

National Indian Gaming Commission
Proposed Revisions to 25 C.F.R. Part 514
Annual Fees (3/26/07)

§514.1 ANNUAL FEES.

(a) Each gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

(1) The Commission shall adopt ~~preliminary~~the rates for each calendar year ~~during the first quarter of that year (or as soon thereafter as possible)~~no later than February 1st of that year, and, if considered necessary, shall modify those rates no later than July 1st of that year ~~during the second and third quarters of the calendar year.~~

(2) The Commission shall adopt final rates of fees for each calendar year during the fourth quarter of that year.

(3) The Commission shall publish the rates of fees in a notice in the FEDERAL REGISTER.

(4) The rates of fees imposed shall be --

(i) No more than ~~2.5~~ 0.0 percent of the first \$1,500,000 (1st tier), and

(ii) No more than ~~5~~ .08 percent ~~(or .0008)~~ of amounts in excess of the first \$1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.

(5) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than ~~.25~~ .05 percent ~~(or .0005)~~ of assessable gross revenues from self-regulated class II gaming operations.

(6) If a tribe is determined to be self-regulated pursuant to the provisions of 25 U.S.C. 2717(a)(2)(C), no fees shall be imposed.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

(1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(2) The allowance for amortization of capital expenditures for structures shall may be the greater of:

(a) an amount not to exceed 5% of the cost of structures in use throughout the year and 2 1/2% of the cost of structures in use during only a part of the year; or

(b) an amount not to exceed 10% of the cost of the total amount of amortization depreciation expense for the year.

(3) Example for (2)(a):

Gross gaming revenues:		\$1,000,000
Money wagered		
Admission fees	5,000	
		\$1,005,000
Less:		
Prizes paid in cash	\$500,000	
Cost of other prizes awarded	\$10,000	\$510,000

Gross gaming profit		\$495,000
Less allowance for amortization of capital expenditures for structures made in:		
Prior years	\$750,000	
Current years	\$50,000	

		\$800,000

Maximum allowance:		
\$750,000 x .05=	\$37,500	
\$750,000 x .025=	\$1,250	\$38,750

Assessable gross revenues		\$456,250

(4) All class II and III revenues from gaming operations are to be included.

(c) Each gaming operation subject to the jurisdiction of the Commission and not exempt from paying fees pursuant to the self-regulation provisions shall file with

the Commission ~~quarterly~~ a statement showing its assessable gross revenues for the previous calendar year.

(1) These ~~quarterly~~ statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These ~~quarterly~~ statements shall ~~be filed no later than -- March 31, June 30, September 30, and December 31~~ be transmitted to the Commission to arrive no later than March 1st and August 1st of each calendar year ~~the gaming operation is subject to the jurisdiction of the Commission, beginning in September 1991. For calendar year 1998, the quarterly statement for the first quarter shall be filed no later than April 13, 1998. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.~~

(3) The ~~quarterly~~ statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(4) The ~~quarterly~~ statements shall be transmitted to the Commission to arrive no later than the ~~due date~~ March 1st and August 1st of each calendar year.

(5) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using --

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) or (a)(2) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during ~~previous quarters~~ the year.

(6) Each ~~quarterly~~ statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(6)(i) and (ii) of

this section.

(iv) Multiply the total obtained in paragraph (c)(6)(iii) of this section by $\frac{1}{2}$ the fraction representing the quarter for which the computation is being made: 1st quarter -- $\frac{1}{4}$; 2nd quarter -- $\frac{1}{2}$ ($\frac{2}{4}$); 3rd quarter -- $\frac{3}{4}$; and 4th quarter -- $\frac{4}{4}$. For the purpose of making these computations in 1991 only, the third calendar quarter is the first quarter and the fourth calendar quarter is the second quarter. There will be no third or fourth quarter in 1991.

(v) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in paragraph (c)(6)(iv) of this section.

(vi) The amount computed in paragraph (c)(6)(v) of this section is the amount to be remitted.

