, or amendments;

18 (2) Part 583 of this chapter, appeals of the approval or disapproval of  
19 management contracts or amendments to a management contract;

20 (3) Part 584 of this chapter, appeals before a presiding official of notices of  
21 violation, orders of temporary closure, proposed civil fine assessments, the  
22 Chair’s decision to void or modify a management contracts, and notices of  
23 late fees and late fee assessments; and

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1 (4) Part 585 of this chapter, appeals to the Commission on written  
2 submissions of, notices of violation, orders of temporary closure, proposed  
3 civil fine assessments, the Chair's decision to void or modify a  
4 management contracts, and notices of late fees and late fee assessments.

5 (b) This part also governs motion practice in hearings under § 535.3 to review the  
6 Chair's decision to void or modify a management contract.

7  
8 **§ 581.2 How do I file a motion for limited participation in an ordinance appeal?**

9 Motions for limited participation in ordinance appeals are governed by § 582.6.

10  
11 **§ 581.3 How do I file a motion to intervene in appeals before a presiding official?**

12 Motions to intervene in appeals before a presiding official are governed by § 584.6.

13  
14 **§ 581.4 How do I file a motion in an appeal on written submissions before the**  
15 **Commission?**

16 (a) Leave shall be sought to file any motion other than a motion to participate as a  
17 limited participant.. Leave to file motions shall be made, together with the motion,  
18 within 20 days of the filing of the appeal brief. Leave to file motions by limited  
19 participants shall be made, together with the motion, within 20 days of the Commission's  
20 decision to allow limited participation.

21 (b) Motions shall:

22 (1) Be filed with a brief in support, stating succinctly the grounds;

23 (2) Set forth the relief or order sought; and

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- 1 (3) Be served on all parties and limited participants if any.
- 2 (c) A brief in opposition, which may contain supporting documentation, may be filed  
3 within 10 days after service of the motion.
- 4 (d) The movant shall not file a brief in reply, except as permitted by the Commission.  
5 Permission may be granted only in compelling circumstances, such as where the movant  
6 demonstrates that it could not reasonably have anticipated the arguments to which it  
7 seeks leave to reply.
- 8 (e) The Commission shall issue its decision on the motion within 20 days after briefing is  
9 complete.

10  
11 **§ 581.5 How do I file a motion before a Presiding Official.**

12 Motion practice before a presiding official on appeals of notices of violation, orders of  
13 temporary closure, proposed civil fine assessments, the Chair's decision to void or  
14 modify a management contracts, and notices of late fees and late fee assessments are  
15 governed by § 584.5..

16  
17 **§ 581.6 How do I file a motion to supplement the record**

18 Upon its own motion or the motion of a party, the Commission may allow the submission  
19 of additional evidence. A party may file a motion for leave to submit additional evidence  
20 at any time prior to issuance of a final decision by the Commission. Such motion shall  
21 show with particularity that such additional evidence is material and that there were  
22 reasonable grounds for failure to submit such evidence previously. The Commission may



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1 adjust its time for issuing a final decision accordingly, unless the subject of the appeal is  
2 a temporary closure order.

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4 **§ 581.7 How do I file a motion for reconsideration?**

5 (a) Motions for reconsideration may be made only for final decisions on appeal and only  
6 in extraordinary circumstances.

7 (b) Motions for reconsideration shall be filed within 30 days of the date of the  
8 Commission's final decision and shall be served on all parties and limited participants, if  
9 any. A motion for reconsideration shall explain the extraordinary circumstances requiring  
10 reconsideration.

11 (c) A party may file only one petition for reconsideration.

12 (d) Opposition briefs shall be filed within 10 days after the motion is filed.

13 (e) There is no right to reply, except as permitted by the Commission. Permission may be  
14 granted only in compelling circumstances, such as where the movant demonstrates that it  
15 could not reasonably have anticipated the arguments to which it seeks leave to reply.

16 (f) The Commission shall issue a decision on reconsideration within 30 days of the filing  
17 of oppositions or the time to file oppositions expires, whichever is later. The  
18 Commission shall issue a brief statement of the reasons for its decision.

19 (g) If the Commission grants the motion, it may simultaneously reverse or modify the  
20 decision from which reconsideration is sought or may remand to the Chair for further  
21 consideration.

