

§ 310.4 Application of mark.

All marks shall be applied to the article with a rubber stamp to be furnished by the Indian Arts and Crafts Board. Each stamp shall bear a distinctive letter and may be used only by the person to whom it has been issued. With the addition of the distinctive letter, each stamp shall read:

()
 HAND-MADE
 ALASKAN INDIAN
 U S
 INDIAN ARTS & CRAFTS BOARD
 I D

or, in the case of articles too small to carry this stamp:

()
 U S I D
 ALASKAN INDIAN

On baskets and fabrics which offer no surface for the application of such a rubber stamp, the stamp shall be placed on a paper tag attached to the article by a wire caught in a lead seal disc that shall be impressed and made fast with a hand seal press furnished by the Indian Arts and Crafts Board.

ALASKAN ESKIMO

§ 310.5 Certificates of genuineness, authority to affix.

Government marks of genuineness for Alaskan Eskimo hand-made products may be affixed to articles meeting the conditions specified in § 310.6 by persons duly authorized by the Indian Arts and Crafts Board to affix such marks.

§ 310.6 Conditions.

No article may carry the Government mark of genuineness for Alaskan Eskimo hand-made products unless all of the following conditions are met:

- (a) The article is hand-made by an Alaskan Eskimo.
- (b) The article is hand-made under conditions not resembling a workshop or factory system.
- (c) All raw materials used in the making of the articles are of native origin except:
 - (1) Commercial fasteners.
 - (2) Calfskin trimmings for decorative borders on parkas and mukluks.
 - (3) Tops for mukluks made of commercial fabric.
 - (4) Commercially made draw-cords for mukluks.
 - (5) Commercial fabrics for parka linings.
 - (6) Sewing thread and glass beads.

§ 310.7 Application of mark.

All marks shall be applied to the article with a rubber stamp to be furnished by the Indian Arts and Crafts Board. Each stamp shall bear a distinctive letter and may be used only by the person to whom it has been issued. With the addition of the distinctive letter, each stamp shall read:

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 HAND-MADE
 ALASKAN ESKIMO
 U S
 INDIAN ARTS & CRAFTS BOARD
 I D

or, in the case of articles too small to carry this stamp:

()
 U S I D
 ALASKAN ESKIMO

On baskets and fabrics which offer no surface for the application of such a rubber stamp, the stamp shall be placed on a paper tag attached to the article by a wire caught in a lead seal disc that shall be impressed and made fast with a hand seal press furnished by the Indian Arts and Crafts Board.

CHAPTER III—NATIONAL INDIAN GAMING COMMISSION, DEPARTMENT OF THE INTERIOR

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SUBCHAPTER A—GENERAL PROVISIONS

PART 501—PURPOSE AND SCOPE OF THIS CHAPTER

Sec.

501.1 Purpose.

501.2 Scope.

AUTHORITY: 25 U.S.C. 2706, 2710.

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§501.1 Purpose.

This chapter implements the Indian Gaming Regulatory Act (Pub. L. 100-497, 102 Stat. 2467).

§501.2 Scope.

(a) Tribes and other operators of class II and class III gaming operations on Indian lands shall conduct gaming operations according to the requirements of the Indian Gaming Regulatory Act, the regulations of this chapter, tribal law and, where applicable, the requirements of a compact or procedures prescribed by the Secretary under 25 U.S.C. 2710(d).

(b) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of the Indian Gaming Regulatory Act or this chapter.

(c) Class II gaming on Indian lands shall continue to be within the jurisdiction of an Indian tribe, but shall be subject to the provisions of the Indian Gaming Regulatory Act and this chapter.

(d) Nothing in the Indian Gaming Regulatory Act or this chapter shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with a State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by a Tribal-State compact that is entered into by an Indian tribe under the Indian Gaming Regulatory Act and that is in effect.

PART 502—DEFINITIONS OF THIS CHAPTER

Sec.

502.1 Chairman.

502.2 Class I gaming.

502.3 Class II gaming.

502.4 Class III gaming.

502.5 Collateral agreement.

502.6 Commission.

502.7 Electronic, computer or other technologic aid.

502.8 Electronic or electromechanical facsimile.

502.9 Game similar to bingo.

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502.13 Indian tribe.

502.14 Key employee.

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502.17 Person having a direct or indirect financial interest in a management contract.

502.18 Person having management responsibility for a management contract.

502.19 Primary management official.

502.20 Secretary.

502.21 Tribal-state compact.

AUTHORITY: 25 U.S.C. 2701 *et seq.*

SOURCE: 57 FR 12392, Apr. 9, 1992, unless otherwise noted.

§502.1 Chairman.

Chairman means the Chairman of the National Indian Gaming Commission or his or her designee.

§502.2 Class I gaming.

Class I gaming means:

(a) Social games played solely for prizes of minimal value; or

(b) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

§502.3 Class II gaming.

Class II gaming means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when played by:

(1) Play for prizes with cards bearing numbers or other designations;

(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and

(3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;

(c) Nonbanking card games that:

(1) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

(2) Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;

(d) Card games played in the states of Michigan, North Dakota, South Dakota, or Washington if:

(1) An Indian tribe actually operates the same card games as played on or before May 1, 1988, as determined by the Chairman; and

(2) The pot and wager limits remain the same as on or before May 1, 1988, as determined by the Chairman;

(e) Individually owned class II gaming operations—

(1) That were operating on September 1, 1986;

(2) That meet the requirements of 25 U.S.C. 2710(b)(4)(B);

(3) Where the nature and scope of the game remains as it was on October 17, 1988; and

(4) Where the ownership interest or interests are the same as on October 17, 1988.

§ 502.4 Class III gaming.

Class III gaming means all forms of gaming that are not class I gaming or class II gaming, including but not limited to:

(a) Any house banking game, including but not limited to—

(1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);

(2) Casino games such as roulette, craps, and keno;

(b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;

(c) Any sports betting and pari-mutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or

(d) Lotteries.

§ 502.5 Collateral agreement.

Collateral agreement means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

§ 502.6 Commission.

Commission means the National Indian Gaming Commission.

§ 502.7 Electronic, computer or other technologic aid.

Electronic, computer or other technologic aid means a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used—

(a) Is not a game of chance but merely assists a player or the playing of a game;

(b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and

(c) Is operated according to applicable Federal communications law.

§ 502.8 Electronic or electromechanical facsimile.

Electronic or electromechanical facsimile means any gambling device as defined in 15 U.S.C. 1171(a) (2) or (3).

§ 502.9 Game similar to bingo.

Game similar to bingo means any game that meets the requirements for bingo under § 502.3(a) of this part and that is not a house banking game under § 502.11 of this part.

§ 502.10 Gaming operation.

Gaming operation means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity.

§ 502.11 House banking game.

House banking game means any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.

§ 502.12 Indian lands.

Indian lands means:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either—
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

§ 502.13 Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as—

- (a) Eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and
- (b) Having powers of self-government.

§ 502.14 Key employee.

Key employee means:

- (a) A person who performs one or more of the following functions:
 - (1) Bingo caller;
 - (2) Counting room supervisor;
 - (3) Chief of security;
 - (4) Custodian of gaming supplies or cash;
 - (5) Floor manager;
 - (6) Pit boss;
 - (7) Dealer;
 - (8) Croupier;
 - (9) Approver of credit; or
 - (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- (b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or,
- (c) If not otherwise included, the four most highly compensated persons in the gaming operation.

§ 502.15 Management contract.

Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

§ 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, excluding management fees.

§ 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 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; 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.

§ 502.18 Person having management responsibility for a management contract.

Person having management responsibility for a management contract means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof.

§ 502.19 Primary management official.

Primary management official means:

- (a) The person having management responsibility for a management contract;
- (b) Any person who has authority:
 - (1) To hire and fire employees; or
 - (2) To set up working policy for the gaming operation; or
- (c) The chief financial officer or other person who has financial management responsibility.

§ 502.20 Secretary.

Secretary means the Secretary of the Interior.

§ 502.21 Tribal-State compact.

Tribal-State compact means an agreement between a tribe and a state about class III gaming under 25 U.S.C. 2710(d).

PART 503—COMMISSION INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS AND EXPIRATION DATES

- Sec.
- 503.1 Purpose of this part.
- 503.2 Display of control numbers and expiration dates.

AUTHORITY: 44 U.S.C. 3501 *et seq.*

SOURCE: 58 FR 16495, Mar. 29, 1993, unless otherwise noted.

§ 503.1 Purpose of this part.

This part displays the control numbers and expiration dates assigned to information collection requirements of the National Indian Gaming Commission (NIGC, or the Commission) assigned by the Director of the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

§ 503.2 Display of control numbers and expiration dates.

Part or section number of title 25 CFR	Currently assigned OMB control numbers	Expiration date
§ 514.1 (submission of fee reports)	3141–0007	6/30/94
§ 515.3 (request for access to records)	3141–0002	10/31/95
§ 515.5 (request for amendment to records)	3141–0002	10/31/95
§ 515.7 (appeals)	3141–0002	10/31/95
Part 519 (designation of agent for service)	3141–0003	10/31/95
§ 522.2 (submission and approval of new ordinances)	3141–0003	10/31/95
§ 522.3 (amendment)	3141–0003	10/31/95
§ 522.12 (revocation of class III gaming)	3141–0003	10/31/95
§ 523.2 (submission and approval of existing ordinances)	3141–0003	10/31/95
§ 523.4 (amendment)	3141–0003	10/31/95
Part 524 (appeals)	3141–0003	10/31/95
§ 533.3 (approval of management contracts)	3141–0004	10/31/95
§ 533.5 (modifications)	3141–0004	10/31/95
§ 535.1 (post-approval procedures)	3141–0004	10/31/95
Part 537 (background investigations)	3141–0004	10/31/95
Part 539 (appeals)	3141–0004	10/31/95
§ 556.4 (background investigations for class II gaming)	3141–0003	10/31/95
§ 556.5 (background investigations)	3141–0003	10/31/95
Part 558 (gaming licenses)	3141–0003	10/31/95
§ 571.7 (maintenance of records)	3141–0001	7/31/95
§ 571.12 (audits)	3141–0001	7/31/95
§ 571.13 (audits)	3141–0001	7/31/95
§ 571.14 (audit reconciliation)	3141–0001	7/31/95
§ 575.5 (information to Chairman)	3141–0001	7/31/95
§ 575.6 (penalty reduction)	3141–0001	7/31/95
§ 577.3 (notice of appeal)	3141–0001	7/31/95
§ 577.8 (confidentiality)	3141–0001	7/31/95
§ 577.12 (intervention)	3141–0001	7/31/95

Part or section number of title 25 CFR	Currently assigned OMB control numbers	Expiration date
§ 577.14 (objections)	3141-0001	7/31/95

PARTS 504-513 [RESERVED]

PART 514—FEES

AUTHORITY: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

§ 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 rates for each calendar year during the first quarter of that year (or as soon thereafter as possible), and, if considered necessary, shall modify those rates 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 percent of the first \$1,500,000 (1st tier), and

(ii) No more than 5 percent 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 percent 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 not exceed 5% of the cost of structures in use throughout the year and 2½% of the cost of structures in use during only a part of the year.

(3) *Example:*

Gross gaming revenues:		
Money wagered		\$1,000,000
Admission fees	5,000	
		1,005,000
Less:		
Prizes paid in cash	\$500,000	
Cost of other prizes awarded	10,000	510,000
		495,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
		800,000
Maximum allowance:		
\$750,000×.05 =	37,500	
50,000×.025 =	1,250	38,750
		456,250
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, 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.

(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.

(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 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—1 ($\frac{4}{4}$). 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 of the calendar year, the previous year's assessable gross revenues are \$2,000,000, the fee rates adopted by the Commission are 2% on the first \$1,500,000 and 4% 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—\$1,500,000×2%=	\$30,000
2nd tier revenues— 500,000×4%=	20,000
Annual fees	50,000
Multiply for fraction of year— $\frac{1}{4}$ or25
Fees for first quarter	12,500
Deduct credit due	2,000
Amount to be remitted	\$10,500

(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—\$1,500,000×1%=	\$15,000
2nd tier revenues—3,500,000×1.5%= ...	52,500
Annual fees	67,500
Multiply for fraction of year— $\frac{3}{4}$ or75

National Indian Gaming Commission, Interior

§ 515.1

Fees for first three quarters	50,625
Deduct amounts already remitted ...	¹ 35,000
<hr/>	
Amount to be remitted	\$15,625

¹This amount may be other than \$33,750 (\$87,500 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
<hr/>	
Annual fees	50,000
Multiply for fraction of year—1/4 or	.25
<hr/>	
Fees for first quarter	12,500
Deduct amounts already remitted ...	-0-
<hr/>	
Amount to be remitted	\$12,500

(8) Quarterly 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.

(e) 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.

(f) 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.

[56 FR 40709, Aug. 15, 1991; 56 FR 57373, Nov. 8, 1991, as amended at 63 FR 12316, Mar. 12, 1998]

PART 515—PRIVACY ACT PROCEDURES

Sec.

- 515.1 Purpose and scope.
- 515.2 Definitions.
- 515.3 Identification of individuals making requests.
- 515.4 Procedures for requests and disclosures.
- 515.5 Request for amendment to record.
- 515.6 Review of request for amendment of record by the Records Manager.
- 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.
- 515.8 Disclosure of record to a person other than the individual to whom it pertains.
- 515.9 Fees.
- 515.10 Penalties.
- 515.11 General exemptions. [Reserved]
- 515.12 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 58 FR 5815, Jan. 22, 1993, unless otherwise noted.

§ 515.1 Purpose and scope.

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to

and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

§ 515.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

§ 515.3 Identification of individuals making requests.

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of § 515.4 of this part. The request may be made in person or in writing at the

NIGC, suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

§ 515.4 Procedures for requests and disclosures.

(a) Requests for a determination under § 515.3(a) of this part shall be acknowledged by the Commission within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by § 515.3(b)(1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in § 515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 515.3 of this part.

§ 515.5 Request for amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can fur-

nish to substantiate the reasons for the amendment sought.

§ 515.6 Review of request for amendment of record by the Records Manager.

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under § 515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

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(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in § 515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a

court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with § 515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 515.9 Fees.

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

§ 515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 515.11 General exemptions. [Reserved]

§ 515.12 Specific exemptions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing

of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the in-

terest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

PART 516 [RESERVED]

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

- 517.1 Purpose and scope.
- 517.2 Definitions.
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- 517.4 Disclosure of requested records.
- 517.5 Confidential commercial information.
- 517.6 Response to requests for records.
- 517.7 Appeals.
- 517.8 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 58 FR 44448, Aug. 23, 1993, unless otherwise noted.

§ 517.1 Purpose and scope.

This part contains the regulations of the National Indian Gaming Commission implementing the Freedom of Information Act (FOIA). These regulations provide procedures by which members of the public may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records.

§ 517.2 Definitions.

(a) *Commercial-use requester* means requesters seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to doubt the use to which a requester will put the records sought, or

where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* means those expenditures by the Commission actually incurred in searching for and duplicating records to respond to a FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of and heating or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a document necessary to fulfill a FOIA request. Such copies can take the form of, among other things, paper copy, microform, audio-visual materials, or machine-readable documentation. The copies provided shall be in a form that is reasonably usable by requesters.

(e) *Educational institution* refers to a preschool, a public or private elementary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a “commercial” basis as that term is used in § 517.2(a), commercial-use requester, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* refers to any person actively gathering news for an entity that is organized

and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public.

(i) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(j) *Review* refers to the process of examining a record, in response to a FOIA request, to determine whether any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing of any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. *Review* does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(k) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document. The Commission shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(l) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(m) *Working day* means a federal workday that does not include Saturdays, Sundays or federal holidays.

§ 517.3 Requests for records.

(a) *Form of requests.* Requests for records made pursuant to the FOIA may be in writing, specifically invoke the Act, and be addressed to the FOIA Officer, Suite 250, 1850 M St., NW., Washington, DC 20036-5803. Requests may also be made in person at the same address, where records will be available for inspection on the premises. Requests for records shall describe the records requested with enough specificity to enable Commission employees to locate the information requested with a reasonable amount of

effort. Requests shall also include a statement of the maximum amount of fees the requester is willing to pay to obtain the requested information, or if a waiver or reduction of fees seems appropriate, the reasons for such waiver or reduction.

(b) *Types of records not available.* The FOIA does not require the Commission to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or disposed of.

§ 517.4 Disclosure of requested records.

(a) The FOIA Officer shall make requested records available to the public to the greatest extent possible in keeping with the FOIA, except that the following records are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Commission;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. § 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to particular types of matters to be withheld;

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other

than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a recorded or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(b) If a requested record contains exempted material along with non-exempted material, all reasonable segregable nonexempt material shall be disclosed.

(c) The FOIA Officer may disclose requested information falling within the exemptions of paragraphs (a)(1)-(a)(3), (a)(5), (a)(6), (a)(8) and (a)(9) of this section, if to do so would further the purposes and policies of the FOIA and the IGRA. The FOIA Officer shall not disclose requested information falling within the exemptions of paragraphs (a)(4) and (a)(7) of this section.

§ 517.5 Confidential commercial information.

(a) *Notice to submitters.* The Commission shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the Commission, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The Commission shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The Commission shall afford a submitter a reasonable period of time to provide the Commission with a de-

tailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitters claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specified disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* When a requester brings suit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a

reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

§ 517.6 Response to requests for records.

(a) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and shall so notify the requester within ten (10) working days after receipt of the request. This 10-day period may be extended ten (10) additional working days if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (a)(1) of this section, he or she shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made.

(3) If no initial determination has been made at the end of the 10-day period provided in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(4) If the FOIA Officer determines that another agency is responsible for responding to a request or part thereof, the FOIA Officer shall refer such request to the appropriate agency. The FOIA Officer shall inform the requester of the referral and of the name and address of the agency or agencies to which the request has been referred.

(b) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, he or she shall:

(1) Provide copies of the requested records; or

(2) Notify the requester of his or her decision, including a brief statement of when and how the records will be provided. Requested records shall then be promptly made available.

(c) *Denial of requests.* When the FOIA Officer determines that access to requested records should be denied, he or she shall notify the requester of the denial, the grounds for withholding the records, and the procedures for appeal of the denial.

§ 517.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.*

(1) *Time for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access or after the time limit for response by the FOIA Officer has expired.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial to have been in error. The

appeal shall be addressed to the Freedom of Information Act Appeals Officer, National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination and the right of the requester to obtain judicial review in the appropriate federal district court.

§ 517.8 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Copies.* The Commission shall charge \$0.10 per page for copies of documents up to 8½" x 14". For copies prepared by computer, the Commission will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the Commission shall charge the actual costs of producing the documents.

(2) *Searches.* (i) *Manual searches.* Whenever feasible, the Commission will charge at the salary rate (basic pay plus a percent for benefits) of the employee or employees performing the

search. However, where a homogenous class of personnel is used exclusively in a search (e.g. all administrative/clerical or all professional/executive), the Commission shall charge \$12.50 per hour for clerical time and \$30.00 per hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The Commission will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. The Commission is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the Commission analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraphs (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) *The subject of the request.* Whether the subject of the requested records

concerns the operations or activities of the government;

(2) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to public understanding;

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) *The existence and magnitude of commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. These terms are defined in § 517.2. Specific levels of fees are prescribed below for each of these categories.

(1) *Commercial-use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the above categories fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds \$15.00, *except that* the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer will determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Charges for unsuccessful searches.* Ordinarily, no charge will be assessed when requested records are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting on the 31st day following the day on which the bill was sent to the requester. A fee received by the FOIA Officer, even if not processed, will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982 and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* A requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the Commission reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the Commission may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be

required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed \$250. When payment is required in advance of the processing of a request, the time limits prescribed in §517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed \$25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than \$25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requesting party an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

PART 518—SELF REGULATION OF CLASS II GAMING

Sec.

- 518.1 What does this part cover?
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- 518.4 What criteria must a tribe meet to receive a certificate of self-regulation?
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- 518.8 Does a tribe that holds a certificate of self-regulation have a continuous duty to advise the Commission of any information?
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- 518.10 Under what circumstances may the Commission remove a certificate of self-regulation?
- 518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?

518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

AUTHORITY: 25 U.S.C. 2706(b)(10), 2710(c)(3)-(6).

SOURCE: 63 FR 41969, Aug. 6, 1998, unless otherwise noted.

§518.1 What does this part cover?

This part sets forth requirements for obtaining, and procedures governing, the Commission's issuance of certificates of self-regulation of class II gaming operations under 25 U.S.C. 2710(c). When the Commission issues a certificate of self-regulation, the certificate is issued to the tribe, not to a particular gaming operation; the certificate will apply to all class II gaming operations operated by the tribe that holds the certificate.

§518.2 Who may petition for a certificate of self-regulation?

A tribe may submit to the Commission a petition for self-regulation of class II gaming if, for the three (3) year period immediately preceding the date of its petition:

- (a) The tribe has continuously conducted the gaming activity for which it seeks self-regulation;
- (b) All gaming that the tribe has engaged in, or licensed and regulated, on Indian lands within the tribe's jurisdiction, is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by federal law), in accordance with 25 U.S.C. 2710(b)(1)(A);
- (c) The governing body of the tribe has adopted an ordinance or resolution that the Chairman has approved, in accordance with 25 U.S.C. 2710(b)(1)(B);
- (d) The tribe has otherwise complied with the provisions of 25 U.S.C. 2710; and
- (e) The gaming operation and the tribal regulatory body have, for the three years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

§ 518.3 What must a tribe submit to the Commission as part of its petition?