(7) Examples of fee computations follow:

(i) **Example 1:** Where a filing is made for the first quarter March 1st of the calendar year, the previous year's assessable gross revenues are \$2,000,000, the fee rates adopted by the Commission are 2.0% on the first \$1,500,000 and 4.08% on the remainder, and a credit of \$2,000 is due from the previous year, the amounts to be used and the computations to be made are as follows:

1st tier revenues -- \$1,500,000 x 2.0% =	\$30,000
2nd tier revenues - 500,000 x 4.08% =	\$20,040

Annual fees	\$50,040
Multiply for fraction of year -- 1/4 1/2 or .50	.25

Fees for first quarter payment	\$12,520
Deduct credit due	\$2,000

Amount to be remitted	\$10,520

(ii) **Example 2:** Where a filing is being made for the third quarter, the previous year's assessable gross revenues are \$5,000,000, the fee rates adopted by the Commission are 1% on the first \$1,500,000 and 1.5% on the remainder, and \$35,000 has already been remitted, the amounts to be used and the computations to be made are as follows:

1st tier revenues -- \$1,500,000 x 1% =	\$15,000
2nd tier revenues -- 3,500,000 x 1.5% =	\$52,500

	Annual fees	\$67,500
Multiply for fraction of year -- 3/4 or		.75
	Fees for first three quarters	\$50,625
Deduct amounts already remitted		35,000
	Amount to be remitted	\$15,625

~~This amount may be other than \$33,750 (\$67,500 x .50) because the assessable gross revenues may have been adjusted, the fee rate may have changed, a credit for the previous year's overpayment may have been received, or a clerical error may have been discovered.~~

~~(iii) **Example 3:** Where a filing is being made for the third quarter of 1991, the previous year's assessable gross revenues are \$5,000,000, the fee rates adopted by the Commission are 1% on the first \$1,500,000 and 1% on the remainder, and nothing has already been remitted, the amounts to be used and the computations to be made are as follows:~~

1st tier revenues -- \$1,500,000 x 1% =	\$15,000
2nd tier revenues -- 3,500,000 x 1% =	\$35,000
	Annual fees
	\$50,000
Multiply for fraction of year -- 1/4 or	.25
	Fees for first quarter
	\$12,500
Deduct amounts already remitted	-0-
	Amount to be remitted
	\$12,500

(8) ~~Quarterly~~ The statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

(9) The Commission may assess a penalty for failure to file timely a ~~quarterly~~ statement.

(10) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date (31 U.S.C. 3717).

~~(d) The total amount of all fees imposed during any fiscal year shall not exceed \$8,000,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.~~

~~(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.~~

~~(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.~~

(ed) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(fe) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended (Pub. L. 101-121; 103 Stat. 718; 25 U.S.C. 2717a) to defray the costs of operations of the Commission.

**NATIONAL INDIAN GAMING COMMISSION
PROPOSED DRAFT TO REPLACE
PART 571.12 and 571.13 AUDIT STANDARDS**

The National Indian Gaming Commission (NIGC) is proposing to revise and replace 25 C.F.R. Part 571 Subpart D Audits. These revisions will allow for: (1) reviewed financial statements for gaming tribes with gaming location(s) that have less than \$1 million in assessable gross revenues; (2) consolidated financial statements for gaming tribes that have more than one (1) gaming location; and (3) clarification of the need for financial statements of a period of less than one (1) fiscal year.

25 C.F.R. Part 571 Subpart D Audits will be replaced with:

§ 571.12 Audit Standards.

- (a) Each tribe shall prepare comparative financial statements covering all financial activities of each of the tribe's class II and class III gaming locations for each business year on Indian lands.
- (b) A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each casino location. The independent certified public accountant must be licensed by a state board of accountancy or other equivalent licensing board. The annual audit will be performed in accordance with generally accepted auditing standards and consistent with the auditing standards applicable for the gaming location. The annual audit requirement may be met when the following circumstances apply:
- (1) A tribal gaming location has assessable gross revenues of less than \$1,000,000 during the prior fiscal year, the tribe may choose to engage an independent certified public accountant to complete a review, as defined in Generally Accepted Accounting Principles, of the financial statements if:
 - i. The financial statements for the three (3) previous years were received by the NIGC within the 120 days, unless this requirement is waived in writing by the NIGC;
 - ii. Both the Tribe and the Tribal Gaming Regulatory Authority submit a statement supporting the decision for reviewed financial statements in place of audited financial statements; and
 - iii. If applicable, when a tribe has multiple gaming locations and each location has assessable gross revenues of less than \$1,000,000, during the prior fiscal year, the tribe may also choose to engage an independent certified public accountant to complete a review of the consolidated financial statements if the consolidated financial statements include consolidating schedules for each location; or
 - (2) A tribe has multiple locations, the tribe may choose to consolidate the financial statements of these locations, if:
 - i. The consolidated financial statements include consolidating schedules for each location;