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- 1 (h) The filing of a petition will not stay the effect of any decision or order and will not
- 2 affect the finality of any decision or order for purposes of judicial review, unless so
- 3 ordered by the Commission

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1 **Subchapter H – Proceedings before the Commission**

2 **Part 582 – Appeals of disapprovals of gaming ordinances, resolutions, or**  
3 **amendments.**

4  
5 **§ 582.1 What does this part cover?**

6 **§ 582.2 Who may appeal the disapproval of a gaming ordinance?**

7 **§ 582.3 How do I appeal the disapproval of a gaming ordinance?**

8 **§ 582.4 What happens if I file late or fail to file?**

9 **§ 582.5 Are motions permitted?**

10 **§ 582.6 How do I file a motion for limited participation?**

11 **§ 582.7 What is the standard of review on appeal?**

12 **§ 582.8 When will the Commission make its decision?**

13 **§ 582.9 What will the final decision contain?**

14 **§ 582.10 What is the effective date of the Commission's decision?**

15 **§ 582.11 Is the Commission's decision a final agency action?**

16  
17 **§ 582.1 What does this part cover?**

18 This part applies to appeals from the Chair's decision to disapprove a gaming ordinance,  
19 resolution, or amendment under part 522 of this chapter.

20  
21 **§ 582.2 Who may appeal the disapproval of a gaming ordinance?**

22 Only the tribe whose gaming ordinance, resolution, or amendment is disapproved by the  
23 Chair may appeal.

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**§ 582.3 How do I appeal the disapproval of a gaming ordinance?**

Within 30 days after the Chair serves his or her disapproval, the appellant must file with the Commission a notice of appeal and brief. The brief shall state succinctly why the appellant believes the Chair’s disapproval should be reversed and may include supporting documentation.

**§ 582.4 What happens if I file late or fail to file?**

Failure to file a notice of appeal and brief within the time provided by § 582.3 shall result in a waiver of the appeal.

**§ 582.5 Are motions permitted?**

Ordinance appeals are summary proceedings. No motions are permitted except motions for limited participation, motions to supplement the record under § 581.5, and motions for reconsideration under § 581.6.

**§ 582.6 How do I file a motion for limited participation?**

(a) An entity not permitted to appeal may request to participate in an appeal of an ordinance disapproval on a limited basis by filing a written motion with the Commission or presiding official, as applicable, within 10 days after the entity knew or should have known about the appeal. The movant shall simultaneously serve the motion on all parties to the appeal.

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1 (b) The motion shall include a brief, may contain supporting documentation, and the  
2 brief shall state succinctly:

3 (1) The movant's property, financial, or other interest in the proceeding;

4 (2) How its participation will contribute materially to the disposition of the  
5 proceeding;

6 (3) Who will appear for the moving party;

7 (4) The issues on which the moving party wishes to participate; and

8 (5) Why the Chair's decision should be upheld or reversed.

9 (c) The parties to the appeal may file briefs in opposition, which may contain  
10 supporting documentation, within 10 days after service of the motion to participate.

11 (d) The Commission or presiding official may grant or deny the motion in its  
12 discretion, if the interests of justice so require, and shall rule on the motion within 20  
13 days of the last brief in opposition timely filed, or the expiration of the time to file  
14 opposition, whichever comes last. The Commission or presiding official shall provide a  
15 written statement of the basis for its decision, which it shall serve on the movant and the  
16 parties to the appeal.

17

18 **§ 582.7 What is the standard of review on appeal?**

19 The Commission shall review the Chair's decision de novo.

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21 **§ 582.8 When will the Commission make its decision?**

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1 (a) Within 90 days after it receives the appeal brief, or within 90 days of its ruling on a  
2 motion for limited participation brought under § 581.2, if applicable, the Commission  
3 shall issue its final decision.

4 (b) The Commission shall notify the tribe and any limited participant of its final decision  
5 and the reasons supporting it.

6 (c) In the absence of a decision of a majority of the Commission within the time  
7 provided, the Chair's decision shall constitute the final decision of the Commission.