(a) A petition for a certificate of self-regulation under this part shall contain:

(1) Two copies on 8-1/2" X 11" paper of a petition for self-regulation approved by the governing body of the tribe and certified as authentic by an authorized tribal official, which includes:

(i) A brief history of each gaming operation(s), including the opening dates and periods of voluntary or involuntary closure;

(ii) An organizational chart of the independent tribal regulatory body;

(iii) A description of the process by which all employee and regulator positions at the independent tribal regulatory body are filled, including qualifying and disqualifying criteria;

(iv) A description of the process by which the independent tribal regulatory body is funded and the funding level for the three years immediately preceding the date of the petition;

(v) A list of the current regulators and employees of the independent tribal regulatory body, their titles, the dates they began employment, and, if serving limited terms, the expiration date of such terms;

(vi) A list of the current gaming operation division heads; and

(vii) A report, with supporting documentation, including a sworn statement signed by an authorized tribal official, which explains how tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B);

(2) A descriptive list of the documents maintained by the tribe, together with an assurance that the listed documents or records are available for the Commission's review for use in determining whether the tribe meets the eligibility criteria of § 518.2 and the approval criteria of § 518.4, which shall include but is not limited to:

(i) The tribe's constitution or other governing documents;

(ii) If applicable, the tribe's revenue allocation plan pursuant to 25 U.S.C. 2710(b)(3);

(iii) A description of the accounting system(s) at both the gaming operation and the tribe that account for the flow

of the gaming revenues from receipt to their ultimate use, consistent with IGRA;

(iv) Manual(s) of the internal control systems of the gaming operation(s);

(v) A description of the record keeping system for all allegations of criminal or dishonest activity for the three (3)-year period immediately preceding the date of the petition, and measures taken to resolve the allegations;

(vi) A description of the record keeping system for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three (3)-year period immediately preceding the date of the petition, including dispositions thereof;

(vii) A description of the personnel record keeping system of all current employees of the gaming operation(s);

(viii) The dates of issuance, and criteria for the issuance of tribal gaming licenses issued for each place, facility or location at which gaming is conducted; and

(ix) The tribe's current set of gaming regulations; and

(3) A copy of the public notice required under 25 CFR 518.5(d) and a certification, signed by a tribal official, that it has been posted. Upon publication of the notice in a local newspaper, the tribe shall forward an affidavit of publication to the Commission.

§ 518.4 What criteria must a tribe meet to receive a certificate of self-regulation?

(a) The Commission shall issue a certificate of self-regulation if it determines that the tribe has, for the three years immediately preceding the petition:

(1) Conducted its gaming activity in a manner that:

(i) Has resulted in an effective and honest accounting of all revenues;

(ii) Has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) Has been generally free of evidence of criminal or dishonest activity;

(2) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the activity;

(ii) Investigation, licensing and monitoring of all employees of the gaming activity; and

(iii) Investigation, enforcement and prosecution of violations of its gaming ordinance and regulations;

(3) Conducted the operation on a fiscally and economically sound basis; and

(4) The gaming activity has been conducted in compliance with the IGRA, NIGC regulations in this chapter, and the tribe's gaming ordinance and gaming regulations.

(b) Indicators that a tribe has met the criteria set forth in paragraph (a) of this section may include, but are not limited to:

(1) Adoption and implementation of minimum internal control standards which are at least as stringent as those promulgated by the Commission, or until such standards are promulgated by the Commission, minimum internal control standards at least as stringent as those required by the State of Nevada or the State of New Jersey;

(2) Evidence that suitability determinations are made with respect to tribal gaming regulators which are at least as stringent as those required for key employees and primary management officials of the gaming operation(s);

(3) Evidence of an established independent regulatory body within the tribal government which:

(i) Monitors gaming activities to ensure compliance with federal and tribal laws and regulations;

(ii) Promulgates tribal gaming regulations pursuant to tribal law;

(iii) Ensures that there is an adequate system for accounting of all revenues from the activity and monitors such system for continued effectiveness;

(iv) Performs routine operational or other audits of the gaming operation(s);

(v) Routinely receives and reviews accounting information from the gaming operation(s);

(vi) Has access to and may inspect, examine, photocopy and audit all papers, books, and records of the gaming operation(s);

(vii) Provides ongoing information to the tribe on the status of the tribe's gaming operation(s);

(viii) Monitors compliance with minimum internal control standards for the gaming operation;

(ix) Adopts and implements an adequate system for investigation, licensing, and monitoring of all employees of the gaming activity;

(x) Maintains records on licensees and on persons denied licenses including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction;

(xi) Inspects and examines all premises where gaming is conducted;

(xii) Establishes standards for and issues vendor licenses or permits to persons or entities who deal with the gaming operation, such as manufacturers and suppliers of services, equipment and supplies;

(xiii) Establishes or approves, and requires the posting of, rules of games;

(xiv) Inspects games, tables, equipment, cards, and chips or tokens used in the gaming operation(s);

(xv) Establishes standards for technological aids and tests such for compliance with standards;

(xvi) Establishes or approves video surveillance standards;

(xvii) Adopts and implements an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations and takes appropriate enforcement actions;

(xviii) Determines that there are adequate dispute resolution procedures for gaming operation employees and customers, and ensures that such system is adequately implemented; and

(xix) Takes testimony and conducts hearings on regulatory matters, including matters related to the revocation of primary management officials and key employee licenses;

(4) Documentation of a sufficient source of permanent and stable funding for the independent tribal regulatory body which is allocated and appropriated by the tribal governing body;

(5) Adoption of a conflict of interest policy for the regulators/regulatory body and their staff;

(6) Evidence that the operation is financially stable;

(7) Adoption and implementation of a system for adequate prosecution of violations of the tribal gaming ordinance and regulations, which may include the existence of a tribal court system authorized to hear and decide gaming related cases;

(8) Evidence that the operation is being conducted in a safe manner, which may include, but not be limited to:

(i) The availability of medical, fire, and emergency services;

(ii) The existence of an evacuation plan; and

(iii) Proof of compliance with applicable building, health, and safety codes; and

(9) Evidence that reports are produced or received by the tribe, the tribal regulatory body, or the gaming operation based on an evaluation of the internal controls of the gaming operation during the three (3) year period immediately preceding the date of the petition.

(c) The burden of establishing self-regulation is upon the tribe filing the petition.

(d) During the review of the petition, the Commission shall have complete access to all areas of and all papers, books, and records of the tribal regulatory body, the gaming operation, and any other entity involved in the regulation or oversight of the gaming operation. The Commission shall be allowed to inspect and photocopy any relevant materials. The tribe shall take no action to prohibit the Commission from soliciting information from any current or former employees of the tribe, the tribal regulatory body, or the gaming operation. Failure to adhere to this paragraph may be grounds for denial of a petition for self-regulation.

§ 518.5 What process will the Commission use to review petitions?

(a) The Chairman shall appoint one Commissioner to administer the Office of Self Regulation. The Office of Self Regulation shall undertake an initial review of the petition to determine whether the tribe meets all of the eligibility criteria of § 518.2. If the tribe fails to meet any of the eligibility criteria, the Office of Self Regulation shall deny the petition and so notify

the tribe. If the tribe meets all of the eligibility criteria, the Office of Self Regulation shall review the petition and accompanying documents for completeness. If the Office of Self Regulation finds the petition incomplete, it shall immediately notify the tribe by letter, certified mail, return receipt requested, of any obvious deficiencies or significant omissions apparent in the petition and provide the tribe with an opportunity to submit additional information and/or clarification.

(b) The Office of Self Regulation shall notify a tribe, by letter, when it considers a petition to be complete.

(c) Upon receipt of a complete petition, the Office of Self Regulation shall conduct a review and investigation to determine whether the tribe meets the approval criteria under § 518.4. During the course of this review, the Office of Self Regulation may request from the tribe any additional material it deems necessary to assess whether the tribe has met the requirements for self-regulation. The tribe shall provide all information requested by the Office of Self Regulation in a timely manner. The Office of Self Regulation may consider any evidence which may be submitted by interested or informed parties. The Office of Self Regulation shall make all such information on which it relies in making its determination available to the Tribe and shall afford the Tribe an opportunity to respond.

(d) The tribe shall post a notice, contemporaneous with the filing of the petition, advising the public that it has petitioned the Commission for a certificate of self regulation. Such notice shall be posted in conspicuous places in the gaming operation and the tribal government offices. Such notice shall remain posted until the Commission either issues a certificate or declines to do so. The tribe shall also publish such notice, once a week for four weeks, in a local newspaper with a broad based circulation. Both notices shall state that one of the criteria for the issuance of a certificate is that the tribe has a reputation for safe, fair, and honest operation of the gaming activity, and shall solicit comments in this regard. The notices shall instruct commentors to submit their comments directly to

the Office of Self Regulation, shall provide the mailing address of the Commission and shall request that commentors include their name, address and day time telephone number.

(e) After making an initial determination on the petition, the Office of Self Regulation shall issue a report of its findings to the tribe.

(1) If the Office of Self Regulation determines that the tribe has satisfied the criteria for a certificate of self regulation, it shall so indicate in its report and shall issue a certificate in accordance with 25 CFR 518.6.

(2) If the Office of Self Regulation's initial determination is that a tribe has not met the criteria for a certificate of self regulation, it shall so advise the tribe in its report and the tribe shall have 60 days from the date of service of the report to submit to the Office of Self Regulation a written response to the report. This response may include additional materials which:

(i) The tribe deems necessary to adequately respond to the findings; and

(ii) The tribe believes supports its petition.

(f) At the time of the submission of its response the tribe may request a hearing before the Office of Self Regulation. This request shall specify the issues to be addressed by the tribe at such hearing, and any proposed oral or written testimony the tribe wishes to present. The Office of Self Regulation may limit testimony.

(g) The Office of Self Regulation shall notify the tribe, within 10 days of receipt of such request, of the date and place of the hearing. The Office of Self Regulation shall also set forth the schedule for the conduct of the hearing, including the specification of all issues to be addressed at the hearing, the identification of any witnesses, the time allotted for testimony and oral argument, and the order of the presentation.

(h) Following review of the tribe's response and the conduct of the hearing, the Office of Self Regulation shall issue a decision on the petition. The decision shall set forth with particularity the findings with respect to the tribe's compliance with standards for self-regulation set forth in this part. If the Of-

fice of Self Regulation determines that a certificate will issue, it will do so in accordance with 25 CFR 518.6.

(i) The decision to deny a petition shall be appealable to the full Commission. Such appeal shall be received by the Commission within thirty (30) days of service of the decision and shall include a supplemental statement that states with particularity the relief desired and the grounds therefor. The full Commission shall decide the appeal based only on a review of the record before it. The decision on appeal shall require a majority vote of the Commissioners.

(j) The decision of the Commission to approve or deny a petition shall be a final agency action. A denial shall be appealable under 25 U.S.C. 2714, subject to the provisions of §518.12. The Commission decision shall be effective when the time for the filing of a request for reconsideration pursuant to §518.12 has expired and no request has been filed.

§518.6 When will a certificate of self-regulation become effective?

A certificate of self-regulation shall become effective on January 1 of the year following the year in which the Commission determines that a certificate will issue. Complete petitions are due no later than June 30. No petitions will be considered for the following January 1 effective date that have not been received by June 30 of the previous year. Petitions will be reviewed and investigated in chronological order based on the date of receipt of a complete petition. The Commission will announce its determinations on December 1 for all those reviews and investigations it completes.

§518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?

Yes. Each tribe that holds a certificate of self-regulation shall be required to submit a self-regulation report annually to the Commission in order to maintain its self-regulatory status. Such report shall set forth information to establish that the tribe has continuously met the eligibility requirements of §518.2 and the approval requirements

of §518.4 and shall include a report, with supporting documentation, including a sworn statement signed by an authorized tribal official, which explains how tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B)". The annual report shall be filed with the Commission on April 15th of each year following the first year of self-regulation. Failure to file such report shall be grounds for the removal of a certificate under §518.8.

§518.8 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any information?

Yes. A tribe that holds a certificate of self-regulation has a continuing duty to advise immediately the Commission of any circumstances that may reasonably cause the Commission to review the tribe's certificate of self-regulation. Failure to do so is grounds for removal of a certificate of self-regulation. Such circumstances may include, but are not limited to: a change in management contractor; financial instability; or any other factors that are material to the decision to grant a certificate of self regulation.

§518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?

No. Subject to the provisions of 25 U.S.C. 2710(c)(5)(A) the Commission retains its investigative and enforcement powers over all class II gaming tribes notwithstanding the issuance of a certificate of self-regulation. The Commission shall retain its powers to investigate and bring enforcement actions for violations of the Indian Gaming Regulatory Act, accompanying regulations, and violations of tribal gaming ordinances.

§518.10 Under what circumstances may the Commission remove a certificate of self-regulation?

The Commission may, after an opportunity for a hearing, remove a certificate of self-regulation by a majority vote of its members if it determines that the tribe no longer meets the eligibility criteria of §518.2, the approval criteria of §518.4, the require-

ments of §518.7 or the requirements of §518.8. The Commission shall provide the tribe with prompt notice of the Commission's intent to remove a certificate of self-regulation under this Part. Such notice shall state the reasons for the Commission's action and shall advise the tribe of its right to a hearing under §518. 11. The decision to remove a certificate is appealable to Federal District Court pursuant to 25 U.S.C. 2714.

§518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?

Yes. A tribe may request a hearing regarding the Commission's proposal to remove a certificate of self regulation under §518.10. Such a request shall be filed with the Commission within thirty (30) days after the tribe receives notice of the Commission's action. Failure to request a hearing within the time provided by this section shall constitute a waiver of the right to a hearing.

§518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Yes. A tribe may file a request for reconsideration of a denial of a petition or a removal of a certificate of self-regulation within 30 days of receipt of the denial or removal. Such request shall set forth the basis for the request, specifically identifying those Commission findings which the tribe believes to be erroneous. The Commission shall issue a final decision within 30 days of receipt of the request. If the Commission fails to issue a decision within 30 days, the request shall be considered to be disapproved.

PART 519—SERVICE

Sec.

- 519.1 Designation of an agent by a tribe.
- 519.2 Designation of an agent by a management contractor or a tribal operator.
- 519.3 Methods of service.
- 519.4 Copy of any official determination, order, or notice of violation.

AUTHORITY: 25 U.S.C. 2706(b)(10).

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§ 519.1 Designation of an agent by a tribe.

By written notification to the Commission, a tribe shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.2 Designation of an agent by a management contractor or a tribal operator.

By written notification to the Commission, a management contractor or a tribal operator shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.3 Methods of service.

(a) The Chairman shall serve any official determination, order, or notice of violation by:

- (1) Delivering a copy to a designated agent;
- (2) Delivering a copy to the person who is the subject of the official determination, order, or notice of violation;
- (3) Delivering a copy to the individual who, after reasonable inquiry, appears to be in charge of the gaming operation that is the subject of the official determination, order, or notice of violation;
- (4) Mailing to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known address. Service by mail is complete upon mailing; or

(5) Transmitting a facsimile to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known facsimile number. Service by facsimile is complete upon transmission.

(b) Delivery of a copy means: Handing it to the person or designated agent (or attorney for either); leaving a copy at the person's, agent's or attorney's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service shall not be deemed incomplete because of refusal to accept.

§ 519.4 Copy of any official determination, order, or notice of violation.

The Commission shall transmit a copy of any official determination, order, or notice of violation to the tribal chairman, the designated tribal agent under § 519.1, and to the relevant tribal gaming authority. The Commission shall transmit such copy as expeditiously as possible. Service under § 519.3 shall not depend on a copy being sent to the appropriate tribal chairman, the designated tribal agent or to the relevant tribal gaming authority.

SUBCHAPTER B—APPROVAL OF CLASS II AND CLASS III ORDINANCES AND RESOLUTIONS

PARTS 520–521 [RESERVED]

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.

- 522.1 Scope of this part.
- 522.2 Submission requirements.
- 522.3 Amendment.
- 522.4 Approval requirements for class II ordinances.
- 522.5 Disapproval of a class II ordinance.
- 522.6 Approval requirements for class III ordinances.
- 522.7 Disapproval of a class III ordinance.
- 522.8 Publication of class III ordinance and approval.
- 522.9 Substitute approval.
- 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
- 522.11 Individually owned class II gaming operations operating on September 1, 1986.
- 522.12 Revocation of class III gaming.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§ 522.1 Scope of this part.

This part applies to any gaming ordinance or resolution adopted by a tribe after February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 522.2 Submission requirements.

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

- (a) One copy on 8½" x 11" paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in § 522.4(b) or 522.6 of this part;
- (b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are

notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact or procedures as prescribed by the Secretary;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) Designation of an agent for service under § 519.1 of this chapter; and

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under §§ 522.2(b) through (h) of this part within 15 days after adoption of such amendment.

§ 522.4 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.10 or § 522.11 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

§ 522.5 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under § 522.2 of this part, the Chairman

may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of § 522.2 or § 522.4(b) of this part. The Chairman shall notify a tribe of its right to appeal under part 524 of this chapter. A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§ 522.6 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class III ordinance or resolution if—

(a) A tribe follows the submission requirements contained in § 522.2 of this part;

(b) The ordinance or resolution meets the requirements contained in § 522.4(b) (2), (3), (4), (5), (6), and (7) of this part; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.10 of this part.

§ 522.7 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of § 522.6 of this part and no later than 90 days after a submission under § 522.2 of this part, the Chairman shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 524 of this chapter if the Chairman determines that—

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§522.8 Publication of class III ordinance and approval.

The Chairman shall publish a class III tribal gaming ordinance or resolution in the FEDERAL REGISTER along with the Chairman's approval thereof.

§522.9 Substitute approval.

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under §522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

§522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under §522.11 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in §522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the Tribe;

(d) That the owner pay an assessment to the Commission under §514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits and hours of operation.

§522.11 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under §502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in §522.10(a)-(d) of this part.

§522.12 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8½" x 11" paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the FEDERAL REGISTER and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the FEDERAL REGISTER under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

PART 523—REVIEW AND APPROVAL OF EXISTING ORDINANCES OR RESOLUTIONS

Sec.

523.1 Scope of this part.

523.2 Submission requirements.

523.3 Review of an ordinance or resolution.

523.4 Review of an amendment.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5812, Jan. 22, 1993, unless otherwise noted.

§ 523.1 Scope of this part.

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to February 22, 1993, and that has not been submitted to the Chairman.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 523.2 Submission requirements.

(a) Within 60 days after a request by the Chairman, a tribe shall:

(1) Submit for review and approval all items required under § 522.2 of this chapter; and

(2) For each gaming operation submit the financial statements for the previous fiscal year and the most recent audit report and management letter.

(b) If a tribe fails to submit all items under § 522.2 of this chapter within 60 days, the Chairman shall deem the ordinance or resolution disapproved and shall notify the tribe of its right to appeal under part 524.

§ 523.3 Review of an ordinance or resolution.

Within 90 days after receipt of a submission under § 523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.

(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.

(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.

(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.

(d) At the end of the 120-day period provided under paragraph (c) of this section, or earlier if the tribe notifies

the Chairman that it intends not to comply, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.

§ 523.4 Review of an amendment.

Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.

(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman will approve the amendment.

(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.

(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.

PART 524—APPEALS

Sec.

524.1 Appeals by a tribe.

524.2 Limited participation by an entity other than a tribe.

524.3 Decisions on appeals.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5812, Jan. 22, 1993, unless otherwise noted.

§ 524.1 Appeal by a tribe.

A tribe may appeal disapproval of a gaming ordinance, resolution or amendment under part 522 or 523 of this chapter. An appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination under part 519 of this chapter. Such an appeal shall state succinctly why the tribe believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Failure to file an appeal within the time provided by

this section shall result in a waiver of the opportunity for an appeal.

§ 524.2 Limited participation by an entity other than a tribe.

(a) An entity other than a tribe may request to participate in an appeal of a disapproval under part 522 or part 523 of this chapter by filing a written submission. Such written submission shall:

(1) State the property, financial, or other interest of the party in the appeal; and

(2) The reasons why the action of the Chairman in disapproving an ordinance, resolution or amendment may be in error or the reasons why the Chairman's disapproval should be upheld by the Commission. The reasons shall address the approval requirements under §§ 522.4, 522.5, 522.6, 522.7, 523.2 of this chapter.

(b) The Commission shall forward a copy of a request under paragraph (a) of this section to the party of record under § 524.1 of this part.

(c) The Commission shall review a request under this section and timely no-

tify the requester of its determination. Such notification shall supply the reasons for the determination. The Commission shall also notify the party of record on appeal under § 524.1 of its determination.

(d) The Commission shall limit the extent of participation by an entity other than a tribe to one written submission as described under paragraph (a) of this section, unless the Commission determines further participation would substantially contribute to the record.

§ 524.3 Decisions on appeals.

(a) Within 90 days after it receives the appeal, the Commission shall render its decision on the appeal.

(b) The Commission shall notify the party of record under § 524.1 of this part and any limited participant under § 524.2 of this part of its final decision and the reasons supporting it.

PARTS 525-529 [RESERVED]

SUBCHAPTER C—MANAGEMENT CONTRACT PROVISIONS

PART 530 [RESERVED]

PART 531—CONTENT OF MANAGEMENT CONTRACTS

Sec.

531.1 Required provisions.

531.2 Prohibited provisions.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5828, Jan. 22, 1993, unless otherwise noted.

§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 contract 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 con-

tract 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.

PART 532 [RESERVED]

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

Sec.

533.1 Requirement for review and approval.

533.2 Time for submitting management contracts.

533.3 Submission of management contract for approval.

533.4 Action by the Chairman.

533.5 Notice of noncompliance.

533.6 Approval.

533.7 Void agreements.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5829, Jan. 22, 1993, unless otherwise noted.

§ 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, upon execution.

§ 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, ob-

jectives, 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.

§ 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.

(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 120 days from receipt of such notice to modify the contract.

(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.

(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.

PART 534 [RESERVED]**PART 535—POST-APPROVAL PROCEDURES**

Sec.

535.1 Modifications.

535.2 Assignments.

535.3 Post-approval noncompliance.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5830, Jan. 22, 1993, unless otherwise noted.

§ 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) 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:

(i) 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

(ii) 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.

PART 536 [RESERVED]

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

Sec.

537.1 Applications for approval.

537.2 Submission of background information.

537.3 Fees for background investigations.

537.4 Determinations.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5831, Jan. 22, 1993, unless otherwise noted.

§ 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 manage-

ment 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.

(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).

[58 FR 5831, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 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

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

(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.

§ 537.4

(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.

PART 538 [RESERVED]

PART 539—APPEALS

Sec.

539.1 Scope of this part.

539.2 Appeals.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5832, Jan. 22, 1993, unless otherwise noted.

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under

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this subchapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed in part 577 of this chapter.

[58 FR 16494, Mar. 29, 1993]

§ 539.2 Appeals.

A party may appeal the Chairman's disapproval of a management contract or modification under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. An appeal under this section shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute the final decision of the Commission.

SUBCHAPTER D

PARTS 540–541 [RESERVED]

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

Sec.

- 542.1 What does this part cover?
- 542.2 What are the definitions for this part?
- 542.3 How do I comply with this part?
- 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?
- 542.5 What are the minimum internal control standards for bingo?
- 542.6 What are the minimum internal control standards for pull tabs?
- 542.7 What are the minimum internal control standards for card games?
- 542.8 What are the minimum internal control standards for manual keno?
- 542.9 What are the minimum internal control standards for computerized keno?
- 542.10 What are the minimum internal control standards for pari-mutuel wagering?
- 542.11 What are the minimum internal control standards for table games?
- 542.12 What are the minimum internal control standards for gaming machines?
- 542.13 What are the minimum internal control standards for cage and credit?
- 542.14 What are the minimum internal control standards for internal audit?
- 542.15 What are the minimum internal control standards for surveillance?
- 542.16 What are the minimum internal control standards for electronic data processing?
- 542.17 What are the minimum internal control standards for complimentary services or items?
- 542.18 Who may apply for a variance and how do I apply for one?
- 542.19 Does this part apply to charitable bingo operations?