- ii. The financial statements for the three (3) previous years were received by the NIGC within one hundred and twenty (120) days as required by regulation, unless this requirement is waived in writing by the NIGC;
- iii. Both the tribe and the Tribal Gaming Regulatory Authority submit a statement supporting the decision for consolidated financial statements in placed of audited financial statements for each location; and
- iv. The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and shall subject the accompanying consolidating financial information to the auditing procedures applicable to the audit of consolidated financial statements.

§ 571.13 Copies of audit reports.

- (a) A tribe shall prepare and submit to the NIGC two (2) copies of the applicable financial statements, refer § 571.12, and management letter(s), if any, setting forth the results of each fiscal year. The statements must be received by the NIGC within 120 days after the end of each fiscal year of the gaming location(s).
- (b) If a gaming location(s) changes its fiscal year, the tribe shall prepare and submit to the NIGC two (2) copies of the applicable financial statements, refer § 571.12, and management letter(s) setting forth the results of the "stub" period from the end of the previous fiscal year to the beginning of the new fiscal year. The statements must be received by the NIGC not later than one hundred and twenty (120) days after the end of the stub period.
- (c) When no gaming is conducted at a gaming location for more than forty-five (45) consecutive days and/or when a gaming location is closed and/or terminated, the tribe shall prepare and submit to the NIGC two (2) copies of the applicable financial statements, refer Section 571.12, and management letter(s) setting forth the results covering the period since the period covered by the previous financial statements. The statements must be received by the NIGC not later than one hundred and twenty (120) days after the cessation of business activity.

§ 571.14 Relationship of audited financial statements to fee assessment reports.

A tribe shall reconcile its NIGC fee assessment reports, submitted under 25 CFR Part 514, with its audited financial statements for each location and make available such reconciliation upon request by the NIGC's authorized representatives.

(Note: The NIGC will issue a Bulletin at the same time the regulations are revised which will go into more detail about the NIGC's view of current accounting standards. Because the accounting standards are modified and updated on a regular basis, the regulations have been drafted so not to require revisions when the accounting standards change. Rather, the revised regulations require tribes to engage an independent certified public

accountant licensed by a state board of accountancy (or other equivalent licensing board) by any state in the United States. The duly licensed CPA will be responsible for being current on the requirements of the accounting standards. Please note that requirements for audits to be reported under all applicable Governmental Accounting Standards Board (GASB) or Financial Accounting Standards Board (FASB) pronouncements will be discussed in a NIGC Bulletin since it is not clear that all tribal gaming must be reported under GASB. In addition, the Bulletin will list the current type of statements required (i.e. Statement of Net Assets/Balance Sheet; Statement of Revenues Expenses and Change in Net Assets; and Statement of Cash Flows.)

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**NATIONAL INDIAN GAMING COMMISSION
PROPOSED REVISIONS TO § 502.16
(March 26, 2007)**

§502.16 NET REVENUES.

Net revenues means gross ~~gaming~~-revenues of an Indian gaming operation less –

- (a) Amounts paid out as, or paid for, prizes; and
- (b) Total ~~gaming-related~~-operating expenses including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

Proposed:

Net revenues means gross revenues of an Indian gaming operation less –

- (a) Amounts paid out as, or paid for, prizes;
- (b) Total operating expenses including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

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NATIONAL INDIAN GAMING COMMISSION
PROPOSED REVISIONS TO
PARTS 531, 533, 535 and 537
3/26/07

Content of Management Contracts

§531.1 REQUIRED PROVISIONS.