8

9 **§ 582.9 What will the final decision contain?**

10 The Commission may affirm, modify, or reverse the Chair's disapproval, and will state  
11 the bases of its decision. The final decision will be in writing and will include:

12 (a) A statement of findings and conclusions, with the bases for them on all material  
13 issues of fact, law, or discretion;

14 (b) A ruling on each material issue; and

15 (c) An appropriate grant or denial of relief.

16

17 **§ 582.10 What is the effective date of the Commission's decision?**

18 The Commission's final decision is effective immediately unless the Commission  
19 provides otherwise in the decision.

20

21 **§ 582.11 Is the Commission's decision a final agency action?**

22 The Commission's final decision is final agency action for purposes of judicial review.

23

1 **Subchapter H – Proceedings before the Commission**

2 **Part 583 – Appeals from approvals or disapprovals of management contracts or**  
3 **amendments to management contracts.**

4  
5 **§ 583.1 What does this part cover?**

6 **§ 583.2 Who may appeal the approval or disapproval of a management contract or**  
7 **amendment to a management contract?**

8 **§ 583.3 How do I appeal the approval or disapproval of a management contract or**  
9 **amendment to a management contract?**

10 **§ 583.4 What happens if I file late or fail to file?**

11 **§ 583.5 Are motions permitted?**

12 **§ 583.6 What is the standard of review on appeal?**

13 **§ 583.7 When will the Commission make its decision?**

14 **§ 583.8 What will the final decision contain?**

15 **§ 583.9 What is the effective date of the Commission’s decision?**

16 **§ 583.10 Is the Commission’s decision final agency action?**

17  
18 **§ 583.1 What does this part cover?**

19 This part applies to appeals from the Chair’s decision to approve or disapprove a  
20 management contract or amendment to a management contract under parts 533 and 535  
21 of this chapter.

22

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1 **§ 583.2 Who may appeal the approval or disapproval of a management contract or**  
2 **amendment to a management contract?**

3 Only a party to the management contract or amendment approved or disapproved by the  
4 Chair may appeal.

5

6 **§ 583.3 How do I appeal the approval or disapproval of a management contract or**  
7 **amendment to a management contract?**

8 (a) Within 30 days after the Chair serves his or her determination, the appellant must  
9 file with the Commission, and serve on all parties to the management contract, a notice of  
10 appeal and brief. The brief shall state succinctly why the appellant believes the Chair's  
11 approval or disapproval should be reversed and may include supporting documentation.

12 (b) Another party to the management contract may oppose the appeal by:

13 (1) Filing a notice of opposition with the Commission within 10 days after  
14 service of the appellant's notice of appeal and brief; and

15 (2) Filing an opposition brief with the Commission within 30 days after  
16 service of the appellant's notice of appeal and brief. The opposition  
17 brief shall state succinctly why the party believes the Chair's approval  
18 or disapproval should be upheld and may include supporting  
19 documentation.

20

21 **§ 583.4 What happens if I file late or fail to file?**



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1 Failure to file a notice of appeal and brief within the time provided by § 583.3(a) shall  
2 result in a waiver of the appeal. Failure to file a notice of opposition and brief within the  
3 time provided by § 583.3(b) shall result in a waiver of the opposition.

4  
5 **§ 583.5 Are motions permitted?**

6 Yes. Management contract and amendment appeals are summary proceedings. No  
7 motions are permitted except motions to supplement the record under § 581.5, and  
8 motions for reconsideration under § 581.6.

9  
10 **§ 583.6 What is the standard of review on appeal?**

11 The Commission shall review the Chair's decision de novo.

12  
13 **§ 583.7 When will the Commission make its decision?**

14 (a) The Commission shall issue its final decision within 90 days after service of the  
15 opposition brief

16 (b) The Commission shall notify the tribe and management contractor of its final decision  
17 and the reasons supporting it.

18  
19 **§ 583.8 What will the final decision contain?**

20 The Commission may affirm, modify, or reverse the Chair's determination, and will state  
21 the bases of its decision. The final decision will be in writing and will include:

22 (a) A statement of findings and conclusions, with the bases for them on all material issues  
23 of fact, law, or discretion;

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- 1 (b) A ruling on each material issue; and  
2 (c) An appropriate grant or denial of relief.