AUTHORITY: 25 U.S.C. 2702, 2710 and 2717.

SOURCE: 64 FR 596, Jan. 5, 1999, unless otherwise noted.

§542.1 What does this part cover?

This part establishes the minimum internal control standards for gaming operations on Indian land.

§542.2 What are the definitions for this part?

(a) The definitions in this section shall apply to all sections of this part unless otherwise noted.

(b) Definitions.

Accountability means all items of currency, chips, coins, tokens, receivables, and customer deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Accumulated credit payout means credit earned in a gaming machine that is paid to a customer manually in lieu of a machine payout.

Actual hold percentage means the percentage calculated by dividing the win by the drop or coin-in. Can be calculated for individual tables or slot machines, type of table games or slot machines on a per day or cumulative basis.

Adjustment form means a document used to describe and identify any change to player's account balance not generated directly by player gaming activity.

AICPA means the American Institute of Certified Public Accountants.

Bank or bankroll means the inventory of currency, coins, chips, checks, tokens, receivables, and customer deposits in the cage, pit area, gaming booths, and on the playing tables and cash in bank which is used to make change, pay winnings, bets, and pay gaming machine jackpots.

Bank number means a unique number assigned to identify a network of player terminals.

Betting station means the area designated in a race book that accepts and pays winning bets.

Betting ticket means a printed, serially numbered form used to record the event upon which a wager is made, the amount and date of the wager, and sometimes the line or spread (odds).

Bill validator (or currency acceptor) means a device that accepts and reads currency by denomination in order to accurately register customer credits at a gaming machine.

Boxman means the first-level supervisor who is responsible for directly participating in and supervising the operation and conduct of the craps game.

Breakage means the difference between actual bet amounts paid out by a race track to bettors and amounts won due to bet payments being rounded

up or down. For example a winning bet that should pay \$4.25 may be actually paid at \$4.20 due to rounding.

Cage means a secure work area within the gaming operation for cashiers and a storage area for the gaming operation bankroll.

Cage accountability form means an itemized list of the components that make up the cage accountability.

Cage credit means advances in the form of cash or gaming chips made to customers at the cage. Documented by the players signing an IOU or a marker similar to a counter check.

Cage marker forms means a document, usually signed by the customer evidencing an extension of credit at the cage to the customer by the gaming operation.

Calibration module means the section of a weigh scale used to set the scale to a specific amount or number of coins to be counted.

Call bets means a wager made without money or chips, reserved for a known patron and includes marked bets (which are supplemental bets made during a hand of play). For the purpose of settling a call bet, a hand of play in craps is defined as a natural winner (e.g., seven or eleven on the come-out roll), a natural loser (e.g., a two, three or twelve on the come-out roll), a seven-out, or the player making his point, whichever comes first.

Card games means a game in which the gaming operation is not party to wagers and from which the gaming operation receives compensation in the form of a rake-off, a time buy-in, or other fee or payment from a player for the privilege of playing.

Card room bank means the operating fund assigned to the card room or main card room bank.

Cash-out ticket means an instrument of value generated by a gaming machine representing a monetary amount owed to a customer at a specific gaming machine. This investment may be wagered at other machines by depositing the cash-out ticket in the machine document acceptor.

Change ticket means an instrument of value automatically generated when a cash-out ticket includes change that cannot be wagered on a \$1.00 and higher denomination machine. This instru-

ment may be wagered at a lower denomination machine by depositing it in the machine document acceptor.

Chip tray means container located on gaming tables where chips are stored that are used in the game.

Chips mean money substitutes, in various denominations, issued by a gaming establishment and used for wagering.

Coin in meter means the meter that displays the total amount wagered in a gaming machine which includes coins-in and credits played.

Coin room inventory means coins and tokens stored in the coin room that are generally used for gaming machine department operation.

Coin room vault means an area where coins and tokens used in the gaming machine department operation are stored.

Complementaries or comps means promotional allowances to customers.

Count means the total funds counted for a particular game, coin-operated gaming device, shift, or other period.

Count room means a room where the coin and cash drop from gaming machines, table games or other games are transported to and counted.

Counter check means a form provided by the gaming operation for the customer to use in lieu of a personal check.

Credit means the right granted by a gaming operation to a patron to defer payment of debt or to incur debt and defer its payment.

Credit limit means the maximum dollar amount of credit assigned to a customer by the gaming operation.

Credit slip means a form used to record either:

(1) The return of chips from a gaming table to the cage; or

(2) The transfer of IOUs, markers, or negotiable checks from a gaming table to a cage or bankroll.

Currency acceptor (also known as a bill validator or bill changer), means the device that accepts and reads currency by denomination in order to accurately register customer credits at a gaming machine.

Currency acceptor drop means cash contained in currency acceptor drop boxes.

Currency acceptor drop box, also known as a cash storage box, means box attached to currency acceptors used to contain currency received by currency acceptors.

Currency acceptor drop box release key means the key used to release currency acceptor drop box from currency acceptor device.

Currency acceptor drop storage rack key means the key used to release currency acceptor drop boxes from the storage rack.

Customer deposits means the amounts placed with a cage cashier by customers for the customers' use at a future time.

Deal-in pull tabs games means the numerical sequence of all pull tabs in a specific pull tab game that are sold or available for sale to patrons.

Dealer/boxman means an employee who operates a game, individually or as a part of a crew, administering house rules and making payoffs.

Deskman means a person who authorizes payment of winning tickets and verifies pay-outs for keno games.

Document acceptor is the device integrated into each gaming machine that reads bar codes on coupons and cash-out tickets.

Draw ticket means a blank keno ticket whose numbers are punched out when balls are drawn for the game. Used to verify winning tickets.

Drop box means a locked container affixed to the gaming table into which the drop is placed. The game type, table number, and shift are indicated on the box.

Drop box contents keys means the key used to open drop boxes.

Drop box release keys means the key used to release drop boxes from tables.

Drop box storage rack keys means the key used to release drop boxes from the storage rack.

Drop bucket means a container located in the drop cabinet (or in a secured portion of the gaming machine in coinless/cashless configurations) for the purpose of collecting coins, tokens, cash-out tickets and coupons from the gaming machine.

Drop cabinet is the wooden or metal base of the gaming machine which contains the gaming machine drop bucket.

Drop (for table games) means the total amount of cash and chips contained in the drop box, plus the amount of credit issued at the table; *drop (for gaming machines)* means the total amount of money, cash-out tickets or coupons removed from the drop bucket or currency acceptor.

Earned and unearned take means race bets taken on present and future race events. *Earned take* means bets received on current or present events. *Unearned take* means bets taken on future race events.

EPROM means erasable programmable read-only memory.

Fill means a transaction whereby a supply of chips or coins and tokens is transferred from a bankroll to a table game, coin-operated gaming device, bingo or keno department.

Fill slip means a document evidencing a fill.

Flare means the information sheet provided by the manufacturer that sets forth the rules at a particular game of breakopen tickets and that is associated with a specific deal of breakopen tickets. The flare shall contain the following information:

- (1) Name of the game;
- (2) Manufacturer name or manufacturer's logo;
- (3) Ticket count; and
- (4) Prize structure, which shall include the number of winning breakopen tickets by denomination, with their respective winning symbols, numbers or both.

Floor pars means the sum of the theoretical hold percentages of all machines within a gaming machine denomination weighted by the coin-in contribution.

Future wagers means bets on races to be run in the future (e.g., Kentucky Derby).

Game openers and closers means the form used by gaming operation supervisory personnel to document the inventory of chips, coins and tokens on a table at the beginning and ending of a shift.

Game server means an electronic selection device, utilizing a random number generator.

Gaming machine means an electronic or electromechanical machine which contains a microprocessor with random

number generator capability which allows a player to play games of chance, some of which may be affected by skill, which machine is activated by the insertion of a coin, token or currency, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements are redeemable for cash.

Gaming machine analysis report means a report prepared that compares theoretical to actual hold by a gaming machine on a monthly or other periodic basis.

Gaming machine bill-in meter means a meter included on a gaming machine that accepts currency that tracks the number of bills put in the machine.

Gaming machine booths and change banks means a booth or small cage in the gaming machine area used to provide change to players, store change aprons and extra coin, and account for jackpot and other payouts.

Gaming machine count means the total amount of coins and tokens removed from a gaming machine drop bucket or bag. The amount counted is entered on the Gaming Machine Count Sheet and is considered the drop. Also, the procedure of counting the coins and tokens or the process of verifying gaming machine coin and token inventory.

Gaming machine count team means personnel that perform count of the gaming machine drop.

Gaming machine credit-in meter means a meter that records the amount wagered as a result of credits played.

Gaming machine drop cabinet means the stand that contains the drop bucket.

Gaming machine fill means the coins or tokens placed in a hopper.

Gaming machine fill and payout sheet means a list of the gaming machine fills and gaming machine payouts.

Gaming machine game mix means the type and number of games in a multiple game machine.

Gaming machine hopper loads means coins or tokens stored within a gaming machine used to make payments.

Gaming machine monitoring system means a system used by a gaming operation to monitor gaming machine

meter reading activity on an online basis.

Gaming machine pay table means the reel strip combinations illustrated on the face of the gaming machine that can identify payouts of designated coin amounts.

Gaming machine weigh/count and wrap means the comparison of the weighed gaming machine drop to counted and wrapped coin.

Gaming operation accounts receivable (for gaming operation credit) means credit extended to gaming operation patrons in the form of markers, returned checks or other credit instruments that have not been repaid.

Gross gaming revenue means annual total amount of money wagered on Class II and Class III games and admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded.

Hold means the relationship of win to coin-in for gaming machines and win to drop for table games.

Hub means the person or entity that is licensed to provide the operator of a race book information related to horse racing which is used to determine winners of races or payoffs on wagers accepted by the race book.

Inside ticket means a keno ticket retained by the house, showing the customers' selection of numbers, amount wagered, and number of games wagered.

Internal audit means individuals who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship as the internal audit department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Results of audits are generally communicated to management. Audit exceptions generally require follow-up. Internal audit personnel may provide audit coverage to more than one operation within a tribe's gaming operation holdings.

Issue slip means a copy of a credit instrument that is retained for numerical sequence control purposes.

Jackpot payout means the portion of a jackpot paid by gaming machine personnel. The amount is usually determined as the difference between the total posted jackpot amount and the coins paid out by the machine. May also be the total amount of the jackpot.

Jackpot payout slip means a form on which the amount of a jackpot paid by gaming machine personnel is recorded.

Keno locked box copy or restricted copy means copies of Keno tickets that are created for written tickets that cannot be accessed by Keno personnel.

Keno multi race or game ticket means a keno ticket that is played in multiple games.

Keno outstations means areas other than the main keno area where bets may be placed and tickets paid.

Lammer button means a type of chip that is placed on a gaming table to indicate that the amount of chips designated thereon has been given to the customer for wagering on credit prior to completion of the credit instrument. Lammer button may also mean a type of chip used to evidence transfers between table banks and card room banks.

Machine payout form means a document used to log all progressive jackpots and amounts won greater than \$1,200.

Main card room bank means a fund of currency, coin, and chips used primarily for poker and pan card game areas. Used to make even money transfers between various games as needed. May be used similarly in other areas of the gaming operation.

Marker means a document, usually signed by the customer, evidencing an extension of credit to him by the gaming operation.

Marker credit play means that players are allowed to purchase chips using credit in the form of a marker.

Marker inventory form means a form maintained at table games or in the gaming operation pit that are used to track marker inventories at the individual table or pit.

Marker issue slip means the copy of an original marker that is inserted in the table drop box at the time credit is extended.

Marker payment slip means the copy of the original marker used to document customer marker payment transactions. The payment slip is inserted in the table drop box if the marker is paid in the pit or attached to the original marker until the marker is paid.

Marker transfer form means a form used to document transfers of markers from the pit to the cage.

Master credit record means a form to record the date, time, shift, game, table, amount of credit given, and the signatures or initials of the individuals extending the credit.

Master game program number means the game program number listed on a gaming machine EPROM.

Master game report sheet means a form used to record, by shift and day, each table game's winnings and losses. This form reflects the opening and closing table inventories, the fills and credits, and the drop and win.

Mechanical coin counter means a device used to count coins that may be used in addition to or in lieu of a coin weigh scale.

Meter means an electronic (soft) or mechanical (hard) apparatus in a gaming machine. May record the number of coins wagered, the number of coins dropped, the number of times the handle was pulled, or the number of coins paid out to winning players.

Metered count machine means a device used in a coin room to count coin.

MICS means minimum internal control standards.

Multi-game machines means a gaming machine that includes more than one type of game option.

Name credit instruments means personal checks, payroll checks, counter checks, hold checks, travelers checks or other similar instruments that are accepted in the pit as a form of credit issuance to a player.

Order for credit means a form that is used to request the transfer of chips or markers from a table to the cage. The order precedes the actual transfer transaction which is documented on a credit slip.

Outs means winning race book tickets that have not been paid at the end of a shift.

Outside ticket means a keno ticket given to a customer as a receipt, with

the customer's selection of numbers, number of games wagered, game numbers, and the amount wagered marked on the ticket.

Par percentage means the percentage of each dollar wagered that the house wins (i.e., gaming operation advantage).

Par sheet means a specification sheet for a gaming machine that provides machine hold percentage, model number, hit frequency, reel combination, number of reels, number of coins that can be accepted and reel strip listing.

Pari-mutuel book means a race book that accepts pari-mutuel wagers on horse races, jai-alai, greyhound and harness racing.

Pari-mutuel wagering means a system of wagering on horse races, jai-alai, greyhound and harness racing, where the winners divide the total amount wagered, net of commissions and operating expenses, proportionate to the individual amount wagered.

Payment slip means that part of a marker form on which customer payments are recorded.

PIN means personal identification number selected by player and used to access player's account.

Pit podium means stand located in the middle of the tables used as a work space and record storage area for gaming operation supervisory personnel.

Pit repayment means a customer's repayment of credit at a table.

Pit supervisor means the employee who supervises all games in a pit.

Player tracking system means a system typically used in gaming machine departments that can record the gaming machine play of individual patrons.

Post time in pari-mutuel wagering means the time when the track stops accepting bets in accordance with rules and regulations of the applicable jurisdiction.

Primary and secondary jackpots means promotional pools offered at certain card games that can be won in addition to the primary pot.

Progressive gaming machine means a gaming machine, with a payoff indicator, in which the payoff increases as it is played (i.e., deferred payout). The payoff amount is accumulated, displayed on a machine and will remain until a player lines up the jackpot

symbols that result in the progressive amount being paid.

Progressive jackpots means deferred payout from a progressive gaming machine.

Progressive table game means table games that offer progressive jackpots.

Promotional payouts are generally personal property or awards given to players by the gaming operation as an inducement to play. Promotions vary but a promotion example might be a program developed where a player receives a form of personal property based on the number of games or sessions played.

Promotional progressive pots/pools means funds contributed to a table game by and for the benefit of players. Funds are distributed to players based on a predetermined event.

Proposition players means a person paid a fixed sum by the gaming operation for the specific purpose of playing in a card game. A proposition player makes wagers with his own funds, retains his winnings, and absorbs his losses.

Rabbit ears means a device, generally V-shaped, that holds the numbered balls selected during a keno or bingo game so that the numbers are visible to players and employees.

Rake means a commission charged by the house for maintaining or dealing a game such as poker.

Rake circle means the area of a table where rake is placed.

Random number generator means a device that generates numbers in the absence of a pattern. May be used to determine numbers selected in various games such as keno and bingo. Also commonly used in gaming machines to generate game outcome.

Reel symbols means symbols listed on reel strips of gaming machines.

Rim credit means extensions of credit that are not evidenced by the immediate preparation of a marker and does not include call bets.

Runner means a gaming employee who transports chips/cash to and from a gaming table to a cashier.

Screen Automated Machine or SAM means an automated terminal used in some race books to accept wagers. SAM's also pay winning tickets in the

form of a voucher which is redeemable for cash at the race book.

Shift means any time period designated by management up to 24 hours.

Shill or game starter means an employee financed by the house and acting as a player for the purpose of starting or maintaining a sufficient number of players in a game.

Short pay means a payoff from a coin-operated gaming device that is less than the listed amount.

Sleeper means a winning keno ticket not presented for payment or a winning bet left on the table through a player's forgetfulness.

Soft count means the count of the contents in a drop box or currency acceptor.

Table bank par means the chip imprest amount at which a table bank is maintained.

Table chip tray means a container used to hold tokens, coins and chips at a gaming table.

Table games means games that are banked by the house or a pool whereby the house or the pool pays all winning bets and collects from all losing bets.

Table inventory means the total coins, chips, and markers at a table.

Table opener and closer means the document where chips and funds held at a table are recorded when a table inventory is taken. Also known as table inventory form.

Take and total take means the amount of a bet or bets taken in by a pari mutual race book.

Terminal number means a unique number assigned to identify a single player terminal in the gaming operation.

Theoretical hold means the intended hold percentage or win of an individual coin-operated gaming machine as computed by reference to its payout schedule and reel strip settings or EPROM.

Theoretical hold worksheet means a worksheet provided by the manufacturer for all gaming machines which indicate the theoretical percentages that the gaming machine should hold based on adequate levels of coin-in. The worksheet also indicates the reel strip settings, number of coins that may be played, the payout schedule, the number of reels and other informa-

tion descriptive of the particular type of gaming machine.

Tier A means gaming operations with annual gross gaming revenues of no more than \$3 million.

Tier B means gaming operations with annual gross gaming revenues of more than \$3 million but not more than \$10 million.

Tier C means gaming operations with annual gross gaming revenues of more than \$10 million.

Tokens means a coinlike money substitute, in various denominations, used for gambling transactions.

Total take means the total amount of funds bet by a customer on a specific race book ticket.

Vault means a secure area within the gaming operation where tokens, checks, currency, coins, and chips are stored.

Weigh count means the value of coins and currency counted by a weigh machine.

Weigh scale calibration module means the device used to adjust a coin weigh scale.

Weigh scale interface means a communication device between the weigh scale used to calculate the amount of funds included in drop buckets and the computer system used to record the weigh data.

Weigh tape means the tape where weighed coin is recorded.

Wide area progressive gaming machine means a progressive gaming machine that makes deferred payouts where individual machines are linked to machines in other operations and all the machines affect the progressive amount. As a coin is inserted into a single machine, the progressive meter on all of the linked machines increases.

Win means the net win resulting from all gaming activities. Net win results from deducting all gaming losses from all wins prior to considering associated operating expenses.

Win to write hold percentage means bingo or Keno win divided by write to determine hold percentage.

Wrap means the procedure of wrapping coins. May also refer to the total amount or value of the wrapped coins.

Write means the total amount wagered in keno, and race and sports book operations.

Writer means an employee who writes keno or race and sports book tickets. A keno writer usually also makes payouts.

Writer machine means a locked device used to prepare keno or race and sports book tickets.

§ 542.3 How do I comply with this part?

(a) Within six months of February 4, 1999, each tribe or its designated tribal governmental body or agency shall establish by regulation and implement tribal minimum internal control standards which shall:

(1) Be at least as stringent as those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103;

(3) Establish standards for games which are not addressed in this part; and

(4) Establish a deadline, which shall not exceed twelve months from February 4, 1999, by which a gaming operation must come into compliance with the tribal minimum internal control standards. However, the tribe may extend the deadline by an additional six months if:

(i) The tribe submits a written request to the Commission to extend the deadline no later than two weeks prior to the expiration of the initial six month period;

(ii) The request includes an explanation of why the gaming operation cannot come into compliance within the initial six month period; and

(iii) The tribe has not received written notification from the Commission denying the request within two weeks following submission of the request.

(5) All gaming operations that are operating on or before March 31, 1999, shall comply with this part within the time requirements established in this paragraph. All gaming operations which commence operations after March 31, 1999, shall comply with this part prior to commencement of operations.

(b) Tribal regulations promulgated pursuant to this section shall not be required to be submitted to the Commission pursuant to 25 CFR 522.3 (b).

(c) Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal minimum internal control standards.

(d) The independent certified public accountant (CPA) shall perform procedures to verify that the gaming operation's internal control system (ICS) is in substantial compliance with the tribal MICS by comparing the gaming operation's ICS to the tribal MICS. The CPA shall also perform procedures to verify, on a test basis, that the gaming operation has implemented and is in substantial compliance with its ICS. The procedures may be performed in conjunction with the annual audit. The CPA shall prepare a report of the findings for the tribe and management. The tribe shall submit a copy of the report to the Commission within 120 days of the gaming operation's fiscal year end.

§ 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

(a) If an internal control standard or a requirement set forth in this part is more stringent than an internal control standard established in a Tribal-State compact, then the internal control standard or requirement set forth in this part shall prevail. If a standard in a Tribal-State compact is more stringent than a standard set forth in this part, then the Tribal-State compact standard shall prevail.

(b) If there is a direct conflict between an internal control standard established in a Tribal-State compact and a standard or requirement set forth in this part, then the internal control standard established in a Tribal-State compact shall prevail.

(c) Nothing in this part shall grant to a state jurisdiction in class II gaming or extend a state's jurisdiction in class III gaming.

§ 542.5 What are the minimum internal control standards for bingo?

(a) Game play standards. (1) The functions of seller and payout verifier shall be segregated. Employees who sell cards on the floor shall not verify payouts with cards in their possession.

Floor clerks who sell cards on the floor are permitted to announce the serial numbers of winning cards.

(2) All sales of bingo cards shall be documented by recording at least the following:

- (i) Date;
- (ii) Shift (if applicable);
- (iii) Session (if applicable);
- (iv) Dollar amount;
- (v) Signature or initials of at least one seller (if manually documented); and
- (vi) Signature or initials of person independent of seller who has randomly verified the card sales (this requirement is not applicable to locations with \$1 million or less in annual write).

(3) The total write shall be computed and recorded by shift (or session, if applicable).

(4) The gaming operation shall develop and comply with procedures that ensure the correct calling of numbers selected in the bingo game.

(5) Each ball shall be shown to a camera immediately before it is called so that it is individually displayed to all patrons. For locations not equipped with cameras, each ball drawn shall be shown to an independent patron.

(6) For all coverall games and other games offering a payout of \$1,200 or more, as the balls are called the numbers shall be immediately recorded by the caller and maintained for a minimum of 24 hours.