~~A management contract previously approved by the Secretary of the Interior shall conform to the requirements contained in paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section and a management contracts not previously approved by the Secretary shall conform to all of the requirements contained in this section in the manner indicated.~~

(a) Governmental authority. Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) Assignment of responsibilities. Enumerate the responsibilities of each of the parties for each identifiable function, including:

- (1) Maintaining and improving the gaming facility;
- (2) Providing operating capital;
- (3) Establishing operating days and hours;
- (4) Hiring, firing, training and promoting employees;
- (5) Maintaining the gaming operation's books and records;
- (6) Preparing the operation's financial statements and reports;
- (7) Paying for the services of the independent auditor engaged pursuant to §571.12 of this chapter;
- (8) Hiring and supervising security personnel;
- (9) Providing fire protection services;

- (10) Setting advertising budget and placing advertising;
- (11) Paying bills and expenses;
- (12) Establishing and administering employment practices;
- (13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;
- (14) Complying with all applicable provisions of the Internal Revenue Code;
- (15) Paying the cost of any increased public safety services; and
- (16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) Accounting. Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

- (1) Include an adequate system of internal accounting controls;
- (2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;
- (3) Be susceptible to audit;
- (4) Allow a ~~class II~~ gaming operation, the tribe, and the Commission to calculate the annual fee under §514.1 of this chapter;
- (5) Permit the calculation and payment of the manager's fee; and
- (6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) Reporting. Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) Access. Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

- (1) The right to verify the daily gross revenues and income from the gaming

operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) Guaranteed payment to tribe. Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) Development and construction costs. Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) Term limits. Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) Compensation. Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) Termination provisions. Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) Dispute provisions. Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) Assignments and subcontracting. Indicate whether and to what extent contract

assignments and subcontracting are permissible.

(m) Ownership interests. Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) Effective date. State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

§531.2 PROHIBITED PROVISIONS.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

Approval Of Management Contracts

§533.1 REQUIREMENT FOR REVIEW AND APPROVAL.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity.

(a) Such contract shall become effective upon approval by the Chairman.

(b) Contract approval shall be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid.

~~(c) Contracts approved by the Secretary remain effective until approved or disapproved by the Chairman.~~

§533.2 TIME FOR SUBMITTING MANAGEMENT CONTRACTS.

A tribe or a management contractor shall submit a management contract to the Chairman for review ~~as follows:~~

~~(a) Contracts approved by the Secretary, within sixty (60) days after a request by the Chairman. If a tribe or a management contractor fail to submit all items under §533.3 of this part within 60 days, the Chairman may deem the contract disapproved and shall notify the parties of their rights to appeal under part 539 of this chapter.~~

~~(b) All other contracts, within 30 days of upon execution by the parties.~~

§533.3 SUBMISSION OF MANAGEMENT CONTRACT FOR APPROVAL.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(3)(i) If the contract has been approved by the Secretary, terms that meet the requirements of §§531.1(c), (d), (e), (f), (g), (h), (i), and (j) and §531.2 of this chapter; or

(ii) Terms that meet the requirements of part 531 of this chapter.

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under §537.1(b)(1) of this chapter for Class II gaming contracts and §537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e)(1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For existing contracts, income statements and sources and uses of funds statements for the previous three (3) years; or

(3) For new contracts for existing operations, a three (3) year business plan which sets forth the parties goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of §531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of §531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(h) a legal description for the site on which the gaming operation to be managed is, or will be, located.

§533.4 ACTION BY THE CHAIRMAN.

(a) The Chairman shall provide notice of noncompliance under §533.5 of this part, or shall approve or disapprove a management contract applying the standards contained in §533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under §533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not provide notice of noncompliance or approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not provided notice of noncompliance or approved or disapproved the contract under this part.

§533.5 NOTICE OF NONCOMPLIANCE AND DISAPPROVAL.

(a) If a management contract ~~previously approved by the Secretary~~ fails to meet the requirements of this part, the Chairman shall notify the tribe and management contractor, in writing, of the specific areas of noncompliance.

(1) The Chairman shall allow the tribe and the management contractor ~~60~~ 120 days from receipt of such notice to modify the contract, unless the Tribe and management contractor request an additional sixty (60) days.

~~(2) If the Secretary approved a management contract before October 17, 1988, the Chairman shall allow the tribe and the management contractor 180 days from receipt of such notification to modify the contract.~~

(b) If a tribe and a management contractor fail to modify a management contract within the time provided, the Chairman may:

(1) Disapprove the management contract, or

(2) Approve the management contract subject to the required modifications if:

(i) All modifications benefit the tribe;

(ii) The modifications are required to bring the contract into statutory compliance; and

(iii) The modifications are all agreed to by the management contractor.