3

4 **§ 583.9 What is the effective date of the Commission's decision?**

5 The Commission's final decision is effective immediately unless the Commission  
6 provides otherwise in the decision.

7

8 **§ 583.10 Is the Commission's decision final agency action?**

9 (a) The Commission's final decision is a final agency action for purposes of judicial  
10 review.

11 (b) In the absence of a decision of a majority of the Commission within the time  
12 provided, the Chair's decision shall constitute the final decision of the Commission.

1

2 **Subchapter H – Proceedings before the Commission**

3 **Part 584 – Appeals before a presiding official of notices of violation, proposed civil**  
4 **fine assessments, orders of temporary closure, the Chair’s decision to void or modify**  
5 **a management contracts, and notices of late fees and late fee assessments.**

6

7 **§ 584.1 What does this part cover?**

8 **§ 584.2 Who may appeal?**

9 **§ 584.3 How do I appeal a notice of violation, proposed civil fine assessment, order**  
10 **of temporary closure, late fee notification or assessment, or decision to modify or**  
11 **void a management contract?**

12 **§ 584.4 What happens if I file late or fail to file?**

13 **§ 584.5 Are motions permitted?**

14 **§ 584.6 How do I file a motion to intervene?**

15 **§ 584.7 What are the burdens of proof and standards of review?**

16 **§ 584.8 When will the hearing be held?**

17 **§ 584.9 What is the hearing process?**

18 **§ 584.10 How may I request to limit disclosure of confidential information?**

19 **§ 584.11 What is the process for pursuing settlement or a consent decree?**

20 **§ 584.12 Will the hearing be transcribed?**

21 **§ 584.13 What happens after the hearing?**

22 **§ 584.14 May I file an objection to the recommended decision?**

23 **§ 584.15 When will the Commission issue its decision?**

1 § 584.16 What will the final decision contain?

2 § 584.17 What is the effective date of the Commission's decision?

3 § 584.18 Is the Commission's decision final agency action?

4

5 § 584.1 What does this part cover?

6 This part applies to appeals of the following where the appellant elects a hearing before a  
7 presiding official:

- 8 (a) (1) A violation alleged in a notice of violation under § 573.3;  
9 (2) Proposed civil fine assessments under part 575 of this chapter;  
10 (3) Orders of temporary closure under § 573.6;  
11 (4) Late fee notifications and assessments under part 514 of this chapter; and  
12 (5) The Chair's decision to void or modify a management contract under part 535  
13 of this chapter subsequent to initial approval.

14 (b) Appeals from these actions and decisions brought before the Commission on the  
15 written record and without a hearing are brought under part 585 of this chapter.

16

17 § 584.2 Who may appeal?

18 (a) Appeals of notices of violation, proposed civil fine assessments, orders of temporary  
19 closure, and late fee notifications and assessments may only be brought by the tribal  
20 operator of Indian gaming, an operator of individually owned gaming, a management  
21 contractor, or a person or entity operating Indian gaming without an approved  
22 management contract that is the subject of the action.

1 (b) Appeals of the Chair's decision to void or modify a management contract after  
2 approval may only be brought by a party to the management contract.

3

4 **§ 584.3 How do I appeal a notice of violation, proposed civil fine assessment, order**  
5 **of temporary closure, late fee notification or assessment, or decision to modify or**  
6 **void a management contract?**

7 (a) Within 30 days after the Chair serves his or her action or decision, the appellant must  
8 file a notice of appeal with the Commission. The notice of appeal must reference the  
9 action or decision from which the appeal is taken.

10 (b) Within 10 days after filing the notice of appeal, the appellant shall file with the  
11 Commission:

12 (1) A list of the names of proposed witnesses who would present oral testimony at  
13 the hearing, the general nature of their expected testimony, and whether a closed  
14 hearing is requested and why; and

15 (2) A brief that states succinctly the relief desired and the grounds in support  
16 therefor and which may include supporting documentation and evidence in the  
17 form of affidavits.

18 (c) An appellant may waive the right to an oral hearing before a presiding official and  
19 instead elect to have the matter determined by the Commission solely on the basis of  
20 written submissions. These appeals are governed by part 585.

21 (d) The Chair may file a response brief and a list of the names of proposed witnesses  
22 who would present oral testimony at the hearing, the general nature of their expected

1 testimony, and whether a closed hearing is requested and why within 10 days of the  
2 deadline for filing the appellate brief.