(7) Controls shall be present to assure that the numbered balls are placed back into the selection device prior to calling the next game.

(8) The authenticity of each payout shall be verified by at least two persons. A computerized card verifying system may function as the second person verifying the payout if the card with the winning numbers is displayed on a reader board.

(9) Payouts in excess of \$1,200 shall require written approval, by supervisory personnel independent of the transaction, that the bingo card has been examined and verified with the bingo card record to ensure that the ticket has not been altered.

(10) Total payout shall be computed and recorded by shift or session, if applicable.

(b) If the gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

- (1) Date and time;
- (2) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);
- (3) Type of promotion; and
- (4) Signature of at least one employee authorizing and completing the transaction.

(c) All funds used to operate the bingo department shall be recorded on an accountability form. These funds shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(d) Access and control of bingo equipment shall be restricted as follows:

(1) Access to controlled bingo equipment (e.g., blower, balls in play, and back-up balls) shall be restricted to authorized persons.

(2) Procedures shall be established to inspect new bingo balls put into play as well as for those in use.

(3) Bingo equipment shall be maintained and checked for accuracy on a periodic basis.

(4) The bingo card inventory shall be controlled so as to assure the integrity of the cards being used as follows:

(i) Purchased paper shall be inventoried and secured by an individual independent from the bingo sales;

(ii) The issue of paper to the cashiers shall be documented and signed for by the inventory control department and cashier. The document log shall include the numerical sequence of the bingo paper;

(iii) A copy of the bingo paper control log shall be given to the bingo ball caller for purposes of determining if the winner purchased the paper that was issued to the gaming operation that day;

(iv) At the end of each month an independent department shall verify the accuracy of the ending balance in the bingo paper control by counting the paper on-hand;

(v) Monthly the amount of paper sold from the bingo paper control log shall be compared to the amount of revenue for reasonableness.

(e) Data concerning bingo shall be maintained as follows:

(1) Records shall be maintained which include win, write (card sales), and a win-to-write hold percentage for:

- (i) Each shift or each session;
- (ii) Each day;
- (iii) Month-to-date; and
- (iv) Year-to-date or fiscal year-to-date.

(2) Non-bingo management shall review bingo statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Investigations shall be documented and maintained for Commission inspection.

(f) If the gaming operation utilizes electronic equipment in connection with the play of bingo, then the following standards shall also apply:

(1) If the electronic equipment contains a currency acceptor, then § 542.12(g) (as applicable) shall apply.

(2) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically by an entity independent of Bingo personnel to determine that it is correctly reading the bar code or the microchip.

(3) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.12(u) (as applicable) shall apply.

(g) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(h) Standards for linked electronic games. (1) Host requirements/game information.

(i) Providers of any linked electronic game(s) shall maintain complete records of game data for a period of one (1) year from the date the games are played (or a time frame established by the Tribe). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, game data for the preceding 72 hours shall be immediately accessible;

(ii) Data required to be maintained for each game played includes:

- (A) Date and time game start and game end.

- (B) Sales information by location.

- (C) Money distribution by location.

- (D) Refund totals by location.

- (E) Cards-in-play count by location.

- (F) Identification number of winning card(s).

- (G) Ordered list of bingo balls drawn.

- (H) Prize amounts at start and end of game.

(2) Host requirements/sales information.

(i) Providers of any linked electronic game(s) shall maintain complete records of sales data for a period of one (1) year from the date the games are played (or a time frame established by the Tribe). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, sales data for the preceding 10 days shall be immediately accessible. Summary information must be accessible for at least 120 days.

(ii) Sales information required shall include:

- (A) Daily sales totals by location.

- (B) Commissions distribution summary by location.

- (C) Game-by-game sales, prizes, refunds, by location.

- (D) Daily network summary, by game by location.

(3) Remote host requirements.

(i) Linked game providers shall maintain online records at the remote host site for any game played. These records shall remain online until the conclusion of the session of which the game is a part. Following the conclusion of the session, records may be archived, but in any event, must be retrievable in a timely manner for at least 72 hours following the close of the session. Records shall be accessible through some archived media for at least 90 days from the date of the game;

(ii) Game information required includes date and time of game start and game end, sales totals, money distribution (prizes) totals, and refund totals;

(iii) Sales information required includes cash register reconciliations, detail and summary records for purchases, prizes, refunds, credits, and game/sales balance for each session.

(i) Standards for player accounts (for proxy play and linked electronic games).

(1) Prior to participating in any game, players shall be issued a unique player account number. The player account number can be issued through the following means:

- (i) Through the use of a point-of-sale (cash register device);
- (ii) By assignment through an individual play station;
- (iii) Through the incorporation of a "player tracking" media.

(2) Printed receipts issued in conjunction with any player account should include a time/date stamp.

(3) All player transactions shall be maintained, chronologically by account number, through electronic means on a data storage device. These transaction records shall be maintained online throughout the active game and for at least 24 hours before they can be stored on an "off-line" data storage media.

(4) The game software shall provide the ability to, upon request, produce a printed account history, including all transactions, and a printed game summary (total purchases, deposits, wins, debits, for any account that has been active in the game during the preceding 24 hours).

(5) The game software shall provide a "player account summary" at the end of every game. This summary shall list all accounts for which there were any transactions during that game day and include total purchases, total deposits, total credits (wins), total debits (cash-outs) and an ending balance.

§ 542.6 What are the minimum internal control standards for pull tabs?

(a) Standards for statistical reports.

(1) Records shall be maintained which include win, write (sales) and a win to write hold percentage as compared to the theoretical hold percentage derived from the flare for:

- (i) Each deal or type of game;
- (ii) Each shift;
- (iii) Each day;
- (iv) Month-to-date; and
- (v) Year-to-date or fiscal year-to-date as applicable.

(2) Non Pull Tab management independent of pull tab personnel shall review statistical information at least on a monthly basis and shall investigate any large or unusual statistical fluctuations.

These investigations shall be documented and maintained for inspection.

(3) Each month, the actual hold percentage shall be compared to the theoretical hold percentage. Any significant variations shall be investigated.

(b) Winning pull tabs shall be verified and paid as follows:

(1) Payouts in excess of a dollar amount determined by the tribe shall be verified by at least two employees.

(2) Total payout shall be computed and recorded by shift.

(3) The winning Pull Tabs shall be voided so that they cannot be presented for payment again.

(c) Personnel independent of Pull Tab management shall verify the amount of winning Pull Tabs redeemed each day.

(d) Pull Tab inventory (including unused tickets) shall be controlled, so as to assure the integrity of the Pull Tabs.

(1) Purchased pull tabs shall be inventoried and secured by an individual independent from the pull tab sales.

(2) The issue of pull tabs to the cashier or sales location shall be documented and signed for by the inventory control department and the cashier or tribal official witnessing the fill. The document log shall include the serial number of the pull tabs.

(3) Appropriate documentation shall be given to the redemption booth for purposes of determining if the winner purchased the pull tab that was issued by the gaming operation.

(4) At the end of each month, an independent department shall verify the accuracy of the ending balance in the pull tab control by counting the pull tabs on hand.

(5) Monthly, a comparison shall be done, of the amount of pull tabs sold from the pull tab control log to the amount of revenue recognized for reasonableness.

(e) Access to Pull Tabs shall be restricted to authorized persons.

(f) Transfers of Pull Tabs from storage to the sale location shall be secured and independently controlled.

(g) All funds used to operate the pull tabs game shall be recorded on an accountability form.

(h) For any authorized computer application, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(i) If the gaming operation utilizes electronic equipment in connection with the play of pull tabs, then the following standards shall also apply:

(1) If the electronic equipment contains a currency acceptor, then § 542.12(g) shall apply (as applicable).

(2) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically to determine that it is correctly reading the bar code or microchip.

(3) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.12(u) (as applicable) shall apply.

§ 542.7 What are the minimum internal control standards for card games?

(a) Standards for supervision. (1) Supervision shall be provided at all times the card room is in operation by personnel with authority equal to or greater than those being supervised.

(2) Transfers between table banks and the main card room bank (or cage, if a main card room bank is not used) shall be authorized by a supervisor and evidenced by the use of a lammer. (A lammer is not required if the exchange of chips, tokens, and/or currency takes place at the table.)

(3) Transfers from the main card room bank (or cage, if a main card room bank is not used) to the table banks shall be verified by the card room dealer and the runner.

(4) If applicable, transfers between the main card room bank and the cage shall be properly authorized and documented.

(5) A rake shall be collected in accordance with the posted rules unless authorized by a supervisor.

(b) Standards for drop and count. The procedures for the collection of card games drop boxes and the count of the contents thereof shall comply with the internal control standards applicable to the pit drop boxes.

(c) Playing cards, both used and unused, shall be maintained in a secure location to prevent unauthorized ac-

cess and to reduce the possibility of tampering. Used cards shall be maintained in a secure location until marked or destroyed to prevent unauthorized access and reduce the possibility of tampering. The tribe shall establish a reasonable time period within which to mark and remove cards from play which shall not exceed seven days. A card control log shall be maintained that documents when cards are received on site, distributed to and returned from tables and removed from the gaming operation.

(d) Notwithstanding paragraph (c) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three months if the plastic cards are washed or cleaned at least every three days.

(e) Standards for reconciliation of card room bank.

(1) The amount of the main card room bank shall be counted, recorded, and reconciled on at least a per shift basis.

(2) At least once per shift the table banks shall be counted, recorded, and reconciled by a dealer (or other individual if the table is closed) and a supervisor, and shall be attested to by their signatures on the check-out form.

(f) Standards for shills and proposition players.

(1) Issuance of shill funds shall have the written approval of the supervisor.

(2) Shill returns shall be recorded and verified on the shill sign-out form.

(3) The replenishment of shill funds shall be documented.

(g) Standards for promotional progressive pots and pools.

(1) All funds contributed by players into the pools shall be returned when won in accordance with the posted rules with no commission or administrative fee withheld.

(2) Rules governing promotional pools shall be conspicuously posted in a location visible from each table, and designate:

(i) The amount of funds to be contributed from each pot;

(ii) What type of hand it takes to win the pool (e.g., what constitutes a "bad beat");

(iii) How the promotional funds will be paid out;

(iv) How/when the contributed funds are added to the jackpots; and

(v) Amount/percentage of funds allocated to primary and secondary jackpots, if applicable.

(3) Promotional pool contributions shall not be placed in or near the rake circle, in the drop box, or commingled with gaming revenue from card games or any other gambling game.

(4) Promotional funds removed from the card game shall be placed in a locked container in plain view of the public.

(5) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(6) The contents key shall be maintained by a department independent of the card room.

(7) At least once a day, the locked container shall be removed by two individuals, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted.

(8) If the funds are maintained in the cage, the contents shall be counted, recorded, and verified prior to accepting the funds into cage accountability.

(9) The amount of the jackpot shall be conspicuously displayed in the card room. At least once a day the progressive sign or meter, if applicable, shall be updated to reflect the current pool amount.

(10) At least once a day increases to the progressive sign/meter shall be reconciled to the cash previously counted or received by the cage.

(h) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.8 What are the minimum internal control standards for manual keno?

(a) Physical controls over equipment.
(1) The keno write and desk area shall be restricted to specified personnel (desk area is restricted to preclude writers from accessing inside tickets).

(2) Effective periodic maintenance shall be planned to service keno equipment.

(3) Keno equipment maintenance shall be independent of the operation of the keno game.

(4) Keno maintenance shall report irregularities to management personnel independent of keno, either in writing or verbally.

(5) Keno balls in use shall be safeguarded to prevent tampering. The gaming operation shall establish and comply with procedures for inspecting new keno balls put into play as well as for those being used.

(6) There shall be safeguards over electronic equipment to prevent access and/or tampering.

(b) Game play standards. (1) The individual controlling inside tickets shall:

(i) Be precluded from writing and making payouts, including during the writer's break periods; or

(ii) Have all winning tickets written by him with payouts exceeding \$100.00 verified, regraded, and compared to the inside ticket by another keno employee. Additionally, this individual writes tickets out of his own predesignated writer's station and bank (unless a community bank is used).

(2) At no time shall a keno game with annual write of greater than or equal to \$500,000 be operated by one person.

(3) Both inside and outside keno tickets shall be stamped with the date, ticket sequence number, and game number (as applicable to the system being used). The ticket shall indicate that it is multi-race (if applicable).

(4) The game openers and closers shall be stamped with the date, ticket sequence number, and game number. An alternative which provides the same controls may be acceptable.

(5) Controls shall exist to ensure that inside tickets have been received from outstations prior to calling of a game.

(6) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and the number selection process for the game has begun.

(7) A legible restricted copy of written keno tickets shall be created (carbonized locked box copy, microfilm, videotape, etc.) for, at a minimum, all winning tickets exceeding \$30.00. If

there are no restricted copies of winning tickets of \$30.00 or less, then the desk person shall not write tickets.

(8) When it is necessary to void a ticket which contains the sequence number, the ticket shall be designated as "void" and initialed or signed by at least one person.

(c) Standards for number selection.

(1) A camera shall be utilized to film the following both prior to, and subsequent to, the calling of a game:

- (i) Empty rabbit ears;
- (ii) Date and time;
- (iii) Game number, and
- (iv) Full rabbit ears.

(2) The picture of the rabbit ears on the camera shall provide a legible identification of the numbers on the balls drawn.

(3) Keno personnel shall produce a draw ticket as numbers are drawn, and such tickets contain the race number, numbers drawn, and date. The draw ticket shall be verified to the balls drawn by a second keno employee.

(4) A gaming operation shall establish and comply with procedures which prevent unauthorized access to keno balls in play.

(5) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(6) A gaming operation shall establish effective procedures for inspecting new keno balls put into play as well as for those in use.

(d) Winning tickets shall be verified and paid as follows:

(1) All winning tickets shall be compared with the draw ticket by the writer before being paid, marked with evidence that the ticket was "paid" and marked with the amount of the payout.

(2) Payouts over a predetermined amount (not to exceed \$30.00) shall be verified by actual examination of the inside ticket.

(3) Wins over a specified dollar amount (not to exceed \$10,000 for locations with annual keno write in excess of \$5,000,000 and \$3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department evidenced by their signature;

(ii) Examination of films of rabbit ears prior to and after the game is

called to determine that the same numbers called were not left up from the prior game and to verify the accuracy of the draw ticket;

(iii) If necessary, film may be developed as soon as possible after payouts;

(iv) Regrading of the inside ticket and comparison of both the winning ticket presented for payment and the inside ticket to the restricted copy (machine copy, microfilm, videotape, etc.);

(v) Procedures described in this paragraph shall be documented for later verification and reconciliation by the keno audit process on a ball check form.

(e) A cash summary report (count sheet) shall be prepared for the end of every shift which includes:

(1) Computation of cash proceeds for the shift by bank (i.e., community bank or individual writer banks, whichever is applicable); and

(2) Signatures in ink of two employees who have verified the cash proceeds recorded in the computation in paragraph (e)(1).

(f) Statistics shall be maintained as follows:

(1) Records shall be maintained which include (for each game) win, write, and win-to-write hold percentage for:

- (i) Each shift;
- (ii) Each day;
- (iii) Month-to-date; and
- (iv) Calendar or fiscal year-to-date, as applicable.

(2) Non-keno management shall review keno statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Such investigations shall be documented and maintained.

(4) The accounting department or someone who is independent of the keno writer and desk person, shall calculate and indicate in a summary report the total "write" by game and shift, total "payout" by game and shift, and the "win/loss" by game and shift.

(5) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of +/- 3%. The base level is defined as the gaming

operations win percentage for the previous business year or the previous 12 months.

(g) Key control standards. (1) Keys to locked box tickets shall be maintained by a department independent of the keno function.

(2) The master panel, which safeguards the wiring that controls the sequence of the game, shall be locked at all times to prevent unauthorized access. Someone independent of the Keno department is required to accompany such keys to the Keno area and observe repairs or refills each time locked boxes are accessed.

(3) Master panel keys shall be maintained by a department independent of the keno function.

(4) Microfilm machine keys shall be maintained by personnel who are independent of the keno writer function.

(5) Someone independent of the keno writer function (e.g., a keno supervisor who doesn't write or someone independent of keno) shall be required to observe each time the microfilm machine is accessed by keno personnel.

(6) Keno equipment discussed in this section shall always be locked when not being accessed.

(7) All electrical connections shall be wired in such a manner so as to prevent tampering.

(8) Duplicate keys to the above areas shall be maintained independently of the keno department.

(h) Standards for keno audit. (1) The accounting department shall perform the various audit functions of keno and shall include verification on a sample basis at least once a week of the total "write" by writer and shift (from inside tickets for microfilm or videotape system or from locked box copies for a writing machine system), the total "payout" by writer and shift, and the "win/loss" by writer and shift.

(2) Audit procedures may be performed up to one month following the transaction.

(3) Keno audit personnel shall total (or "foot") write (either inside ticket or restricted copy) and payouts (customer copy) to arrive at an audited win/loss by shift.

(4) Keno audit personnel shall obtain an audited win/loss for each bank (i.e., individual writer or community). The

keno audit function is independent of the keno department for the next five standards.

(5) The keno receipts (net cash proceeds) shall be compared with the audited win/loss by keno audit personnel.

(6) Major cash variances (i.e., overages or shortages in excess of \$25.00) noted in the comparison in paragraph (h)(5) of this section shall be investigated on a timely basis.

(7) On a sample basis (for at least one race per shift or ten races per week) keno audit personnel shall perform the following, where applicable:

(i) Regrade winning tickets utilizing the payout schedule and draw tickets and compare winning tickets (inside and outside) to restricted copies (locked box copy, developed microfilm, videotape, etc.) for 100% of all winning tickets of \$100.00 or greater and 25% of all winning tickets under \$100.00 for those races selected;

(ii) Either review sequential numbering on inside tickets (microfilm and videotape systems) to ensure that tickets have not been destroyed to alter the amount of write, or compute write from developed film and compare to write computed from inside tickets;

(iii) Review restricted copies for blank tickets and proper voiding of voids;

(iv) Ensure the majority of the races in the sample selected contain payouts in excess of \$100.00 but less than the amount established for the independent verification required by paragraph (d)(3) of this section.

(8) In addition to the audit procedures in paragraph (h)(7) of this section, when a keno game is operated by one person:

(i) At least 25% of all other winning tickets shall be regraded;

(ii) At least 10% of all tickets shall be traced to the restricted copy;

(iii) Film of rabbit ears shall be randomly compared to draw tickets for at least 25% of the races;

(9) The keno audit function shall be independent of the keno shift being audited when performing standards in paragraphs (h)(7) (i), (ii), and (iii) of this section.

(10) Draw tickets shall be compared to rabbit ears film for at least five races per week with payouts which do

not require draw ticket verification independent of the keno department. (The draw information may be compared to the rabbit ears at the time the balls are drawn provided it is done without the knowledge of keno personnel and it is subsequently compared to the keno draw ticket.)

(11) Documentation (e.g., logs, checklists, etc.) shall be maintained and shall evidence the performance of all keno audit procedures.

(12) Non-keno management shall review keno audit exceptions, perform investigations into unresolved exceptions and document results.

(13) Copies of all Keno tickets and the video tape of the rabbit ears shall be maintained for at least seven days.

(i) Standards for multi-race keno tickets. (1) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with the standard in paragraph (d)(3) of this section.

(2) Controls shall exist to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(j) For any authorized computer applications, alternate documentation and/or procedures that are at least at the level of control described by the standards in this section may be acceptable.

§ 542.9 What are the minimum internal control standards for computerized keno?

(a) Game play standards. (1) The computerized customer ticket shall include the date, game number, ticket sequence number, station number, and conditioning (including multi-race if applicable).

(2) Concurrently with the generation of the ticket the information on the ticket shall be recorded on a restricted transaction log or computer storage media.

(3) Keno personnel shall be precluded from access to the restricted transaction log or computer storage media.

(4) When it is necessary to void a ticket, the void information shall be inputted in the computer and the computer shall document the appropriate information pertaining to the voided

wager (e.g., void slip is issued or equivalent documentation is generated).

(5) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and after the number selection process for that game has begun.

(6) The controls in effect for tickets prepared in outstations (if applicable) shall be identical to those in effect for the primary keno game.

(b) The following standards shall apply if a rabbit ear system is utilized:

(1) A camera shall be utilized to film the following both prior to, and subsequent to, the calling of a game:

- (i) Empty rabbit ears;
- (ii) Date and time;
- (iii) Game number; and
- (iv) Full rabbit ears.

(2) The film of the rabbit ears shall provide a legible identification of the numbers on the balls drawn.

(3) Keno personnel shall immediately input the selected numbers in the computer and the computer shall document the date, the game number, the time the game was closed, and the numbers drawn.

(4) A gaming operation shall establish and comply with procedures which prevent unauthorized access to keno balls in play.

(5) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(6) The gaming operation shall establish and comply with procedures for inspecting new keno balls put into play as well as for those in use.

(c) The following standards shall apply if a random number generator is utilized:

(1) The random number generator shall be linked to the computer system and shall directly relay the numbers selected into the computer without manual input.

(2) Keno personnel shall be precluded from access to the random number generator.

(d) Winning tickets shall be verified and paid as follows:

(1) The sequence number of tickets presented for payment shall be inputted into the computer, and the payment amount generated by the computer shall be given to the patron.

(2) A gaming operation shall establish and comply with procedures to preclude payment on tickets previously presented for payment, unclaimed winning tickets (sleepers) after a specified period of time, voided tickets, and tickets which have not been issued yet.

(3) All payouts shall be supported by the customer (computer-generated) copy of the winning ticket (payout amount is indicated on the customer ticket or a payment slip is issued).

(4) A manual report or other documentation shall be produced and maintained documenting any payments made on tickets which are not authorized by the computer.

(5) Winning tickets over a specified dollar amount (not to exceed \$10,000 for locations with more than \$5 million annual keno write and \$3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department, evidenced by their signature;

(ii) Review of the videotape or development of the film of the rabbit ears to verify the legitimacy of the draw and the accuracy of the draw ticket (for rabbit ear systems only);

(iii) Comparison of the winning customer copy to the computer reports;

(iv) Regrading of the customer copy using the payout schedule and draw information; and

(v) Documentation and maintenance of the procedures in this paragraph.

(6) When the keno game is operated by one person, all winning tickets in excess of an amount to be determined by management (not to exceed \$1,500) shall be reviewed and authorized by someone independent of the keno department.

(e) Check out standards at the end of each keno shift. For each writer station, a cash summary report (count sheet) shall be prepared that includes:

(1) Computation of net cash proceeds for the shift and the cash turned in; and (2) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in.