§533.6 APPROVAL AND DISAPPROVAL.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and §533.3 of this part;

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that --

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming

operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

§533.7 VOID AGREEMENTS.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman in accordance with the requirements of this part, are void.

Post-Approval Procedures

§535.1 MODIFICATIONS.

(a) Subject to the Chairman's approval, a tribe may enter into a modification of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit a modification to the Chairman upon its execution.

(c) A tribe shall include in any request for approval of a modification under this part:

(1) A modification containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an

authorized tribal official to act for the tribe concerning the modification;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) A list of all persons and entities identified in §§537.1(a) and 537.1(c)(1) of this chapter

(i) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(A) The information required under §537.1(b)(1) of this chapter for class II gaming contracts or §537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(B) The dates on which the information was previously submitted;

(5) If applicable, a justification, consistent with the provisions of §531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) If applicable, a justification, consistent with the provisions of §531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d) For modifications which do not require a background investigation under part 537 of this chapter, the Chairman shall have thirty (30) days from receipt to approve or disapprove a modification, or to notify the parties that an additional thirty (30) days is required to reach a decision.

(1) When a modification requires a background investigation under part 537 of this chapter, the Chairman shall approve or disapprove such modification as soon as practicable but in no event later than 180 days after the Chairman receives it;

(2) If the Chairman does not approve or disapprove, he shall respond in accordance with the service provisions of part 519 of this chapter noting that no action has been taken on the proposed modification. The request shall therefore be deemed disapproved and the parties shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e)(1) The Chairman may approve a modification to a management contract if the modification meets the submission requirements of paragraph (c) of this section.

(2) The Chairman shall disapprove a modification of a management contract for

class II gaming if he or she determines that the conditions contained in §533.6(b) of this chapter apply.

(3) The Chairman may disapprove a modification of a management contract for class III gaming if he or she determines that the conditions contained in §533.6(c) of this chapter apply.

(f) Modifications that have not been approved by the Chairman in accordance with the requirements of this part are void.

§535.2 ASSIGNMENTS.

Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. A tribe or a management contractor shall submit such assignment to the Chairman upon execution. The Chairman shall approve or disapprove an assignment applying the standards of, and within the time provided by §§535.1(d) and 535.1(e) of this part.

§535.3 POST-APPROVAL NONCOMPLIANCE.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, and 537 of this chapter, the Chairman may require modifications of, or may void, a management contract approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification proceedings by serving the parties, specifying the grounds for modification. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make his decision on the basis of the developed record and notify the parties of his/her decision and of their right to appeal.

Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibilities for, a Management Contract

§537.1 APPLICATIONS FOR APPROVAL.

(a) For each management contract for class II gaming, the Chairman shall

conduct or cause to be conducted a background investigation of:

- (1) Each person with management responsibility for a management contract;
- (2) Each person who is a director of a corporation that is a party to a management contract;
- (3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;
- (4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and
- (5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) Required information.

(i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) Fingerprints. The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) Responses to questions. Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Privacy notice. In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and

regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) Notice regarding false statements. Each person required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) List of individuals.

(i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership; and

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; and

(iv) For any other type of entity; the ten (10) largest owners of that entity alone or in combination with any other owner who is a spouse, parent, child or sibling and any person with management responsibility for that entity.

(2) Required information.

(i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

- (ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;
- (iii) Copies of documents designating the person who is charged with acting on behalf of the entity;
- (iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;
- (v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;
- (vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;
- (viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;
- (ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;
- (x) Complete financial statements for the previous three (3) fiscal years; and
- (xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) Responses to questions. Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Notice regarding false statements. Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we

may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

§537.2 SUBMISSION OF BACKGROUND INFORMATION.

A management contractor shall submit the background information required in §537.1 of this part:

(a) In sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and

(b) Within ten (10) days of any proposed change in financial interest.

§537.3 FEES FOR BACKGROUND INVESTIGATIONS.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract) -- ~~\$10,000~~ 25,000

(2) Each individual and entity with a financial interest in the contract -- ~~\$5~~ 10,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

§537.4 DETERMINATIONS.