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4 **§ 584.4 What happens if I file late or fail to file?**

5 Failure to file the notice of appeal or brief within the time provided by § 584.3 shall result  
6 in a waiver of the appeal.

7

8 **§ 584.5 Are motions permitted?**

9 Yes. Motions to intervene under § 584.6 are permitted. All other motions may be  
10 scheduled and heard at the discretion of the presiding official.

11

12 **§ 584.6 How do I file a motion to intervene?**

13 (a) An entity not permitted to appeal may be permitted to participate as a party if the  
14 presiding official finds that:

- 15 (1) The final decision could directly and adversely affect it or the class it  
16 represents;
- 17 (2) It may contribute materially to the disposition of the proceedings;
- 18 (3) Its interest is not adequately represented by existing parties; and
- 19 (4) Intervention would not unfairly prejudice existing parties or delay  
20 resolution of the proceeding.

21 (b) If a tribe has jurisdiction over lands on which there is a gaming operation that is the  
22 subject of a proceeding under this part, and the tribe is not already a named party, such  
23 tribe may intervene as a matter of right.

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1 (c) A motion to intervene shall be submitted to the presiding official within ten days after  
2 the entity knew or should have known about the proceeding. The petition shall be filed  
3 with the presiding official and served on each person who has been made a party at the  
4 time of filing. The petition shall state succinctly:

- 5 (1) Petitioner's interest in the proceeding;
- 6 (2) How his or her participation as a party will contribute materially to the  
7 disposition of the proceeding;
- 8 (3) Who will appear for petitioner;
- 9 (4) The issues on which petitioner wishes to participate; and
- 10 (5) Whether petitioner wishes to present witnesses.

11 (d) Objections to the petition may be filed by any party within ten days after service  
12 of the petition.

13 (e) When petitions to participate as parties are made by individuals or groups with  
14 common interests, the presiding official may request all such petitioners to designate a  
15 single representative, or he or she may recognize one or more petitioners.

16 (f) The presiding official shall give each petitioner and party, written notice of his or  
17 her decision on the petition. For each petition granted, the presiding official shall provide  
18 a brief statement of the basis of the decision. If the petition is denied, the presiding  
19 official shall briefly state the grounds for denial and may then treat the petition as a  
20 request for participation as amicus curiae (that is, "friend of the court").

21

22 **§ 584.7 What are the burdens of proof and standards of review?**

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1 (a) The Chair bears the burden of proof to support his or her action or decision by a  
2 preponderance of the evidence.

3 (b) The Commission shall review the Chair's actions or decisions de novo.  
4

5 **§ 584.8 When will the hearing be held?**

6 (a) The Commission shall designate a presiding official who shall commence a hearing  
7 within 30 days after the Commission receives a timely notice of appeal. At the request of  
8 the appellant, the presiding official may waive the 30 day requirement. The Commission  
9 shall transmit the agency record of the case to the presiding official upon designation.

10 (b) If the subject of an appeal is whether an order of temporary closure should be made  
11 permanent or be dissolved, the hearing shall be concluded within 30 days after the  
12 Commission receives a timely notice of appeal, unless the appellant waives this  
13 requirement. Notwithstanding any other provision of this part, the presiding official shall  
14 conduct such a hearing in a manner that will enable him or her to conclude the hearing,  
15 including any period the record is kept open following the hearing, within the period  
16 required by this paragraph while ensuring due process to all parties.  
17

18 **§ 584.9 What is the hearing process?**

19 (a) Once designated by the Commission, the presiding official shall set the matter for  
20 hearing. The appellant may appear at the hearing personally, through counsel, or  
21 personally with counsel. The appellant and Chair shall have the right to introduce  
22 relevant written materials and to present an oral argument. At the discretion of the



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1 presiding official, a hearing under this section may include an opportunity to submit oral  
2 and documentary evidence and cross-examine witnesses.