(f) If a gaming operation offers promotional payouts and awards, the payout form/documentation shall include the following information:

(1) Date and time;

(2) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(3) Type of promotion; and

(4) Signature of at least one employee authorizing and completing the transaction;

(g) Statistics shall be maintained as follows:

(1) Records shall be maintained which include win and write by individual writer for each day.

(2) Records shall be maintained which include (for each licensed game) win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(3) Non-keno management independent from the keno personnel shall review keno statistical data at least on a monthly basis and investigate any large or unusual statistical variances.

(4) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of $\pm 3\%$. The base level shall be defined as the gaming operation's win percentage for the previous business year or the previous 12 months.

(5) Such investigations shall be documented and maintained.

(h) System security standards. (1) All keys (including duplicates) to sensitive computer hardware in the keno area shall be maintained by a department independent of the keno function.

(2) Someone independent of the keno department shall be required to accompany such keys to the keno area and shall observe changes or repairs each time the sensitive areas are accessed.

(i) A gaming operation shall comply with the following documentation standards:

(1) Adequate documentation of all pertinent keno information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) Ticket information (as described in paragraph (a)(1) of this section);

(ii) Payout information (date, time, ticket number, amount, etc.);

(iii) Game information (number, ball draw, time, etc.);

(iv) Daily recap information which includes:

(A) Write;

(B) Payouts; and

(C) Gross revenue (win);

(v) System exception information, including:

(A) Voids;

(B) Late pays; and

(C) Appropriate system parameter information (e.g., changes in pay tables, ball draws, payouts over a predetermined amount, etc.); and

(vi) Personnel access listing which includes at least:

(A) Employee name;

(B) Employee identification number; and

(C) Listing of functions employee can perform or equivalent means of identifying same.

(j) Keno audit standards.

(1) The keno audit function shall be independent of the keno department.

(2) At least annually, keno audit shall foot the write on the restricted copy of the keno transaction report for a minimum of one shift and compare the total to the total as documented by the computer.

(3) For at least one shift every other month keno audit shall perform the following:

(i) Foot the customer copy of the payouts and trace the total to the payout report; and

(ii) Regrade at least 1% of the winning tickets using the payout schedule and draw ticket;

(4) Keno audit shall perform the following:

(i) For a minimum of five games per week, compare the videotape/film of the rabbit ears to the computer transaction summary;

(ii) Compare net cash proceeds to the audited win/loss by shift and investigate any large cash overages or shortages (i.e., in excess of \$25.00);

(iii) Review and regrade all winning tickets greater than or equal to \$1,500, including all forms which document that proper authorizations and verifications were obtained and performed;

(iv) Review the documentation for payout adjustments made outside the computer and investigate large and frequent payments;

(v) Review personnel access listing for inappropriate functions an employee can perform;

(vi) Review system exception information on a daily basis for propriety of transactions and unusual occurrences including changes to the personnel access listing;

(vii) If a random number generator is used, then at least weekly review the numerical frequency distribution for potential patterns; and

(viii) Investigate and document results of all noted improper transactions or unusual occurrences.

(5) When the keno game is operated by one person:

(i) The customer copies of all winning tickets in excess of \$100 and at least 5% of all other winning tickets shall be regraded and traced to the computer payout report;

(ii) The videotape/film of rabbit ears shall be randomly compared to the computer game information report for at least 10% of the games during the shift;

(iii) Keno audit personnel shall review winning tickets for proper authorization pursuant to paragraph (d) (6) of this section.

(6) In the event any person performs the writer and deskman functions on the same shift, the procedures described in paragraphs (j)(5) (i) and (ii) of this section (using the sample sizes indicated) shall be performed on tickets written by that person.

(7) Documentation (e.g., a log, checklist, etc.) which evidences the performance of all keno audit procedures shall be maintained.

(8) Non-keno management shall review keno audit exceptions, and perform and document investigations into unresolved exceptions.

(9) When a multi-game ticket is part of the sample in paragraphs (j)(3)(ii), (j)(5) (i) and (j)(6) of this section, the procedures may be performed for 10 games or 10% of the games won, whichever is greater.

(k) Access to the computer system shall be adequately restricted (i.e.,

passwords are changed at least quarterly, access to computer hardware is physically restricted, etc.).

(l) There shall be effective maintenance planned to service keno equipment, including computer program updates, hardware servicing, and keno ball selection equipment (e.g., service contract with lessor).

(m) Keno equipment maintenance (excluding keno balls) shall be independent of the operation of the keno game.

(n) Keno maintenance shall report irregularities to management personnel independent of keno.

(o) All documents, including computer storage media discussed in this section shall be retained for five (5) years except for the following which shall be retained for at least seven (7) days:

(1) Videotape of rabbit ears;

(2) All copies of winning keno tickets of less than \$1,500.00; and

(3) The information required in paragraph (i) (3) of this section.

(p) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with standards in paragraphs (d)(5) (i) through (v). Procedures shall be established to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(q) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.10 What are the minimum internal control standards for pari-mutuel wagering?

(a) Betting ticket and equipment standards. (1) All pari-mutuel wagers shall be transacted through the pari-mutuel satellite system. In case of computer failure between the pari-mutuel book and the hub, no tickets shall be manually written.

(2) Whenever a betting station is opened for wagering or turned over to a new writer/cashier, the writer/cashier shall sign on and the computer shall document gaming operation name, sta-

tion number, the writer/cashier identifier, and the date and time.

(3) A betting ticket shall consist of at least three parts:

(i) An original which shall be transacted and issued through a printer and given to the patron;

(ii) A copy which shall be recorded concurrently with the generation of the original ticket either on paper or other storage media (e.g., tape or diskette);

(iii) A restricted copy which shall not be accessible to book employees; and

(iv) For automated systems the second copy referred to in paragraph (a)(3)(ii) and the restricted copy referred to in paragraph (a)(3)(iii) may be retained within the automated system.

(4) Upon accepting a wager, the betting ticket which is created shall contain the following:

(i) An alpha-numeric ticket number (the alpha-numeric need not be used if the numeric series is not used during the business year);

(ii) Gaming operation name and station number;

(iii) Race track, race number, horse identification or event identification, as applicable;

(iv) Type of bet(s), each bet amount, total number of bets, and total take; and

(v) Date and time.

(5) All tickets shall be considered final at post time.

(6) If a book voids a betting ticket written prior to post time:

(i) A void designation shall be immediately branded by the computer on the ticket;

(ii) All voids shall be signed by the writer/cashier and the supervisor at the time of the void; and

(iii) A ticket may be voided manually by inputting the ticket sequence number and immediately writing/stamping a void designation on the original ticket.

(7) Future wagers shall be accepted and processed in the same manner as regular wagers.

(b) Payout standards. (1) Prior to making payment on a ticket the writer/cashier shall input the ticket for verification and payment authorization.

(2) The system shall brand the ticket with a paid designation, the amount of payment and date, or if a writer/cashier manually inputs the ticket sequence number into the computer, the writer/cashier shall immediately date stamp and write/stamp a paid designation on the patron's ticket.

(3) The computer shall be incapable of authorizing payment on a ticket which has been previously paid, a voided ticket, a losing ticket, or an unissued ticket.

(4) In case of computer failure, tickets may be paid. In those instances where system failure has occurred and tickets are manually paid, a log shall be maintained which includes:

- (i) Date and time of system failure;
- (ii) Reason for failure; and
- (iii) Date and time system is restored.

(5) A log for all manually paid tickets shall be maintained which shall include:

- (i) An alpha-numeric ticket number (the alpha-numeric need not be used if the numeric series is not used during the business year);
- (ii) Gaming operation name and station number;
- (iii) Racetrack, race number, runner identification or event identification, as applicable;
- (iv) Type of bet(s), each bet amount, total number of bets and total take; and
- (v) Date and time.

(6) All manually paid tickets shall be entered into the computer system as soon as possible to verify the accuracy of the payout (this does not apply to purged, unpaid winning tickets). All manually paid tickets shall be re-graded as part of the end-of-day audit process should the computer system be inoperative.

(c) Checkout standards. (1) Whenever the betting station is closed or the writer/cashier is replaced, the writer/cashier shall sign off and the computer shall document the gaming operation name, station number, the writer/cashier identifier, the date and time, and cash balance.

(2) For each writer/cashier station a summary report shall be completed at the conclusion of each shift including:

(i) Computation of cash turned in for the shift; and

(ii) Signatures of two employees who have verified the cash turned in for the shift.

(d) Pari-mutuel book employees shall be prohibited from wagering on race events while on duty, including during break periods and from wagering on race events occurring while the employee is on duty.

(e) Computer reports standards. (1) Adequate documentation of all pertinent pari-mutuel information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall be created daily and shall include, but is not limited to:

- (i) Ticket/voucher number;
- (ii) Date/time of transaction;
- (iii) Type of wager;
- (iv) Horse identification or event identification;
- (v) Amount of wagers (by ticket, writer/SAM, track/event, and total);
- (vi) Amount of payouts (by ticket, writer/SAM, track/event, and total);
- (vii) Tickets refunded (by ticket, writer, track/event, and total);
- (viii) Unpaid winners/vouchers ("outs") (by ticket/voucher, track/event, and total);
- (ix) Voucher sales/payments (by ticket, writer/SAM, and track/event);
- (x) Voids (by ticket, writer, and total);
- (xi) Future wagers (by ticket, date of event, total by day, and total at the time of revenue recognition);
- (xii) Results (winners and payout data);
- (xiii) Breakage data (by race and track/event);
- (xiv) Commission data (by race and track/event); and
- (xv) Purged data (by ticket and total).

(4) The system shall generate the following reports:

(i) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(ii) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(iii) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(iv) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(v) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(i) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;

(ii) An exception report that contains a listing of all system functions and overrides not involved in the actual writing or cashing of tickets, including sign-on/off, voids, and manually input paid tickets; and

(iii) A purged ticket report that contains a listing of ticket numbers, description, ticket cost and value, and date purged.

(f) A gaming operation shall perform the following accounting and auditing functions:

(1) The pari-mutuel audit shall be conducted by someone independent of the race, sports, and pari-mutuel operations.

(2) Documentation shall be maintained evidencing the performance of all pari-mutuel accounting and auditing procedures.

(3) An accounting employee shall examine the daily reconciliation report, compare it to the revenue summary produced by the system, and recalculate the net amount due to or from the systems operator. An accounting employee shall reconcile transfers with the bank statements on a monthly basis.

(4) The auditor shall verify daily cash turn-in by comparing actual cash turned in to cash turn-in per pari-mutuel reports (Beginning balance, (+) fills (draws), (+) net write (sold less voids), (-) payouts (net of IRS withholding), (-) moneybacks (pays), (=) cash turn-in).

(5) For one track/event per day, the auditor shall verify commissions per the daily reconciliation report by recalculating track/event commissions.

(6) For the track/event selected above, the auditor shall verify daily transfers due to/from the systems operator by recalculating the deposits (Net sales, (+) negative breakage, (-) commissions, (-) positive breakage, (-) accrual pays, (=) deposit).

(7) An accounting employee shall produce a gross revenue recap report to calculate gross revenue on a daily and month-to-date basis, including the following totals:

- (i) Commission;
- (ii) Positive breakage;
- (iii) Negative breakage;
- (iv) Track/event fees;
- (v) Track/event fee rebates; and

(vi) Purged tickets.

(8) Track/event fees and track/event fee rebates shall be traced to the invoices received from the systems operator.

(9) All winning tickets and vouchers from the SAM's shall be removed on a daily basis by an accounting employee.

(10) SAM's winning tickets and vouchers shall be immediately delivered to the accounting department.

(11) The auditor shall perform the following procedures:

(i) For one SAM per day, foot the winning tickets and vouchers deposited and trace to the totals of SAM activity produced by the system;

(ii) Foot the listing of cashed vouchers and trace to the totals produced by the system;

(iii) Review all exceptions for propriety of transactions and unusual occurrences;

(iv) Review all voids for propriety;

(v) For one day per week, verify the results as produced by the system to the results provided by an independent source;

(vi) For one day per week, regrade 1% of paid (cash) tickets to ensure accuracy and propriety; and

(vii) When applicable, reconcile the daily totals of future tickets written to the totals produced by the system for both unearned and earned take, and review the reports to ascertain that future wagers are properly included on the day of the event.

(12) At least annually the auditor shall perform the following:

(i) Foot the wagers for one day and trace to the total produced by the system; and

(ii) Foot the customer copy of paid tickets for one day and trace to the total produced by the system.

(13) At least one day per quarter, the auditor shall recalculate and verify the change in the unpaid winners to the total purged tickets.

(g) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.11 What are the minimum internal control standards for table games?

(a) Where a standard in this section requires a minimum of three employees to perform a function or be present during one, Tier A and B gaming operations may require only two employees to be present.

(b) If a gaming operation allows marker credit play (exclusive of rim credit and call bets), the following standards shall apply:

(1) A marker system shall allow for credit to be both issued and repaid in the pit. A name credit system shall allow for the issuance of credit without using markers.

(2) Prior to the issuance of gaming credit to a player, the employee extending the credit shall contact the cashier or other independent source to determine if the player's credit limit has been properly established and there is sufficient remaining credit available for the advance.

(3) Proper authorization of credit extension in excess of the previously established limit shall be documented.

(4) The amount of credit extended shall be communicated to the cage or another independent source and the amount documented within a reasonable time subsequent to each issuance.

(5) The marker form shall be prepared in at least triplicate form (triplicate form being defined as three parts performing the functions delineated in the standard in paragraph (b)(6) of this section), with a preprinted or concurrently-printed marker number, and utilized in numerical sequence (This requirement shall not preclude the distribution of batches of markers to various pits.).

(6) At least three parts of each separately numbered marker form shall be utilized as follows:

(i) Original shall be maintained in the pit until settled or transferred to the cage;

(ii) Payment slip shall be maintained in the pit until the marker is settled or transferred to the cage. If paid in the pit, the slip shall be inserted in the table drop box. If not paid, the slip shall be transferred to the cage with the original;

(iii) Issue slip shall be inserted into the appropriate table drop box when credit is extended or when the player has signed the original.

(7) When marker documentation (e.g., issue slip and payment slip) is inserted in the drop box, such action shall be performed by the dealer or boxman at the table.

(8) A record shall be maintained which details the following (e.g., master credit record retained at the pit podium):

(i) The signature or initials of the individual(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

(ii) The legible name of the individual receiving the credit;

(iii) The date and shift of granting the credit;

(iv) The table on which the credit was extended;

(v) The amount of credit issued;

(vi) The marker number;

(vii) The amount of credit remaining after each issuance or the total credit available for all issuances;

(viii) The amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

(ix) The signature or initials of the individual receiving payment/settlement.

(9) The forms required in paragraphs (b) (5), (6), and (8) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

(10) All credit extensions shall be initially evidenced by lammer buttons which shall be displayed on the table in public view and placed there by supervisory personnel.

(11) Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

(12) Lammer buttons shall be removed only by the dealer or boxman employed at the table upon completion of a marker transaction.

(13) The original marker shall contain at least the following information:

marker number, player's name and signature, date, and amount of credit issued.

(14) The issue slip or stub shall include the same marker number as the original, the table number, date and time of issuance, and amount of credit issued. The issue slip or stub shall also include the signature of the individual extending the credit, and the signature or initials of the dealer or boxman at the applicable table, unless this information is included on another document verifying the issued marker.

(15) The payment slip shall include the same marker number as the original. When the marker is paid in full in the pit, it shall also include the table number where paid, date and time of payment, nature of settlement (cash, chips, etc.) and amount of payment. The payment slip shall also include the signature of a pit supervisor acknowledging payment, and the signature or initials of the dealer or boxman receiving payment, unless this information is included on another document verifying the payment of the marker.

(16) When partial payments are made in the pit, a new marker shall be completed reflecting the remaining balance and the marker number of the marker originally issued.

(17) When partial payments are made in the pit, the payment slip of the marker which was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (b) (16) of this section, and inserted into the drop box.

(18) The cashier's cage or another independent source shall be notified when payments (full or partial) are made in the pit so that cage records can be updated for such transactions. Notification shall be made no later than when the patron's play is completed or at shift end, whichever is earlier.

(19) The Tribe shall implement appropriate controls for purpose of security and integrity. The Tribe shall establish and comply with procedures for collecting and recording checks returned to the gaming operation after deposit which include re-deposit procedures. These procedures shall provide for noti-

fication of cage/credit departments and custodianship of returned checks.

(20) All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

(21) An investigation shall be performed to determine the cause and responsibility for loss whenever marker forms, or any part thereof, are missing. The result of the investigation shall be documented and maintained for inspection.

(22) When markers are transferred to the cage, marker transfer forms or marker credit slips (or similar documentation) shall be utilized and such documents shall include, at a minimum, the date, time, shift, marker number(s), table number(s), amount of each marker, the total amount transferred, signature of pit supervisor releasing instruments from the pit, and the signature of cashier verifying receipt of instruments at the cage.

(23) All markers shall be transferred to the cage within 24 hours of issuance.

(24) Markers shall be transported to the cashier's cage by an individual who is independent of the marker issuance and payment functions (pit clerks may perform this function).

(c) The following standards shall apply if personal checks or other name credit instruments are accepted in the pit:

(1) Prior to accepting a name credit instrument, the employee extending the credit shall contact the cashier or another independent source to determine if the player's credit limit has been properly established and the remaining credit available is sufficient for the advance.

(2) All name credit instruments shall be transferred to the cashier's cage (utilizing a two-part order for credit) immediately following the acceptance of the instrument and issuance of chips (If name credit instruments are transported accompanied by a credit slip, an order for credit is not required).

(3) The order for credit (if applicable) and the credit slip shall include the patron's name, amount of the credit instrument, the date, time, shift, table number, signature of pit supervisor releasing instrument from pit, and the

signature of cashier verifying receipt of instrument at the cage.

(4) The procedures for transacting table credits at standards in paragraphs (b)(16) through (f)(23) of this section shall be strictly adhered to.

(5) The acceptance of payments in the pit for name credit instruments shall be prohibited.

(d) The following standards shall apply if call bets are accepted in the pit:

(1) A call bet shall be evidenced by the placement of a lammer button, chips, or other identifiable designation in an amount equal to that of the wager in a specific location on the table.

(2) The placement of the lammer button, chips, or other identifiable designation shall be performed by supervisory/boxmen personnel. The placement may be performed by a dealer only if the supervisor physically observes and gives specific authorization.

(3) The call bet shall be settled at the end of each hand of play by the preparation of a marker, repayment of the credit extended, or the payoff of the winning wager. Call bets extending beyond one hand of play shall be prohibited.

(4) The removal of the lammer button, chips, or other identifiable designation shall be performed by the dealer/boxman upon completion of the call bet transaction.

(e) The following standards shall apply if rim credit is extended in the pit:

(1) Rim credit shall be evidenced by the issuance of chips to be placed in a neutral zone on the table and then extended to the patron for the patron to wager, or to the dealer to wager for the patron, and by the placement of a lammer button or other identifiable designation in an amount equal to that of the chips extended.

(2) Rim credit shall be recorded on player cards, or similarly used documents, which shall be:

(i) Prenumbered or concurrently numbered and accounted for by a department independent of the pit;

(ii) For all extensions and subsequent repayments, evidenced by the initials or signatures of a supervisor and the

dealer attesting to the Validity of each credit extension and repayment;

(iii) An indication of the settlement method (e.g., serial number of marker issued, chips, cash);

(iv) Settled no later than when the patron leaves the table at which the card is prepared;

(v) Transferred to the accounting department on a daily basis;

(vi) Reconciled with other forms utilized to control the issuance of pit credit (e.g., master credit records, table cards).

(f) If foreign currency is accepted in the pit, the following standards shall apply:

(1) Foreign currency transactions shall be authorized by a pit supervisor/boxman who completes a foreign currency exchange form prior to the exchange for chips or tokens;

(2) Foreign currency exchange forms include the country of origin, total face value, amount of chips/token extended (i.e., conversion amount), signature of supervisor/boxman, and the dealer completing the transaction;

(3) Foreign currency exchange forms and the foreign currency shall be inserted in the drop box by the dealer.

(g) Fill and credit standards. (1) Fill slips and credit slips shall be in at least triplicate form, in a continuous numerical series, and prenumbered and concurrently numbered in a form utilizing the alphabet and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year.

(2) Unissued and issued fill/credit slips shall be safeguarded and adequate procedures shall be employed in the distribution, use and control of same. Personnel from the cashier or pit departments shall have no access to the locked box copies of the fill, credit slips.

(3) When a fill/credit slip is voided, the cashier shall clearly mark "void" across the face of the original and first copy, the cashier and one other person independent of the transactions shall sign both the original and first copy, and shall submit them to the accounting department for retention and accountability.

(4) Fill transactions shall be authorized by a pit supervisor prior to the

issuance of fill slips and transfer of chips, tokens, or monetary equivalents. The fill request shall be communicated to the cage where the fill slip is printed.

(5) At least three parts of each fill slip shall be utilized as follows:

(i) One part shall be transported to the pit with the fill and, after the appropriate signatures are obtained, deposited in table drop box;

(ii) One part shall be retained in the cage for reconciliation of cashier bank; and

(iii) One part shall be retained intact by the locked machine in a continuous unbroken form.

(6) For Tier C gaming operations, the part of the fill slip that is placed in the drop box shall be of a different color for fills than for credits, unless the type of transaction is clearly distinguishable in another manner (the checking of a box on the form shall not be a clearly distinguishable indicator).

(7) The table number, shift, and amount of fill by denomination and in total shall be noted on all copies of the fill slip. The correct date and time shall be indicated on at least two copies.

(8) All fills shall be carried from the cashier's cage by an individual who is independent of the cage or pit.

(9) The fill slip shall be signed by at least the following individuals (as an indication that each has counted the amount of the fill and the amount agrees with the fill slip):

(i) Cashier who prepared the fill slip and issued the chips, tokens, or monetary equivalent;

(ii) Runner who carried the chips, tokens, or monetary equivalents from the cage to the pit;

(iii) Dealer who received the chips, tokens, or monetary equivalents at the gaming table; and

(iv) Pit supervisor who supervised the fill transaction.

(10) Fills shall be either broken down or verified by the dealer in public view before the dealer places the fill in the table tray.

(11) All fill slips requesting chips or money shall be prepared at the time a fill is made.

(12) A copy of the fill slip shall then be deposited into the drop box on the

table by the dealer, where it shall appear in the soft count room with the cash receipts for the shift.

(13) When table credits are transacted, a two-part order for credit shall be prepared by the pit supervisor for transferring chips, tokens, or monetary equivalents from the pit to the cashier area or other secure area of accountability.