The Chairman shall determine whether the results of a background investigation preclude the Chairman from approving a management contract because of the individual disqualifying factors contained in §533.6(b)(1) of this chapter. The Chairman shall promptly notify the tribe and management contractor if any findings preclude the Chairman from approving a management contract or a change in financial interest.

NATIONAL INDIAN GAMING COMMISSION
PROPOSED REVISIONS TO PART 502.17

**§502.17 PERSON HAVING A DIRECT OR INDIRECT FINANCIAL INTEREST
IN A MANAGEMENT CONTRACT.**

Person having a direct or indirect financial interest in a management contract means:

- (a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;
- (b) When a trust is a party to a management contract, any beneficiary or trustee;
- (c) When a partnership is a party to a management contract, any partner;
- (d) When a corporation is a party to a management contract, any person who is a director or who holds at least ~~40~~ 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10) shareholders for a privately held corporation; or
- (e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract ~~;~~ or
- (f) Any person or entity who will receive a portion of the direct and/or indirect interest of any person or entity listed above through attribution, grant, pledge, or gift.

Revised date 3/26/07

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National Indian Gaming Commission

Proposed Changes to Parts 556 and 559

§556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be **granted a gaming license** ~~employed in a gaming operation~~. The information will be used by **Tribal Gaming Regulatory Authorities and by the** National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with ~~the hiring or firing of an employee~~, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to **license hire you for in** a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

- (1) Complete a new application form that contains a Privacy Act notice; or
- (2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

§556.3 NOTICE REGARDING FALSE STATEMENTS.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your **license** application may be grounds for **denying a license or the suspension or revocation of a license** ~~not hiring you, or for firing you after you begin work~~. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001)

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

- (1) Complete a new application form that contains a notice regarding false statements; or
- (2) Sign a statement that contains the notice regarding false statements.

§558.1 SCOPE OF THIS PART.

Unless a tribal-state compact allocates responsibility to an entity other than a tribe:

- (a) The licensing authority for class II or class III gaming is a tribal authority.
- (b) A tribe shall develop licensing procedures for all employees of a gaming operation. The procedures and standards of part 556 of this chapter and the procedures and standards of this part apply only to primary management officials and key employees.
- (c) For primary management officials or key employees, a tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for no less than three (3) years from the date of termination of employment.
- (d) A right to a hearing under §558.5 of this part shall vest only upon receipt of a license granted under an ordinance approved by the Chairman.

§558.2 ELIGIBILITY DETERMINATION FOR GRANTING A GAMING LICENSE EMPLOYMENT IN A GAMING OPERATION.

An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for **granting of a gaming license employment in a gaming operation**. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that **licensing employment** of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not **license employ** that person in a key employee or primary management official position.

§558.3 PROCEDURES FOR FORWARDING APPLICATIONS AND REPORTS FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS TO THE COMMISSION.

- (a) When a key employee or a primary management official begins work at a gaming operation, a tribe shall:

(1) Forward to the Commission a completed application for **licensing** employment that contains the notices and information listed in §§556.2, 556.3 and 556.4 of this chapter; and

(2) Conduct a background investigation under part 556 of this chapter to determine the eligibility of the key employee or primary management official for **granting of a gaming license** ~~continued employment in a gaming operation.~~

(b) Upon completion of a background investigation and a determination of eligibility for **granting of a gaming license** ~~employment in a gaming operation~~ under paragraph (a)(2) of this section, a tribe shall forward a report under §556.5(b) of this chapter to the Commission within 60 days after a **licensee** ~~employee~~ begins work or within 60 days of the Chairman's approval of an ordinance under part 523. A gaming operation shall not employ a key employee or primary management official who does not have a license after 90 days.

(c) During a 30-day period beginning when the Commission receives a report submitted under paragraph (b) of this section, the Chairman may request additional information from a tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.

§558.4 GRANTING OF A GAMING LICENSE.

(a) If, within the 30-day period described in §558.3(c) of this part, the Commission notifies a tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to §558.3 (a) and (b) of this part, the tribe may go forward and issue a license to such applicant.

(b) If, within the 30-day period described in §558.3(c) of this part, the Commission provides the tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to §558.3 (a) and (b) of this part, the tribe shall reconsider the application, taking into account the objections itemized by the Commission. The tribe shall make the final decision whether to issue a license to such applicant.

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