3 (b) When holding a hearing under this part, the presiding official shall:

4 (1) Administer oaths and affirmations;

5 (2) Issue subpoenas authorized by the Commission;

6 (3) Rule on offers of proof and receive relevant evidence;

7 (4) Authorize exchanges of information (including depositions and interrogatories  
8 in accordance with 25 C.F.R. part 571, subpart C) among the parties when to do  
9 so would expedite the proceeding;

10 (5) Regulate the course of the hearing;

11 (6) When appropriate, hold conferences for the settlement or simplification of the  
12 issues by consent of the parties;

13 (7) At any conference held pursuant to paragraph (b)(6) of this section, require the  
14 attendance of at least one representative of each party who has authority to  
15 negotiate the resolution of issues in controversy;

16 (8) Dispose of procedural requests or similar matters;

17 (9) Recommend decisions in accordance with §584.12; and

18 (10) Take other actions authorized by the Commission consistent with this part.

19 (c) The presiding official may order the record to be kept open for a reasonable period  
20 following the hearing (normally ten days), during which time the parties may make  
21 additional submissions to the record. Thereafter, the record shall be closed and the  
22 hearing shall be deemed concluded. Within 30 days after the record closes, the presiding  
23 official shall issue a recommended decision in accordance with § 584.12.

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1

2 **§ 584.10 How may I request to limit disclosure of confidential information?**

3 (a) If any person submitting a document in a proceeding involving more than two parties  
4 claims that some or all of the information contained in that document is:

5 (1) Exempt from the mandatory public disclosure requirements under the  
6 Freedom of Information Act (5 U.S.C. 552);

7 (2) Information referred to in 18 U.S.C. 1905 (disclosure of confidential  
8 information); or

9 (3) otherwise exempt by law from public disclosure, the person shall:

10 (i) Indicate that the document in its entirety is exempt from disclosure or  
11 identify and segregate information within the document that is exempt  
12 from disclosure; and

13 (ii) Request that the presiding official not disclose such information to the  
14 parties to the proceeding (other than the Chair, whose actions regarding  
15 the disclosure of confidential information are governed by §571.3) except  
16 pursuant to paragraph (b), and shall serve the request upon the parties to  
17 the proceeding. The request to the presiding official shall include:

18 (A) A copy of the document, group of documents, or segregable  
19 portions of the documents marked "Confidential Treatment  
20 Requested"; and

21 (B) A statement explaining why the information is confidential.

22 (b) A party to a proceeding may request that the presiding official direct a person  
23 submitting information under paragraph (a) to provide that information to the party. The

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1 presiding official shall so direct if the party requesting the information agrees under oath  
2 and in writing:

3 (1) Not to use or disclose the information except directly in connection with the  
4 hearing; and

5 (2) To return all copies of the information at the conclusion of the proceeding to  
6 the person submitting the information under paragraph (a) of this section.

7 (c) If a person submitting documents in a proceeding under this part does not claim  
8 confidentiality under paragraph (a), the presiding official may assume that there is no  
9 objection to disclosure of the document in its entirety.

10 (d) If the presiding official determines that confidential treatment is not warranted with  
11 respect to all or any part of the information in question, the presiding official shall so  
12 inform all parties by any expedient method. The person requesting confidential treatment  
13 then shall be given an opportunity to withdraw the document before it is considered by  
14 the presiding official, or to disclose the information voluntarily to all parties.

15 (e) If the presiding official determines that confidential treatment is warranted, the  
16 presiding official shall so inform all parties by any expedient method.

17 (f) When a decision by a presiding official is based in whole or in part on evidence not  
18 included in the record, the decision shall so state, specifying the nature of the evidence  
19 and the provision of law under which disclosure was denied, and the evidence so  
20 considered shall be retained under seal as part of the official record.

21

22 **§ 584.11 What is the process for pursuing settlement or a consent decree?**

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1 (a) General. At any time after the commencement of a proceeding, but at least five days  
2 before the date set for hearing under § 584.7, the parties jointly may move to defer the  
3 hearing for a reasonable time to permit negotiation of a settlement or an agreement  
4 containing findings and an order disposing of the whole or any part of the proceeding.

5 (b) Content. Any agreement containing consent findings and an order disposing of the  
6 whole or any part of a proceeding shall also provide:

7 (1) A waiver of any further procedural steps before the Commission;

8 (2) A waiver of any right to challenge or contest the validity of the order and  
9 decision entered into in accordance with the agreement; and

10 (3) The presiding official's certification of the findings and agreement shall  
11 constitute dismissal of the appeal and final agency action.