(14) The duplicate copy of an order for credit shall be retained in the pit to check the credit slip for proper entries and to document the total amount of chips, tokens, and monetary equivalents removed from the table.

(15) At least three parts of each credit slip shall be utilized as follows:

(i) One part shall be retained in the cage for reconciliation of the cashier bank;

(ii) One part shall be transported to the pit by the runner who transports chips, tokens, markers, or monetary equivalents from the pit to the cage, and after the appropriate signatures are obtained, deposited in the table drop box;

(iii) One part shall be retained by the locked machine intact in a continuous unbroken form.

(iv) However, if chips, tokens and monetary equivalents are transported accompanied by a credit slip, an order for credit shall not be required.

(16) The table number, shift, and the amount of credit by denomination and in total shall be noted on all copies of the credit slip. The correct date and time shall be indicated on at least two copies.

(17) Chips, tokens and/or monetary equivalents shall be removed from the table tray by the dealer and shall be broken down or verified by the dealer in public view prior to placing them in racks for transfer to the cage.

(18) All chips, tokens, and monetary equivalents removed from the tables and markers removed from the pit shall be carried to the cashier's cage by an individual who is independent of the cage or pit.

(19) The credit slip shall be signed by at least the following individuals (as an indication that each has counted or, in the case of markers, reviewed the items transferred):

(i) Cashier who received the items transferred from the pit and prepared the credit slip;

(ii) Runner who carried the items transferred from the pit to the cage and returned to the pit with the credit slip;

(iii) Dealer who had custody of the items prior to transfer to the cage; and

(iv) Pit supervisor who supervised the credit transaction.

(20) The credit slip shall be inserted in the drop box by the dealer.

(21) Chips, tokens, or other monetary equivalents shall be deposited on or removed from gaming tables only when accompanied by the appropriate fill/credit or marker transfer forms.

(h) Drop procedures standards. (1) At the close of each shift:

(i) Each table's chip, token, coin, and marker inventory shall be counted and recorded on a table inventory form; or

(ii) If the table banks are maintained on an imprest basis, a final fill or credit shall be made to bring the bank back to par.

(2) If final fills are not made, beginning and ending inventories shall be recorded on the master game sheet for shift win calculation purposes.

(3) The accuracy of inventory forms prepared at shift end shall be verified by the outgoing pit supervisor and a dealer, another pit supervisor, or another supervisor from another gaming department. Verifications shall be evidenced by signature on the inventory form.

(4) If inventory forms are placed in the drop box, such action shall be performed by someone other than a pit supervisor.

(5) The setting out of empty drop boxes and the drop shall be a continuous process.

(6) Procedures shall be developed and implemented to insure that unauthorized access to empty drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(7) At the end of each shift:

(i) All locked drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table each shift or a

gaming operation operator may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, drop boxes shall be transported directly to the count room or other secure place and locked in a secure manner until the count takes place.

(8) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(9) The transporting of drop boxes shall be performed by a minimum of two individuals, at least one of whom shall be independent of the pit shift being dropped. This standard does not apply to Tier A gaming operations.

(10) All drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number and shift.

(i) Soft count standards. (1) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect which prevent the commingling of funds from different revenue centers.

(2) The soft count shall be performed by a minimum of three employees. A second count shall be performed by an employee on the count team who did not perform the initial count.

(3) At no time during the count shall there be fewer than three employees in the count room until the monies have been accepted into cage/vault accountability.

(4) Count team members shall be rotated on a routine basis (rotation is such that the count team is not consistently the same three individuals more than four days per week). This standard shall not apply to Tier A gaming operations.

(5) The count team shall be independent of transactions being reviewed and counted and the subsequent accountability of soft drop proceeds. A dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(6) The drop boxes shall be individually emptied and counted in such a

manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(7) The count of each box shall be recorded in ink or other permanent form of recordation.

(8) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(9) Drop boxes, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to recorded or live surveillance, provided the count is monitored in its entirety by someone independent to the count.

(10) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips.

(11) Fills and credits shall be traced to or recorded on the count sheet and examined for correctness.

(12) Pit marker issue and payment slips removed from the drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(13) Foreign currency exchange forms removed from the drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(14) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms (if applicable) to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(15) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through

the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

(16) The count sheet shall be reconciled to the drop by a count team member who shall not function as the sole recorder.

(17) All members of the count team shall attest by signature to their participation in the games drop. The count team supervisor shall attest to the accuracy of the games drop.

(18) All monies and monetary equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person independent of the revenue generation and the count process for verification.

(19) The individual mentioned in paragraph (i)(18) shall certify by signature as to the accuracy of the monies delivered and received.

(20) Access to stored drop boxes, full or empty, shall be restricted to authorized members of the drop and count teams.

(21) Access to the count room during the count shall be restricted to members of the drop and count teams, excluding authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(22) The count sheet, with all supporting documents, shall be promptly delivered to the accounting department by a count team member or someone other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(j) Key control standards. (1) The involvement of at least two individuals independent of the cage department shall be required to access stored empty drop boxes.

(2) Drop box release keys standards. (i) The keys shall be maintained by a department independent of the pit department;

(ii) Only the person authorized to remove drop boxes from the tables shall be allowed access to the release keys; however, the count team members may have access to the release keys during

the soft count in order to reset the drop boxes; and

(iii) Persons authorized to drop the table games drop boxes shall be precluded from having access to drop box contents keys.

(3) Storage rack keys standards. (i) Someone independent of the pit department shall be required to accompany such keys and observe each time drop boxes are removed from or placed in storage racks. This paragraph shall not apply to Tier A and Tier B gaming operations;

(ii) Persons authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys with the exception of the count team.

(4) Drop box contents keys standards.

(i) The physical custody of the keys needed for accessing stored full drop box contents shall require the involvement of persons from at least two separate departments.

(ii) Access to the contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management, and the reason for access shall be documented with the signatures of all participants and observers.

(iii) Only count team members shall be allowed access to drop box content keys during the soft count process.

(5) At least three (two for three tables or less) count team members are required to be present at the time count room and other soft count keys are issued for the soft count.

(6) All duplicate keys shall be maintained in a manner which provides the same degree of control over drop boxes as is required for the original keys. Records shall be maintained for each key duplicated which indicate the number of keys made and destroyed.

(7) Logs are maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(k) Table games computer generated documentation standards. (1) The computer system shall be capable of generating adequate documentation of all information recorded on the source documents and transaction detail (e.g., fill/credit slips, markers, etc.).

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum, system exception information (e.g., appropriate system parameter information, corrections, voids, etc.).

(4) Personnel access listing which includes, at a minimum:

(i) Employee name;

(ii) Employee identification number (if applicable); and

(iii) Listing of functions employees can perform or equivalent means of identifying the same.

(5) For any authorized computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(l) Playing cards and dice, not yet issued to the pit, shall be maintained in a secure location to prevent unauthorized access and reduce the possibility of tampering. Used cards and dice shall be maintained in a secure location until "marked", "scored" or "destroyed" to prevent unauthorized access and reduce the possibility of tampering. Used playing cards and dice shall be canceled or destroyed in a timely manner not to exceed seven days. However, this standard shall not apply where playing cards or dice are retained for an investigation.

(m) Pit supervisory personnel (with authority equal to or greater than those being supervised) shall provide supervision of all table games.

(n) Analysis of table game performance standards. (1) Records shall be maintained by day and shift indicating any single-deck blackjack games which were dealt for an entire shift.

(2) Records reflecting hold percentage by table and type of game shall be maintained by shift, by day, cumulative month-to-date, and cumulative year-to-date.

(3) This information shall be presented to and reviewed by management independent of the pit department on at least a monthly basis.

(4) The management in paragraph (n)(3) of this section shall investigate any unusual fluctuations in hold percentage with pit supervisory personnel.

(5) The results of such investigations shall be documented in writing and maintained.

(o) Table games accounting/auditing procedures.

(1) The accounting and auditing procedures shall be performed by personnel who are independent of the transactions being audited/accounted for.

(2) If a table game has the capability to determine drop (e.g., bill-in/coin-drop meters, bill validator, computerized record, etc.) the dollar amount of the drop shall be reconciled to the actual drop by shift.

(3) Accounting/auditing employees shall review exception reports for all computerized table games systems at least monthly for propriety of transactions and unusual occurrences.

(4) All noted improper transactions or unusual occurrences shall be investigated with the results documented.

(5) Evidence of table games auditing procedures and any follow-up performed shall be maintained and be available upon request by the Commission.

(6) A daily recap shall be prepared for the day and month-to-date which shall include the following information:

- (i) Pit credit issues;
- (ii) Pit credit payments in chips;
- (iii) Pit credit payments in cash;
- (iv) Drop;
- (v) Win; and
- (vi) Gross revenue.

(p) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.12 What are the minimum internal control standards for gaming machines?

(a) When a standard in this section requires a minimum of three employees to perform a function or be present during one, Tier A and Tier B gaming operations may require only two employees to be present.

(b) For this section only, credit or customer credit means a unit of value equivalent to cash or cash equivalents deposited, wagered, won, lost or redeemed by a patron.

(c) Coins shall include tokens.

(d) Coin drop standards. (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time when uncounted funds are present shall there be less than three (3) persons in the count room.

(3) Each gaming operation shall maintain on file the time when the drop buckets and bill acceptor canisters will be removed and the time when the contents are to be counted.

(4) All drop buckets or canisters shall be removed only at the time previously designated except for emergency drops.

(5) The gaming machine drop supervisor shall notify surveillance when the drop is to begin in order that surveillance may monitor the activities.

(6) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review to authorized persons only.

(7) Security shall be provided over the buckets removed from the gaming machine drop cabinets prior to being transported to the count room.

(8) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such monies. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(9) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed (i.e.,

permanently marked with the gaming machine I.D. number, or bar coded labels, printed tags, etc.). If the gaming machine is identified with a removable tag which is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(10) Each gaming machine shall have drop buckets into which coins or tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(11) The collection procedures may include procedures for dropping gaming machines which have trays instead of drop buckets.

(e) Equipment standards. (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) Someone independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed.

(3) Such access shall be documented and maintained.

(4) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(5) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(6) The weigh scale and weigh scale interface (if applicable) shall be tested by someone who is independent of the cage, vault and gaming machine departments and count team at least quarterly. At least semi-annually, this test shall be performed by internal audit in accordance with the internal audit standards. The result of these tests shall be documented and signed by the person(s) performing the test.

(7) During the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale

is properly calibrated (varying weights/coin from drop to drop is acceptable).

(8) If a mechanical coin counter is used (instead of a weigh scale), the gaming operation shall establish and comply with procedures that are equivalent to those described in paragraphs (c)(7), (c)(8), and (c)(9) of this section.

(9) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(f) Gaming machine count and wrap standards.

(1) The weigh/count shall be performed by a minimum of three employees.

(2) At no time during the weigh/count shall there be fewer than three employees in the count room.

(3) The gaming machine count team shall be independent of the gaming machine department and the subsequent accountability of gaming machine count proceeds, unless they are non-supervisory gaming machine employees and perform the laborer function only. (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor.)

(4) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function which involves the recording of the gaming machine count;

(ii) Count team supervisor function which involves the control of the gaming machine weigh and wrap process.

(5) The amount of the gaming machine drop from each machine shall be recorded in ink on a gaming machine count document by the recorder or mechanically printed by the weigh scale. If a weigh scale interface is used, the gaming machine drop figures are transferred via direct line or computer storage media.

(6) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(7) At least three employees who participate in the weigh/count and/or wrap

process shall sign the gaming machine count document or a summary report to attest to their presence. If all other count team members do not sign the gaming machine count document or a summary report, they shall sign a supplemental document evidencing their participation in the weigh/count and/or wrap.

(8) The coins shall be wrapped and reconciled in a manner which precludes the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop.

(9) At least two employees shall be present throughout the wrapping of the gaming machine drop.

(10) If the gaming machine count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least three employees at the start and end of each nomination count, then one employee may perform the wrap.

(11) The coins shall be wrapped immediately after being weighed or counted. As the coin is being wrapped, it shall be maintained in such a manner so as to be able to obtain an accurate count when the wrap is completed. At the completion of the wrap, a count team member shall independently count the wrap and reconcile it with the weigh/meter count.

(12) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(13) Transfers out of the count room during the gaming machine count and wrap process shall be strictly prohibited, or if transfers are permitted during the count and wrap, each transfer shall be recorded on a separate multipart form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) which shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled wrapped gaming machine drop. If transfers are permitted, they must be counted and signed for by at least two members of the count team and by someone independent of the count

team who is responsible for authorizing the transfer.

(14) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following two standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (f)(14)(i)(A) of this section shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (f)(14)(ii)(A) of this section shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(15) For Tier A and B gaming operations the functions described in paragraph (f)(14)(ii)(A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (f)(14)(ii)(E).

(16) If the count room is segregated from the coin room, or if the coin room

is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy; and

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap.

(17) Large (by denomination, either \$1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team and the cage/vault functions on a timely basis.

(18) The results of such investigation shall be documented and maintained.

(19) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be immediately delivered to the accounting department by other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(20) If applicable, the weight shall be converted to dollar amounts prior to the reconciliation of the weigh to the wrap.

(21) A count team member shall test the metered count machine (if used)

prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(22) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(23) Immediately upon receiving the funds, an independent person shall count the gaming machine drop by denomination and shall sign the count sheet attesting to the accuracy of the total and the denominations of the funds received.

(24) After the weigh/wrap count has been completed, the count/wrap amount shall be posted to cage accountability.

(25) Gaming machine analysis reports, which compare actual hold to theoretical hold by gaming machine shall be prepared on at least a monthly basis.

(26) Such reports shall provide all data on both month-to-date and year-to-date bases.

(27) The gaming machine hopper loads and coin in the drop cabinet shall be secured and accounted for during the removal and maintenance of gaming machines.

(28) Cashier/change banks shall be counted and reconciled for each shift.

(29) Corrections on gaming machine count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team employees. If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(i) Crossing out the error on the gaming machine document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(ii) During the count process, correct the error in the computer system and enter the passwords of at least two

count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction and the count team employees attesting to the correction.

(g) Currency acceptor drop and count standards. (1) Tier A gaming operations may be exempt from compliance with this section if the gaming operations develop and comply with procedures that shall protect the integrity of the drop and count.

(2) The currency acceptor drop boxes shall be removed by an employee independent of the gaming machine department then transported directly to the soft count room or other similarly restricted location and locked in a secure manner until the count takes place.

(3) The transporting of currency acceptor drop boxes shall be performed by a minimum of two employees at least one of whom is independent of the gaming machine department.

(4) The currency acceptor count shall be performed in a soft count room or equivalently secure area with comparable controls.

(5) The currency acceptor count shall be performed by a minimum of three employees.

(6) Currency acceptor count team members shall be rotated on a routine basis such that the count team is not consistently the same three individuals more than four days per week.

(7) For Tier B gaming operations a minimum of two persons may perform the count provided the count is viewed either live or on videotape within seven days by an employee independent of the count.

(8) The currency acceptor count team shall be independent of transactions being reviewed and counted and the subsequent accountability of currency drop proceeds.

(9) A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all currency acceptor count documentation.

(10) The currency acceptor drop boxes shall be individually emptied and counted in such a manner as to prevent the commingling of funds between

boxes until the count of the box has been recorded.

(11) The count of each box shall be recorded in ink or other permanent form of recordation.

(12) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to witness the loading and unloading of all currency at the currency counter, including rejected currency.

(13) Drop boxes, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to recorded or live surveillance, provided the count is monitored in its entirety by someone independent of the count.

(14) Corrections to information originally recorded by the count team on currency acceptor count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team members who verified the change.

(15) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(16) All members of the count team shall attest by signature to the accuracy of the currency acceptor drop count. Three verifying signatures on the count sheet shall be adequate if all additional count team employees sign a supplemental document evidencing their involvement in the count process.

(17) All monies that were counted shall be turned over to the cage cashier (who is independent of the count team) or to an employee independent of the revenue generation and the count process for verification.

(18) The employee shall certify by signature as to the accuracy of the currency delivered and received.

(19) Access to stored full drop boxes shall be restricted to authorized members of the drop and count teams.

(20) Access to the count room shall be restricted to members of the drop and count teams, excluding authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(21) The count sheet, with all supporting documents, shall be promptly

delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(h) Jackpot payouts, gaming machines fills, short pays and accumulated credit payouts standards.

(1) For jackpot payouts and gaming machine fills, documentation shall include the following information:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of cash payout or gaming machine fill (both alpha and numeric), or description of personal property awarded; alpha is optional if another unalterable method is used for evidencing the amount of the payout;

(iv) Game outcome (including reel symbols, card values and suits, etc.) for jackpot payouts;

(v) Signatures of at least two employees verifying and witnessing the payout or gaming machine fill; however, on graveyard shifts (eight-hour maximum) payouts/fills less than \$100 can be made without the payout/fill being witnessed if the second person signing can reasonably verify that a payout/fill is justified; and

(vi) Preprinted or concurrently-printed sequential number.

(2) Jackpot payouts over a predetermined amount shall require the signature and verification of a supervisory or management employee independent of the gaming machine department. This predetermined amount shall be authorized by management, documented, and maintained.

(3) For short pays of \$10.00 or more, the jackpot payout form includes:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of payout (both alpha and numeric); and

(iv) Signatures of at least two employees verifying and witnessing the payout.

(4) Short pays involving a single token in a denomination higher than \$10.00 may be handled without the documentation required in paragraph (h) (3) of this section.

(5) Computerized jackpot/fill systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by one individual.

(6) Payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures or by altering the amount paid out subsequent to the payout and misappropriating the funds.

(i) If a gaming operation offers promotional payouts and awards, the payout form/documentation includes the following information:

(1) Date and time;

(2) Machine number and denomination;

(3) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(4) Type of promotion (e.g., double jackpots, four-of-a-kind bonus, etc.); and

(5) Signature of at least one employee authorizing and completing the transaction.

(j) Gaming machine department funds standards.

(1) The gaming machine booths and change banks, which are active during the shift, shall be counted down and reconciled each shift utilizing appropriate accountability documentation.

(2) The wrapping of loose gaming machine booth and cage cashier coin shall be performed at a time or location that does not interfere with the hard count/wrap process or the accountability of that process.

(3) A record shall be maintained evidencing the transfers of wrapped and unwrapped coins and retained for 7 days.

(k) EPROM standards. (1) At least annually, procedures shall be performed to insure the integrity of a sample of gaming machine game program EPROMs by personnel independent of the gaming operation or the machines being tested.

(2) EPROM control standards.

(i) Procedures shall be developed and implemented for the following:

(A) Removal of EPROMs from devices, the verification of the existence of errors as applicable, and the correction via duplication from the master game program EPROM;

(B) Copying one gaming device program to another approved program;

(C) Verification of duplicated EPROMs prior to being offered for play;

(D) Destruction, as needed, of EPROMs with electrical failures; and

(E) Securing the EPROM duplicator and master game EPROMs from unrestricted access.

(ii) The master game program number, par percentage, and the pay table shall be verified to the par sheet when initially received from the manufacturer.

(iii) Gaming machines with potential jackpots in excess of \$100,000 shall have the circuit boards locked or physically sealed. The lock or seal shall necessitate the presence of an individual independent of the gaming machine department to access the device game program EPROM. If a seal is used to secure the board to the frame of the gaming device, it shall be pre-numbered.

(iv) Records which document the procedures in paragraph (k) (2) (i) of this section shall include the following information:

(A) Date;

(B) Machine number (source and destination);

(C) Manufacturer;

(D) Program number;

(E) Personnel involved;

(F) Reason for duplication;

(G) Disposition of any permanently removed EPROM;

(H) Seal numbers, if applicable; and

(I) Approved testing lab approval numbers, if available.

(3) EPROMS returned to gaming devices shall be labeled and shall include the date program number, information identical to that shown on the manufacturer's label, and initials of the individual replacing the EPROM.

(l) Standards for evaluating theoretical and actual hold percentages.

(1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For those gaming machines or groups of identical machines (excluding multi-game machines) with differences in theoretical payback percentage exceeding a 4% spread between the minimum and maximum theoretical payback, an employee or de-

partment independent from the gaming machine department shall:

(i) On a quarterly basis, record the meters that contain the number of plays by wager (i.e., one coin, two coins, etc.);

(ii) On an annual basis, calculate the theoretical hold percentage based on the distribution of plays by wager type;

(iii) On an annual basis, adjust the machine(s) theoretical hold percentage in the gaming machine statistical report to reflect this revised percentage.

(3) For multi-game machines, an employee or department independent of the gaming machine department shall:

(i) Weekly record the total coin-in meter;

(ii) Quarterly record the coin-in meters for each game contained in the machine;

(iii) On an annual basis adjust the theoretical hold percentage to a weighted average based upon the ratio of coin-in for each game.

(4) The adjusted theoretical hold percentage for multi-game machines may be combined for machines with exactly the same game mix throughout the year.

(5) The theoretical hold percentages used in the slot analysis reports should be within the performance standards set by the manufacturer.

(6) Records shall be maintained for each machine which indicate the dates and type of changes made and the recalculation of theoretical hold as a result of the changes.

(7) Records shall be maintained for each machine which indicate the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations.

(8) All of the gaming machines shall contain functioning meters which shall record coin-in or credit-in.

(9) All gaming machines with currency acceptors shall contain functioning bill-in meters which record the dollar amounts or number of bills accepted by denomination.

(10) Gaming machine in-meter readings shall be recorded at least weekly

(monthly for Tier A gaming operations) immediately prior to or subsequent to a gaming machine drop. However, the time between readings may extend beyond one week in order for a reading to coincide with the end of an accounting period only if such extension is for no longer than six days. In-meter readings should be retained for at least five years.

(11) The employee who records the in-meter reading shall either be independent of the hard count team or shall be assigned on a rotating basis, unless the in-meter readings are randomly verified quarterly for all gaming machines and currency acceptors by someone other than the regular in-meter reader.

(12) Upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters.

(13) Prior to final preparation of statistical reports, meter readings which do not appear reasonable shall be reviewed with gaming machine department employees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected.

(14) A report shall be produced at least monthly showing month-to-date, year-to-date, and if practicable, life-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage previously discussed.

(15) Each change to a gaming machine's theoretical hold percentage, including progressive percentage contributions, shall result in that machine being treated as a new machine in the statistical reports (i.e., not commingling various hold percentages).

(16) If promotional payouts and awards are included on the gaming machine statistical reports, it shall be in a manner which prevents distorting the actual hold percentages of the affected machines.

(17) A report shall be produced at least monthly showing year-to-date combined gaming machine performance, by denomination. The report shall include the following for each denomination:

- (i) Floor par;
- (ii) Combined actual hold percentage;
- (iii) Percentage variance; and
- (iv) Projected dollar variance (i.e., coin-in times the percentage variance).

(18) The statistical reports shall be reviewed by both gaming machine department management and management employees independent of the gaming machine department on at least a monthly basis.

(19) Large variances between theoretical hold and actual hold shall be investigated and resolved with the findings documented in a timely manner.

(20) For purposes of analyzing large variances between actual hold and theoretical hold percentages, information to create floor par reports by machine type shall be maintained.

(21) Maintenance of the computerized gaming machine monitoring system data files shall be performed by a department independent of the gaming machine department. Alternatively, maintenance may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified on a monthly basis by employees independent of the gaming machine department.

(22) Updates to the computerized gaming machine monitoring system to reflect additions, deletions, or movements of gaming machines shall be made at least weekly prior to in-meter readings and the weigh process.

(m) Gaming machine hopper contents standards.

(1) When machines are temporarily removed from the floor, gaming machine drop and hopper contents shall be protected to preclude the misappropriation of stored funds.

(2) When machines are permanently removed from the floor, the gaming machine drop and hopper contents shall be counted and recorded by at least two employees with appropriate documentation being routed to the accounting department for proper recording and accounting for initial hopper loads.

(n) Gaming machine drop keys standards.

(1) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates,

shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(2) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance observes the person throughout the period the keys are checked out.

(o) Currency acceptor key control standards. (1) Tier A gaming operations shall not be subject to the requirements of this paragraph (o), provided that the gaming operation develops and complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The physical custody of the keys needed for accessing stored full currency acceptor drop box contents shall require involvement of persons from two separate departments, with the exception of the count team.

(3) Only the employees authorized to remove the currency acceptor drop boxes shall be allowed access to the release keys. For situations that require access to the currency acceptor drop box at other than scheduled drop time, the date, time, and signature of employee signing out/in the release key must be documented. The currency acceptor drop box release keys are separately keyed from the currency acceptor contents keys.

(4) The count team members may have access to the release keys during the count only in order to reset the drop boxes if necessary.

(5) Employees authorized to drop the currency acceptor drop boxes shall be precluded from having access to drop box contents keys.

(6) Someone independent of the gaming machine department shall be required to accompany currency acceptor drop box storage rack keys and observe each time drop boxes are removed from or placed in storage racks.

(7) Employees authorized to obtain drop box storage rack keys shall be

precluded from having access to drop box contents keys (with the exception of the count team).

(8) Access to the currency acceptor contents key at other than scheduled count times shall require the involvement of at least three employees from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers. Only the count team members shall be allowed access to drop box contents.

(9) At least three count team members shall be required to be present at the time currency acceptor count room keys and other count keys are issued for the count.

(10) Duplicate keys shall be maintained in such a manner as to provide the same degree of control over drop boxes as is required for the original keys. Records shall be maintained for each key duplicated which indicate the number of keys made and destroyed.

(p) Player tracking standards. (1) The player tracking system shall be secured so as to prevent unauthorized access (e.g., changing passwords at least quarterly and physical access to computer hardware, etc.).

(2) The addition of points to members' accounts other than through actual gaming machine play shall be sufficiently documented (including substantiation of reasons for increases) and shall be authorized by a department independent of the player tracking and gaming machines. Alternatively, addition of points to members' accounts may be authorized by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by employees independent of the gaming machine department on a quarterly basis.

(3) Booth employees who redeem points for members shall not have access to lost cards.

(4) Changes to the player tracking system parameters, such as point structures and employee access, shall be performed by supervisory employees independent of the gaming machine department. Alternatively, changes to player tracking system parameters may be performed by gaming machine

supervisory employees if sufficient documentation is generated and it is randomly verified by supervisory employees independent of the gaming machine department on a monthly basis.

(5) All other changes to the player tracking system shall be appropriately documented.

(q) Progressive gaming machines standards. (1) A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies. This standard does not apply to wide area progressive machines.

(i) At least once each day, each gaming operation shall record the amount shown on each progressive jackpot meter at the licensee's establishment except for those jackpots that can be paid directly from the machine's hopper;

(ii) Explanations for meter reading decreases shall be maintained with the progressive meter reading sheets, and where the payment of a jackpot is the explanation for a decrease, the gaming operation shall record the jackpot payout number on the sheet or have the number reasonably available; and

(iii) Each gaming operation shall record the base amount of each progressive jackpot the licensee offers.

(2) The wide area progressive gaming machines system shall be adequately restricted to prevent unauthorized access (e.g., changing passwords at least quarterly, restrict access to EPROMs, and restrict physical access to computer hardware, etc.).

(3) For the wide area progressive system, procedures shall be developed, implemented, and documented for:

(i) Reconciliation of meters and jackpot payouts;

(ii) Collection/drop of gaming machine funds;

(iii) Jackpot verification and payment and billing to gaming operations on pro-rata basis;

(iv) System maintenance;

(v) System accuracy; and

(vi) System security.

(4) Reports adequately documenting the procedures required in paragraph (q) (3) of this section shall be generated and retained.

(r) Gaming machine accounting/auditing procedures standards. (1) Gaming machine accounting/auditing procedures shall be performed by employees who are independent of the transactions being reviewed.

(2) For computerized player tracking systems, an accounting/auditing employee shall perform the following procedures at least one day per month:

(i) Foot all jackpot and fill slips and trace totals to those produced by the system;

(ii) Review all slips written (from the restricted copy) for continuous sequencing;

(iii) Foot all points-redeemed documentation and trace to the system-generated totals; and

(iv) Review all points-redeemed documentation for propriety.

(3) For computerized gaming machine monitoring systems, procedures shall be performed at least monthly to verify that the system is transmitting and receiving data from the gaming machines properly and to verify the continuing accuracy of the coin-in meter readings as recorded in the gaming machine statistical report.

(4) For weigh scale interface systems, for at least one drop period per month accounting/auditing employees shall compare the weigh tape to the system-generated weigh, as recorded in the gaming machine statistical report, in total. Discrepancies shall be resolved prior to generation/distribution of gaming machine reports.

(5) For each drop period, accounting/auditing personnel shall compare the "coin-to-drop" meter reading to the actual drop amount. Discrepancies should be resolved prior to generation/distribution of slot statistical reports.

(6) Follow-up shall be performed for any one machine having an unresolved variance between actual drop and coin-to-drop meter reading in excess of 3%. The follow-up performed and results of the investigation shall be documented and maintained.

(7) At least weekly, accounting/auditing employees shall compare the bill-in meter reading to the total currency acceptor drop amount for the week. Discrepancies shall be resolved prior to the generation/distribution of gaming machine statistical reports.

(8) Follow-up shall be performed for any one machine having an unresolved variance between actual drop and bill-in meter reading in excess of 3%. The follow-up performed and results of the investigation shall be documented and maintained.

(9) At least annually, accounting/auditing personnel shall randomly verify that EPROM changes are properly reflected in the gaming machine analysis reports.

(10) Accounting/auditing employees shall review exception reports for all computerized gaming machine systems on a daily basis for propriety of transactions and unusual occurrences.

(11) All gaming machine auditing procedures and any follow-up performed shall be documented and maintained for inspection.

(s) For all computerized gaming machine systems, a personnel access listing shall be maintained which includes at a minimum:

- (1) Employee name;
- (2) Employee identification number (or equivalent); and
- (3) Listing of functions employee can perform or equivalent means of identifying same.

(t) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(u) For gaming machines that accept coins or currency and issue cash-out tickets, the following standards shall apply:

(1) In addition to the applicable accounting and auditing standards in paragraph (r) of this section, on a quarterly basis, the gaming operation shall foot all jackpot cash-out tickets and trace totals to those produced by the system.

(2) The customer may request a cash-out ticket from the gaming machine which reflects all remaining credits. The cash-out ticket shall be printed at the gaming machine by an internal document printer.

(3) The customer shall redeem the cash-out ticket at a change booth or cashiers' cage. Once presented for redemption, the cashier shall:

(i) Scan the bar code via an optical reader or its equivalent; or

(ii) Input the cash-out ticket validation number into the computer.

(4) The information contained in paragraph (u)(3) of this section shall be transmitted to the host computer. The host computer shall verify the authenticity of the cash-out ticket and communicate directly to the change booth or cashier cage terminal.

(5) If valid, the cashier pays the customer the appropriate amount and the cash-out ticket is electronically noted "paid" in the system. The "paid" cash-out ticket shall remain in the cashiers' bank for reconciliation purposes.

(6) If invalid, the host computer shall notify the cashier that one of the following conditions exists:

(i) Serial number cannot be found on file (stale date, forgery, etc.);

(ii) Cash-out ticket has already been paid; or

(iii) Amount of cash-out ticket differs from amount on file. The cashier shall refuse payment to the customer and notify a supervisor of the invalid condition. The supervisor shall resolve the dispute.

(7) If the coinless/cashless gaming machine system temporarily goes down, cashiers may redeem cash-out tickets after recording the following:

(i) Serial number of the cash-out ticket;

(ii) Date;

(iii) Dollar amount; and

(iv) Issuing gaming machine number.

(8) Cash-out tickets shall be validated as expeditiously as possible when the coinless/cashless gaming machine system is restored.

(9) The gaming operation shall develop and implement procedures to control cash-out ticket paper which shall include procedures which:

(i) Mitigate the risk of counterfeiting of cash-out ticket paper;

(ii) Adequately controls the inventory of the cash-out ticket paper; and

(iii) Provide for the destruction of all unused cash-out ticket paper.

(10) If the coinless/cashless gaming machine system is down for more than four hours, the gaming operation shall promptly notify the tribal council or its designated representative.

(11) These gaming machine systems shall comply with all other standards (as applicable) in this section including:

(i) Standards for currency acceptor drop and count;

(ii) Standards for coin drop and count; and

(iii) Standards concerning EPROMS.

(v) If the gaming machine does not accept currency or coin and does not return currency or coin, the following standard shall apply:

(1) Equipment. (i) A central computer, with supporting hardware and software, to coordinate network activities, provide system interface, and store and manage a player/account database;

(ii) A network of contiguous player terminals with touch-screen or button-controlled video monitors connected to an electronic selection device and the central computer via a communications network;

(iii) One or more electronic selection devices, utilizing random number generators, each of which selects any combination or combinations of numbers, colors and/or symbols for a network of player terminals.

(2) Player terminals standards. (i) The player terminals are connected to a game server;

(ii) The game server shall generate and transmit to the bank of player terminals a set of random numbers, colors and/or symbols at regular intervals. The subsequent game results are determined at the player terminal and the resulting information is transmitted to the account server;

(iii) The game servers shall be housed in a game server room or secure locked cabinet off the casino floor.

(3) Patron account maintenance standards. (i) A central computer acting as an account server shall provide customer account maintenance and the deposit/withdrawal function of those account balances;

(ii) Patrons may access their accounts on the computer system by means of a Player Identification Card at the player terminal. Each player terminal may be equipped with a card reader and PIN (personal identification number) pad or touch screen array for this purpose;

(iii) All communications between the player terminal and the account server shall be encrypted for security reasons.

(4) Patron account generation standards. (i) A computer file for each patron shall be prepared by a clerk, with no incompatible functions, prior to the patron being issued a PIN card to be utilized for machine play. The patron shall select his/her four digit PIN, known only to the patron, to be used in conjunction with the PIN Card;

(ii) The clerk shall sign-on with a unique password to a terminal equipped with peripherals required to input data from the Patron Registration form. Passwords are issued and can only be changed by MIS personnel at the discretion of the department director;

(iii) After entering a specified number of incorrect PIN entries at the cage or player terminal, the patron shall be directed to proceed to the Gaming Machine Information Center to obtain a new PIN. If a patron forgets, misplaces or requests a change to their four digit PIN, the patron shall proceed to the Gaming Machine Information Center.

(5) Deposit of credits standards. (i) The cashier shall sign-on with a unique password to a cashier terminal equipped with peripherals required to complete the credit transactions. Passwords are issued and can only be changed by MIS personnel at the discretion of the department director;

(ii) The patron shall present cash, chips, coin or coupons along with their PIN Card to a cashier to deposit credits;

(iii) The cashier shall complete the transaction by utilizing a card scanner which the cashier shall slide the patron's PIN card through;

(iv) The cashier shall accept the funds from the patron and enter the appropriate amount on the cashier terminal;

(v) A multi-part deposit slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign two copies of the deposit slip receipt. The original of the signed deposit slip shall be given to the patron. The first copy of the signed deposit slip shall be secured in the cashier's cash drawer;

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall secure the funds in their cash drawer and return the PIN card to the patron.

(6) Prize standards. (i) Winners at the gaming machines may receive cash, prizes redeemable for cash or merchandise, at the discretion of the gaming operation;

(ii) If merchandise prizes are to be awarded, the specific type of prize or prizes which may be won shall be disclosed to the player before the game begins;

(iii) The patron shall maintain his/her PIN Card for an indefinite period of time. Patrons shall not be required to redeem the balance in their account immediately or at the end of their gaming trip which creates a liability to the patron from the gaming operation.

(7) Payoff odds standards. (i) Payoff odds shall be determined by the gaming operation and approved by the tribe or tribal gaming commission;

(ii) The gaming operation shall submit the pay rate, pay tables, seed amounts (if applicable), machine entry procedures and authorizations, the attendant jackpot payout key control procedures, and machine entry key control procedures to the tribe or the tribe's independent regulatory body.

(8) The gaming operation shall determine the minimum and maximum wagers. The amounts of such wagers shall be conspicuously posted on a sign or displayed on a designated screen of the player terminal.

(9) Jackpot payout procedures. (i) When any progressive jackpot or a payout of \$1,200.00 or more is won, the player terminal shall lock-up preventing further play.

(ii) The player terminal shall indicate by light and sound that a jackpot has been won.

(iii) An attendant shall go to the player terminal and obtain suitable identification such as a driver's license.

(iv) An attendant shall complete the machine payout form for all winning jackpots of \$1,200.00 or more. The form shall include, at a minimum, the following information:

- (A) Game number and type;
- (B) Bank location;

(C) Account number of the player;

(D) Name of the player;

(E) Terminal number the jackpot was won at;

(F) Date, time, and shift;

(G) Amount won;

(H) Amount wagered;

(I) Signature and badge number of the attendant verifying surveillance was notified for jackpot winning of \$5,000 or greater for a single game; and

(J) Signature and badge number of attendant attesting to reactivation of the terminal.

(v) The attendant shall reactivate the machine upon completion of the appropriate paperwork.

(10) The patron shall present their PIN Card to a cashier to withdraw their credits. The cashier shall perform the following:

(i) Scan the PIN Card;

(ii) Request the patron to enter their PIN;

(iii) The cashier shall ascertain the amount the patron wishes to withdraw and enter the amount into the computer;

(iv) A multi-part withdrawal slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign the original and one copy of the withdrawal slip;

(v) The cashier shall verify that the PIN card and the patron match by:

(A) Comparing the patron to image on the computer screen of patron's picture ID; or

(B) Comparing the patron signature on the withdrawal slip to signature on the computer screen.

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall pay the patron the appropriate amount, issue the patron the original withdrawal slip and return the PIN card to the patron;

(vii) The first copy of the withdrawal slip shall be placed in the cash drawer. All account transactions shall be accurately tracked by the account server computer system. The first copy of the withdrawal slip shall be forwarded to the accounting at the end of the gaming day;

(viii) In the event the imaging function is temporarily disabled, patrons shall be required to provide positive ID

for cash withdrawal transactions at the cashier stations.

§ 542.13 What are the minimum internal control standards for cage and credit?

(a) The following standards shall apply if the gaming operation authorizes and extends credit to patrons:

(1) At least the following information shall be recorded for patrons who have credit limits or are issued credit (excluding personal checks, payroll checks, cashier's checks and traveler's checks):

- (i) Patron's name, current address, and signature;
- (ii) Identification verifications;
- (iii) Authorized credit limit;
- (iv) Documentation of authorization by an individual designated by management to approve credit limits; and
- (v) Credit issuances and payments.

(2) Prior to extending credit, the patron's gaming operation credit record and/or other documentation shall be examined to determine the following:

- (i) Properly authorized credit limit;
- (ii) Whether remaining credit is sufficient to cover the credit issuance; and
- (iii) Identity of the patron (except for known patrons).

(3) Credit extensions over a specified dollar amount shall be approved by personnel designated by management.

(4) Proper approval of credit extensions over 10 percent of the previously established limit shall be documented.

(5) The job functions of credit approval (i.e., establishing the patron's credit worthiness) and credit extension (i.e., advancing patron's credit) shall be segregated for credit extensions to a single patron of \$10,000 or more per day (applies whether the credit is extended in the pit or the cage).

(6) If cage credit is extended to a single patron in an amount exceeding \$2,500, applicable gaming personnel shall be notified on a timely basis of the patrons playing on cage credit, the applicable amount of credit issued, and the available balance.

(7) Cage marker forms shall be at least two parts (the original marker and a payment slip), prenumbered by the printer or concurrently numbered by the computerized system, and utilized in numerical sequence.

(8) The completed original cage marker shall contain at least the following information: marker number, player's name and signature, and amount of credit issued (both alpha and numeric).

(9) The completed payment slip shall include the same marker number as the original, date and time of payment, amount of payment, nature of settlement (cash, chips, etc.), and signature of cashier receiving the payment.

(10) If personal checks, cashier's checks, or payroll checks are cashed the Tribe shall implement appropriate controls for purpose of security and integrity. The Tribe shall establish and comply with procedures for collecting and recording checks returned to the gaming operation after deposit which include re-deposit procedures. These procedures shall provide for notification of cage/credit departments and custodianship of returned checks.

(11) Counter checks shall comply with the requirements of paragraph (a) (10) of this section.

(12) When counter checks are issued, the following shall be included on the check:

- (i) The patron's name and signature;
- (ii) The dollar amount of the counter check (both alpha and numeric);
- (iii) Date of issuance; and
- (iv) Signature or initials of the individual approving the counter check transaction.

(13) When travelers checks or other guaranteed drafts such as cashier's checks are presented, the cashier shall comply with the examination and documentation procedures as required by the Tribe.

(b) Payment standards. (1) All payments received on outstanding credit instruments shall be permanently recorded in the gaming operation's records.

(2) When partial payments are made on credit instruments, they shall be evidenced by a multi-part receipt (or another equivalent document) which contains:

- (i) The same preprinted number on all copies;
- (ii) Patron's name;
- (iii) Date of payment;
- (iv) Dollar amount of payment (or remaining balance if a new marker is

issued), and nature of settlement (cash, chips, etc.);

(v) Signature of employee receiving payment; and

(vi) Number of credit instrument on which partial payment is being made.

(3) Unless account balances are routinely confirmed on a random basis by the accounting or internal audit departments, or statements are mailed by someone independent of the credit transactions and collections thereon, and the department receiving payments cannot access cash, then the following standards shall apply:

(i) The routing procedures for payments by mail require that they are received by a department independent of credit instrument custody and collection;

(ii) Such receipts by mail shall be documented on a listing indicating the customer's name, amount of payment, nature of payment (if other than a check), and date payment received;

(iii) The total amount of the listing of mail receipts shall be reconciled with the total mail receipts recorded on the appropriate accountability by the accounting department on a random basis (for at least three days per month).

(c) Access to credit documentation shall be restricted as follows:

(1) The credit information shall be restricted to those positions which require access and are so authorized by management;

(2) Outstanding credit instruments shall be restricted to persons authorized by management; and

(3) Written-off credit instruments shall be further restricted to individuals specified by management.

(d) Documentation shall be maintained as follows:

(1) All extensions of cage credit, pit credit transferred to the cage and subsequent payments shall be documented on a credit instrument control form.

(2) Records of all correspondence, transfers to and from outside agencies, and other documents related to issued credit instruments shall be maintained.

(e) Write-off and settlement standards. (1) Written-off or settled credit instruments shall be authorized in writing.

(2) Such authorizations shall be made by at least two management officials, who are from departments independent of the credit transaction.

(f) The use of collection agencies shall be governed by the following standards:

(1) If credit instruments are transferred to collection agencies, or other collection representatives, a copy of the credit instrument and a receipt from the collection representative shall be obtained and maintained until such time as the original credit instrument is returned or payment is received.

(2) An individual independent of credit transactions and collections shall periodically review the documents in paragraph (f)(1) of this section.

(g) If a gaming operation permits a customer to deposit funds with the gaming operation.

(1) The receipt or withdrawal of a customer deposit shall be evidenced by at least a two-part document with one copy going to the customer and one copy remaining in the cage file.

(2) The multi-part receipt shall contain the following information;

(i) Same receipt number on all copies;

(ii) Customer's name and signature;

(iii) Date of receipt and withdrawal;

(iv) Dollar amount of deposit/withdrawal; and

(v) Nature of deposit (cash, check, chips); however,

(vi) Provided all of the information in paragraph (g)(2)(i) through (v) is available, the only required information for all copies of the receipt is the receipt number.

(3) The gaming operation shall establish and comply with procedures which:

(i) Maintain a detailed record by patron name and date of all funds on deposit;

(ii) Maintain a current balance of all customer cash deposits which are in the cage/vault inventory or accountability; and

(iii) Reconcile this current balance with the deposits and withdrawals at least daily.

(4) The gaming operation shall describe the sequence of the required signatures attesting to the accuracy of

the information contained on the customer deposit or withdrawal form ensuring that the form is signed by the cashier.

(5) All customer deposits and withdrawal transactions at the cage shall be recorded on a cage accountability form on a per-shift basis.

(6) Only cash, cash equivalents, chips and tokens shall be accepted from customers for the purpose of a customer deposit.

(7) The Tribe shall establish and comply with procedures which verify the patron's identity including photo identification.

(8) A file for patrons shall be prepared prior to acceptance of a deposit.

(h) Cage and vault accountability standards. (1) All transactions that flow through the cage shall be summarized on a cage accountability form on a per shift basis.

(2) Increases and decreases to the cage inventory shall be supported by documentation.

(3) The cage and vault (including coin rooms) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison of accuracy and maintenance of individual accountability which shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated.

(4) All net changes in outstanding gaming operation accounts receivables, including all returned checks, shall be summarized on a cage accountability form or similar document on a per shift basis.

(5) The gaming operation cash-on hand shall include, but is not limited to, the following components:

- (i) Currency and coins;
- (ii) House chips, including reserve chips;
- (iii) Personal checks, cashier's checks and traveler's checks for deposit;
- (iv) Customer deposits;
- (v) Chips on tables;
- (vi) Hopper loads (coins put into machines when they are placed in service); and
- (vii) Fills and credits (these documents shall be treated as assets and liabilities, respectively, of the cage dur-

ing a business day. When win or loss is recorded at the end of the business day, they are removed from the accountability).