12 (c) Submission. Before the expiration of the time granted for negotiations, the parties or  
13 their authorized representatives may:

14 (1) Submit to the presiding official a proposed agreement containing consent  
15 findings and an order;

16 (2) Notify the presiding official that the parties have reached a full settlement or  
17 partial settlement and have agreed to dismissal of the action or part thereof,  
18 subject to compliance with the terms of the settlement; or

19 (3) Inform the presiding official that agreement cannot be reached.

20 (d) Disposition. In the event a full or partial settlement agreement containing consent  
21 findings and an order is submitted within the time granted, the presiding official shall  
22 certify such findings and agreement within 30 days after his or her receipt of the

1 submission. Such certification shall constitute full or partial dismissal of the appeal, as  
2 applicable, and final agency action.

3

4 **§ 584.12 Will the hearing be transcribed?**

5 Yes. Hearings under this part that involve oral presentations shall be recorded verbatim  
6 and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall  
7 be at the actual cost of duplication.

8

9 **§ 584.13 What happens after the hearing?**

10 (a) Within 30 days after the record closes, the presiding official shall issue his or her  
11 recommended decision.

12 (b) The recommended decision shall be in writing, based on the whole record, and  
13 include:

14 (1) recommended findings of fact and conclusions of law upon each material  
15 issue of fact or law; and

16 (2) a recommended grant or denial of relief.

17

18 **§ 584.14 May I file an objection to the recommended decision?**

19 Yes. Within 10 days after service of the presiding official's recommended decision, a  
20 party may file with the Commission objections to any aspect of the decision, and the  
21 reasons therefor.

22

23 **§ 584.15 When will the Commission issue its decision?**

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1 (a) The Commission shall issue its decision within 90 days after the date of the  
2 recommended decision, unless the recommended decision is to make permanent a  
3 temporary closure order issued under § 573.6, in which case the Commission shall issue  
4 its decision within 30 days.

5 (b) The Commission shall serve the final decision upon the parties.

6 (c) In the absence of a majority vote by the Commission within the time provided by this  
7 section, the recommended decision of the presiding official shall be deemed affirmed  
8 except that if the subject of the appeal is a temporary closure order, the order shall be  
9 dissolved.

10

11 **§ 584.16 What will the final decision contain?**

12 The Commission may affirm or reverse, in whole or in part, the Chair's decision by a  
13 majority vote. The final decision will be in writing and will include:

14 (a) A statement of findings and conclusions, with the bases for them on all material issues  
15 of fact, law, or discretion;

16 (b) A ruling on each material issue; and

17 (c) An appropriate grant or denial of relief.

18

19 **§ 584.17 What is the effective date of the Commission's decision?**

20 The Commission's final decision is effective immediately unless the Commission  
21 provides otherwise in the decision.

22

23 **§ 584.18 Is the Commission's decision final agency action?**

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- 1 Yes. The Commission's final decision is a final agency action for purposes of judicial
- 2 review.

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1 **Subchapter H: Proceedings before the Commission**

2 **Part 585 – Appeals to the Commission on written submissions of notices of violation,**  
3 **proposed civil fine assessments, orders of temporary closure, the Chair’s decision to**  
4 **void or modify a management contracts, and notices of late fees and late fee**  
5 **assessments.**

6  
7 **§ 585.1 What does this part cover?**

8 **§ 585.2 Who may appeal?**

9 **§ 585.3 How do I appeal a notice of violation, proposed civil fine assessment, order**  
10 **of temporary closure, late fee notification or assessment, or decision to modify or**  
11 **void a management contract?**

12 **§ 585.4 What happens if I file late?**

13 **§ 585.5 Are motions permitted?**

14 **§ 585.6 What are the burdens of proof and standards of review?**

15 **§ 585.7 When will the Commission issue its decision?**

16 **§ 585.8 What will the final decision contain?**

17 **§ 585.9 What is the effective date of the Commission’s decision?**

18 **§ 585.10 Is the Commission’s decision final agency action?**

19

20 **§ 585.1 What does this part cover?**

21 This part applies to appeals of the following where the appellant does not elect a hearing  
22 before a presiding official and instead elects to have the matter decided by the  
23 Commission solely on the basis of written submissions:



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- 1 (a) (1) A violation alleged in a notice of violation under § 573.3;
- 2 (2) Proposed civil fine assessments under part 575 of this chapter;
- 3 (3) Orders of temporary closure under § 573.6;
- 4 (4) Late fee notifications and assessments under part 514 of this chapter; and
- 5 (5) The Chair's decision to void or modify a management contract under part 535
- 6 of this chapter subsequent to initial approval.
- 7 (b) Appeals from these actions and decisions on a hearing before a presiding official are
- 8 brought under Part 584 of this chapter.

9

10 **§ 585.2 Who may appeal?**

- 11 (a) Appeals of notices of violation, proposed civil fine assessments, orders of temporary
- 12 closure, and late fee notifications and assessments may only be brought by the tribal
- 13 operator of Indian gaming, an operator of individually owned gaming, a management
- 14 contractor, or a person or entity operating Indian gaming without an approved
- 15 management contract that is the subject of the action.
- 16 (b) Appeals of the Chair's decision to void or modify a management contract after
- 17 approval may only be brought by a party to the management contract.

18

19 **§ 585.3 How do I appeal a notice of violation, proposed civil fine assessment, order**

20 **of temporary closure, late fee notification or assessment, or decision to modify or**

21 **void a management contract?**

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1 (a) Within 30 days after the Chair serves his or her action or decision, appellant must file  
2 a notice of appeal with the Commission. The notice of appeal must reference the action or  
3 decision from which the appeal is taken.

4 (b) Within 10 days after filing the notice of appeal, the appellant shall file with the  
5 Commission:

6 (1) A written waiver of the right to an oral hearing before a presiding official  
7 and an election to have the matter determined by the Commission solely  
8 on the basis of written submissions; and

9 (2) a brief that states succinctly the relief desired and the supporting grounds  
10 therefor and that may include supporting documentation.

11 (c) Hearings before a presiding official are governed by part 584.

12  
13 **§ 585.4 What happens if I file late?**

14 Failure to file a notice of appeal or brief within the time provided by § 585.3 shall result  
15 in a waiver of the appeal.

16  
17 **§ 585.5 Are motions permitted?**

18 (a) Appeals on written submissions are summary proceedings. No motions are permitted  
19 except motions for limited participation under § 581.4 and motions for which the  
20 Commission has granted leave to file under § 581.4.

21 (b) The Chair shall not, either individually or through counsel, file or respond to motions.

22

23

1 **§ 585.6 What are the burdens of proof and standards of review?**

2 (a) The Chair bears the burden of proof to support his or her action or decision by a  
3 preponderance of the evidence.

4 (b) The Commission shall review the Chair's actions or decisions de novo.

5

6 **§ 585.7 When will the Commission issue its decision?**

7 (a) The Commission shall issue its decision within 90 days after (1) it receives the appeal  
8 brief, or (2) its ruling on a request for limited participation, if applicable, unless the  
9 subject of the appeal is whether to make permanent a temporary closure order issued  
10 under § 573.6 chapter, in which case the Commission shall issue its decision within 30  
11 days.

12 (b) The Commission shall serve the final decision upon the appellants, and any limited  
13 participant.

14 (c) In the absence of a decision of a majority of the Commission within the time  
15 provided, the Chair's decision shall constitute the final decision of the Commission  
16 except that, if the subject of the appeal is a temporary closure order, the order shall be  
17 dissolved.

18

19 **§ 585.8 What will the final decision contain?**

20 The Commission may affirm or reverse, in whole or in part, the Chair's decision by a  
21 majority vote. The final decision will be in writing and will include:

22 (a) A statement of findings and conclusions, with the bases for all material issues of fact,  
23 law, or discretion;

- 1 (b) A ruling on each material issue; and  
2 (c) An appropriate grant or denial of relief.

3

4 **§ 585.9 What is the effective date of the Commission's decision?**

5 The Commission's final decision is effective immediately unless the Commission  
6 provides otherwise in the decision.

7

8 **§ 585.10 Is the Commission's decision final agency action?**

9 The Commission's final decision is a final agency action for purposes of judicial review.

10

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