(6) The Tribe shall establish a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's patrons as they are incurred.

(i) The Tribe shall establish and comply with procedures for the receipt, inventory, storage, and destruction of gaming chips and tokens.

(j) Any program for exchanges of coupons for chips and/or tokens or other coupon program shall be approved by the Tribe prior to implementation; if approved, the Tribe shall establish and comply with procedures that account for and control of such programs.

(k) A gaming operation shall comply with the following accounting standards:

(1) The cage accountability shall be reconciled to the general ledger at least monthly.

(2) A trial balance of gaming operation accounts receivable, including the name of the patron and current balance, shall be prepared at least monthly for active, inactive, settled or written-off accounts. The reconciliation and any follow-up performed shall be documented and retained.

(3) The trial balance of gaming operation accounts receivable shall be reconciled to the general ledger each month. The reconciliation and any follow-up performed shall be documented and retained.

(4) A trial balance of the gaming operation's inactive or written-off accounts receivable, including the name of patron and balance, shall be prepared at least quarterly.

(5) On a monthly basis an evaluation of the collection percentage of credit issued to identify unusual trends shall be performed.

(6) All cage and credit accounting procedures and any follow-up performed shall be documented.

(l) An individual independent of the cage, credit, and collection functions shall perform all of the following at least three times per year:

(1) Ascertain compliance with credit limits and other established credit issuance procedures;

(2) Randomly reconcile outstanding balances of both active and inactive accounts on the accounts receivable listing to individual credit records and physical instruments;

(3) Examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded; and

(4) For a minimum of five (5) days per month, partial payment receipts shall be subsequently reconciled to the total payments recorded by the cage for the day and shall be numerically accounted for.

(m) Computer applications utilized, alternate documentation, and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.14 What are the minimum internal control standards for internal audit?

(a) Separate internal audit personnel shall be maintained by a Tribe for its gaming operation(s).

(1) Tier C gaming operations shall maintain a separate internal audit department whose primary function is performing internal audit work and which is independent with respect to the departments subject to audit.

(2) Tier A and B gaming operations shall either maintain a separate internal audit department or designate personnel to perform internal audit work who are independent with respect to the departments/procedures being examined.

(3) The internal audit personnel shall report directly to the Tribe, the tribal gaming commission, audit committee or other entity designated by the tribe.

(b) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to the requirements in this section. The internal audit department operates with audit programs which, at a minimum, address the MICS. Additionally, the department properly documents the work performed, the conclusions reached, and the resolution of all exceptions.

(c) All material exceptions resulting from internal audit work shall be investigated and resolved with the results of such being documented and retained for five years.

(d) The internal audit department shall report to management and the Tribe or its designated tribal governmental body all instances of non-compliance that come to its attention during the course of testing compliance with the standards in this part. Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the internal audit report which will be delivered to the Tribe or its designated tribal governmental body.

(e) The internal audit department shall perform audits of all major areas of the gaming operation.

(1) The following are reviewed at least once during each six-month period:

(i) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, surprise testing of count room currency counters, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(ii) Gaming machines, including but not limited to, jackpot payout and slot fill procedures, slot drop/count and currency acceptor drop/count and subsequent transfer of funds, surprise testing of weigh scale and weigh scale interface, surprise testing of count room currency counters, slot machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys, compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept coins or currency and issue cash-out tickets or gaming machines that do not accept currency or coin and do not return currency or coin.

(2) The following are reviewed at least annually:

- (i) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;
- (ii) Card games, including but not limited to, card games operation, monetary exchange procedures, shill transactions, and count procedures;
- (iii) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;
- (iv) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued and authorized;
- (v) Cage and credit procedures including all cage, credit and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;
- (vi) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;
- (vii) Electronic data processing functions, including review for compliance with EDP standards.

(3) In addition to the observation and examinations performed under paragraphs (e) (1) and (2) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six months following the date of notification.

(4) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the AICPA Guide.

(f) Reports documenting audits performed shall be maintained and made available to the Commission upon re-

quest. The audit reports shall include the following information:

- (1) Audit objectives;
- (2) Audit procedures and scope;
- (3) Findings and conclusions;
- (4) Recommendations, if applicable; and
- (5) Management's response.

§ 542.15 What are the minimum internal control standards for surveillance?

(a) The surveillance system shall be maintained and operated from a surveillance room and shall provide surveillance over gaming areas. Tier A gaming operations shall not be required to have a surveillance room if the gaming operation maintains and operates an unmanned surveillance system in a secured location whereby the areas under surveillance are continually video taped.

(b) The entrance to the surveillance room or secured location shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to a surveillance room shall be limited to surveillance personnel, key employees and other persons authorized in accordance with the gaming operation policy. Authorized surveillance personnel shall maintain sign-in logs of authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) For all Tier B and C gaming operations, in the event of power loss to the surveillance system, an auxiliary or backup power source shall be available and capable of providing immediate restoration of power to all elements of the surveillance system that enable surveillance personnel to observe the table games remaining open for play and all areas covered by dedicated cameras.

(f) The surveillance system shall include date and time generators which possess the capability to display the date and time of recorded events on video tape recordings. The displayed

date and time shall not significantly obstruct the recorded view.

(g) The surveillance room shall be staffed for all shifts and activities by personnel trained in the use of the equipment, knowledge of the games and house rules.

(h) Each video camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with or disabled by patrons or employees.

(i) Each video camera required by the standards in this section shall possess the capability of having its picture displayed on a video monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(j) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered.

(k) In the event of a dedicated camera malfunction, the gaming operation shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(l) Each gaming machine offering a payout of more than \$250,000 shall be monitored by dedicated camera(s) to provide coverage of:

(1) All patrons and employees at the gaming machine, and

(2) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine;

(m) Notwithstanding paragraph (l) of this section, if the gaming machine is a multi-game machine, the gaming operation with the approval of the Tribe may develop and implement alternative procedures to verify payouts.

(n) The surveillance system of all Tier B and C gaming operations shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(o) The surveillance system of gaming operations operating four (4) or

more table games shall provide at a minimum one (1) pan-tilt-zoom camera per two tables and surveillance must be capable of taping:

(1) With sufficient clarity to identify patrons and dealers; and

(2) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values and game outcome.

(p) The surveillance system of gaming operations operating three (3) or less table games shall:

(1) Comply with the requirements of paragraph (n) of this section; or

(2) Have one (1) overhead camera at each table.

(q) All craps tables shall have two (2) stationary cross view cameras covering both ends of the table. All roulette areas shall have one (1) overhead stationary camera covering the roulette wheel and shall also have one (1) stationary overview of the play of the table. All big wheel games shall have one (1) stationary camera viewing the wheel.

(r) Each progressive table game with a potential progressive jackpot of \$25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(1) The table surface, sufficient that the card values and card suits can be clearly identified;

(2) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(3) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(s) The surveillance system shall possess the capability to monitor the keno and bingo ball drawing device or random number generator which shall be recorded during the course of the draw by a dedicated camera or automatically activated camera with sufficient clarity to identify the balls drawn or numbers selected.

(t) The surveillance system shall monitor and record general activities in each keno game area with sufficient clarity to identify the employees performing the different functions.

(u) The surveillance system in the bingo game area shall monitor and record the game board and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(v) The surveillance system shall monitor and record general activities in each race book, sports pool and pari-mutuel book ticket writer and cashier area with sufficient clarity to identify the employees performing the different functions.

(w) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area with sufficient clarity to identify employees within the cage and patrons and employees at the counter areas. Each cashier station shall be equipped with one (1) stationary overhead camera covering the transaction area. The surveillance system shall be used as an overview for cash transactions. This overview should include the customer, the employee and the surrounding area. This standard is optional for Tier A gaming operations.

(x) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the chip values and the amounts on the fill and credit slips. Controls provided by a computerized fill and credit system may be deemed an adequate alternative to viewing the fill and credit slips.

(y) The surveillance system shall monitor and record all areas where currency or coin may be stored or counted, including the soft and hard count rooms, all doors to the soft and hard count rooms, all scales and wrapping machines and all areas where uncounted currency and coin may be stored during the drop and count process. Tier C gaming operations shall also maintain audio capability of the soft count room. The surveillance system shall provide for:

(1) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(2) Monitoring and recording of the table games drop box storage rack or

area by either a dedicated camera or a motion-detector activated camera.

(3) Monitoring and recording of all areas where coin may be stored or counted including the hard count room, all doors to the hard count room, all scales and wrapping machines, and all areas where uncounted coin may be stored during the drop and count process.

(4) Monitoring and recording of soft count room, including all doors to the room all drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored by a dedicated camera during the soft count.

(5) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(z) All video recordings of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven (7) days. Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions and questioning by security personnel, must be retained for a minimum of thirty (30) days. Recordings of all linked systems (bingo, ball draws, gaming machines, etc.) shall be maintained for at least thirty (30) days.

(aa) Video recordings shall be provided to the Commission upon request.

(bb) A video library log shall be maintained to demonstrate the storage, identification, and retention standards required in this section have been complied with.

(cc) Each tribe shall maintain a log that documents each malfunction and repair of the surveillance system as defined in this section. The log shall state the time, date, and nature of each malfunction, the efforts expended to repair the malfunction, and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired, and where applicable, any alternative security measures that were taken.

(dd) Each gaming operation shall maintain a surveillance log of all surveillance activities in the surveillance room. The log shall be maintained by surveillance room personnel and shall

be stored securely within the surveillance department. At a minimum, the following information shall be recorded in a surveillance log:

- (1) Date and time each surveillance commenced;
- (2) The name and license credential number of each person who initiates, performs, or supervises the surveillance;
- (3) Reason for surveillance including the name, if known, alias, or description of each individual being monitored, and a brief description of the activity in which the person being monitored is engaging;
- (4) The times at which each video or audio tape recording is commenced and terminated;
- (5) The time at which each suspected criminal offense is observed along with a notation of the reading on the meter, counter, or device specified in paragraph (f) of this section that identifies the point on the video tape at which such offense was recorded;
- (6) Time of termination of surveillance; and
- (7) Summary of the results of the surveillance.

§ 542.16 What are the minimum internal control standards for electronic data processing?

(a) General controls for gaming hardware and software. (1) Management shall take an active role in making sure that physical and logical security measures are implemented, maintained, and adhered to by personnel to prevent unauthorized access which could cause errors or compromise data or processing integrity.

(i) Management shall ensure that all new gaming vendor hardware and software agreements/contracts will require the vendor to adhere to the tribal minimum internal control standards.

(ii) Physical security measures shall exist over computer, computer terminals and storage media to prevent unauthorized access and loss of integrity of data and processing.

(iii) Access to systems software and application programs shall be limited to authorized personnel.

(iv) Access to computer data shall be limited to authorized personnel.

(v) Access to computer communications facilities, or the computer system, and information transmissions shall be limited to authorized personnel.

(vi) Standards in paragraph (a)(1) of this section shall apply to each applicable department within the gaming operation.

(2) The main computers (i.e., hardware, software and data files) for each gaming application (e.g., keno, race and sports, gaming machines, etc.) shall be in a secured area with access restricted to authorized persons, including vendors.

(3) Access to computer operations shall be restricted to authorized personnel to reduce the risk of loss of integrity of data or processing.

(4) Incompatible duties shall be adequately segregated and monitored to prevent error in general EDP/MIS procedures to go undetected or fraud to be concealed.

(5) Non-EDP/MIS personnel shall be precluded from having unrestricted access to the secured computer areas.

(6) The computer systems, including application software, shall be secured through the use of passwords or other approved means where applicable. Management personnel or persons independent of the department being controlled shall assign and control access to system functions.

(7) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have their own individual password; and (ii) Passwords shall be changed at least quarterly with changes documented.

(8) Adequate backup and recovery procedures shall be in place which include:

- (i) Frequent backup of data files;
- (ii) Backup of all programs;
- (iii) Secured off-site storage of all backup data files and programs, or other adequate protection; and
- (iv) Recovery procedures which are tested at least annually with documentation of results.

(9) Adequate system documentation shall be maintained, including descriptions of hardware and software, operator manuals, etc.

(b) If a separate EDP department is maintained or if there are in-house developed systems, the following standards shall apply:

(1) The EDP department shall be independent of the gaming areas (e.g., cage, pit, count rooms, etc.). EDP/MIS procedures and controls should be documented and responsibilities communicated.

(2) EDP department personnel shall be precluded from unauthorized access to:

(i) Computers and terminals located in gaming areas;

(ii) Source documents; and

(iii) Live data files (not test data).

(3) EDP/MIS personnel shall be:

(i) Restricted from having an authorized access to cash or other liquid assets; and

(ii) From initiating general or subsidiary ledger entries.

(4) Program changes for in-house developed systems should be documented as follows:

(i) Requests for new programs or program changes shall be reviewed by the EDP supervisor. Approvals to begin work on the program shall be documented;

(ii) A written plan of implementation for new and modified programs shall be maintained and include, at a minimum, the date the program is to be placed into service, the nature of the change, a description of procedures required in order to bring the new or modified program into service (conversion or input of data, installation procedures, etc.), and an indication of who is to perform all such procedures;

(iii) Testing of new and modified programs shall be performed and documented prior to implementation; and

(iv) A record of the final program or program changes, including evidence of user acceptance, date in service, programmer, and reason for changes, shall be documented and maintained.

(5) Computer security logs, if generated by the system, shall be reviewed by EDP supervisory personnel for evidence of:

(i) Multiple attempts to log-on, or alternatively, the system shall deny user access after three attempts to log-on;

(ii) Unauthorized changes to live data files; and

(iii) Any other unusual transactions.

(iv) This paragraph shall not apply to personal computers.

(c) If remote dial-up to any associated equipment is allowed for software support, the gaming operation shall maintain an access log which includes:

(1) Name of employee authorizing modem access;

(2) Name of authorized programmer or manufacturer representative;

(3) Reason for modem access;

(4) Description of work performed; and

(5) Date, time, and duration of access.

(d) Documents may be scanned or directly stored to WORM ("Write Once Read Many") optical disk with the following conditions:

(1) The optical disk shall contain the exact duplicate of the original document.

(2) All documents stored on optical disk shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available upon request by the Commission.

(3) Upon request and adequate notice by the tribe or the Commission, hardware (terminal, printer, etc.) shall be made available in order to perform auditing procedures.

(4) Controls shall exist to ensure the accurate reproduction of records up to and including the printing of stored documents used for auditing purposes.

(5) If source documents and summary reports are stored on re-writable optical disks, the disks may not be relied upon for the performance of any audit procedures and the original documents and summary reports shall be retained.

(6) The disks shall be retained for a minimum of five years.

(7) Original documents must be retained for a minimum of one year after they have been scanned to WORM disks.

§ 542.17 What are the minimum internal control standards for complimentary services or items?

(a) Each gaming operation shall establish and comply with procedures for

the authorization and issuance of complimentary services and items including cash and noncash gifts. Such procedures shall include, but shall not be limited to, the procedures by which the gaming operation delegates to its employees the authority to approve the issuance of complimentary services and items and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes.

(b) At least weekly, accounting, MIS, or alternative personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information for all complimentary service or item that exceeds \$50.00:

- (1) Name of patron who received the complimentary service or item;
- (2) Name(s) of employee(s) who issued and/or authorized the complimentary service or item;
- (3) The actual cash value of the complimentary service or item;
- (4) The type of complimentary service or item (i.e., food, beverage, etc.); and
- (5) Date the complimentary service or item was issued.

(c) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least weekly. These reports shall be made available to the Tribe, the tribe's independent regulatory body, and the Commission upon request.

§ 542.18 Who may apply for a variance and how do I apply for one?

(a) Variance for Tier A and Tier B gaming operations. (1) A Tribe may apply for a variance in its tribal MICS for Tier A or Tier B gaming operations if the Tribe has determined that:

- (i) The gaming operation is unable to comply substantially with an internal control standard in this part; and
 - (ii) The gaming operation develops a variance that will achieve adequate control for the standard which it seeks to replace.
- (2) For each standard for which the Tribe seeks a variance, the Tribe shall

submit to the Commission a detailed report which shall include the following information:

- (i) An explanation of why the gaming operation is unable to comply substantially with the standard;
- (ii) A description of the proposed variance;
- (iii) An explanation of how the proposed variance achieves adequate control; and
- (iv) Evidence that the Tribe or its independent regulatory body has approved the variance.

(3) The Commission may test the adequacy of the variance.

(b) Variances for Tier B and C gaming operations. (1) A Tribe may apply for a variance in its tribal MICS for Tier C gaming operations if the Tribe has determined that the variance will achieve at least the same level of control as the standard the variance is to replace.

(2) For each standard for which the Tribe seeks a variance, the Tribe shall submit to the Commission a detailed report which shall include the following information:

- (i) An explanation of why the Tribe is seeking a variance;
- (ii) A description of the proposed variance;
- (iii) An explanation of how the proposed variance achieves at least the same level of control as the standard it is to replace; and
- (iv) Evidence that the Tribe or its independent regulatory body has approved the variance.

(3) The Commission may test the adequacy of the variance.

(c) The Commission may grant the request for a variance upon its sole discretion. Variances will not be granted routinely. The gaming operation shall comply with standards at least as stringent as those set forth in this part until such time as the Commission approves a request for a variance.

(d) Approval of variances shall expire three years from the date of approval. A Tribe may apply for a renewal of a variance by submitting a request which shall include a justification of why the variance should be renewed. The Commission may grant the request for renewal of a variance upon its sole discretion.

§ 542.19

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§ 542.19 Does this part apply to charitable bingo operations?

(a) This part shall not apply to charitable bingo operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The Tribe permits the charitable organization to be exempt from this part;

(3) The charitable bingo operation is operated wholly by the charitable organization's employees or volunteers;

(4) The annual gross gaming revenue of the charitable organization does not exceed \$50,000; and

(5) The Tribe establishes and the charitable bingo operation complies with minimum standards which shall protect the integrity of the game and safeguard the monies used in connection with the game.

(b) Nothing in this section shall exempt bingo operations conducted by independent operators for the benefit of a charitable organization.

PARTS 543-549 [RESERVED]

SUBCHAPTER E—GAMING LICENSES AND BACKGROUND INVESTIGATIONS FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

PARTS 550–555 [RESERVED]

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.

- 556.1 Scope of this part.
- 556.2 Privacy notice.
- 556.3 Notice regarding false statements.
- 556.4 Background investigations.
- 556.5 Report to Commission.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5813, Jan. 22, 1993, unless otherwise noted.

§ 556.1 Scope of this part.

Unless a tribal-state compact allocates sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 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 employed in a gaming operation. The information will be used by 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 hire you 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 application may be grounds for 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.

§ 556.4 Background investigations.

A tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s),

birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

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

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

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

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

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

(10) 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 (a)(8) or (a)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

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

(12) A photograph;

(13) Any other information a tribe deems relevant; and

(14) Fingerprints consistent with procedures adopted by a tribe according to § 522.2(h) of this chapter.

(b) A tribe shall conduct an investigation sufficient to make a determination under § 558.2 of this chapter. In conducting a background investigation, a tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) If the Commission has received an investigative report concerning an individual who another tribe wishes to employ as a key employee or primary management official and if the second tribe has access to the investigative materials held by the first tribe, the second tribe may update the investigation and update the investigative report under § 556.5(b) of this part.

§ 556.5 Report to Commission.

(a) When a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed application containing the information listed under § 556.4(a)(1)–(13) of this part.

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The bases for those conclusions.

(c) When a tribe forwards its report to the Commission, it shall include a copy of the eligibility determination made under § 558.2 of this chapter.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) May forward copies of its eligibility determination under § 558.2 and investigative report (if any) under § 556.5(b) to the Commission for inclusion in the Indian Gaming Individuals Record System.

PART 557 [RESERVED]**PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS**

Sec.

558.1 Scope of this part.

558.2 Eligibility determination for employment in a gaming operation.

558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.

558.4 Granting a gaming license.

558.5 License suspension.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5814, Jan. 22, 1993, unless otherwise noted.

§ 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.

[58 FR 5814, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 558.2 Eligibility determination for 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 employment in a gaming operation. If the authorized tribal official,

in applying the standards adopted in a tribal ordinance, determines that 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 employ that person in a key employee or primary management official position.

[58 FR 5814, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 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 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 continued employment in a gaming operation.

(b) Upon completion of a background investigation and a determination of eligibility for 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 an 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 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.

§ 558.5 License suspension.

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under § 558.2 of this part, the Commission shall notify the tribe that issued a gaming license.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision.

PART 559 [RESERVED]

SUBCHAPTER F [RESERVED]

PARTS 560–569 [RESERVED]

SUBCHAPTER G—COMPLIANCE AND ENFORCEMENT PROVISIONS

PART 570 [RESERVED]

PART 571—MONITORING AND INVESTIGATIONS

Subpart A—General

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571.12 Audit standards.

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571.14 Relationship of audited financial statements to fee assessment reports.

AUTHORITY: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

SOURCE: 58 FR 5842, Jan. 22, 1993, unless otherwise noted.

Subpart A—General

§ 571.1 Scope.

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

§ 571.2 Definitions.

As used in this subchapter, the following terms have the specified meanings:

Commission's authorized representative means any persons who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter.

Day means calendar day unless otherwise specified.

Hearing means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission.

Party means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding.

Person means an individual, Indian tribe, corporation, partnership, or other organization or entity.

Presiding official means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer oaths, and has had no previous role in the prosecution of a matter over which he or she will preside.

Respondent means a person against whom the Commission is seeking civil penalties under section 2713 of the Act.

Violation means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

[58 FR 5842, Jan. 22, 1993; 58 FR 8449, Feb. 12, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 571.3 Confidentiality.

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act that falls within the exemptions of 5 U.S.C. 552(b) (4) and (7); *except* that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in

a multiple-party proceeding under part 577 of this chapter is addressed in § 577.8 of this chapter.

Subpart B—Inspection of Books and Records

§ 571.5 Entry of premises.

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

§ 571.6 Access to papers, books, and records.

(a) Once the Commission's authorized representative presents proper identification, a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

(c) Upon the request of the Commission's authorized representative, the gaming operation shall photocopy, or allow the Commission's authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

§ 571.7 Maintenance and preservation of papers and records.

(a) A gaming operation shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deduc-

tions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for no less than five (5) years.

(d) A gaming operation shall maintain copies of all enforcement actions that a tribe or a state has taken against the operation, noting the final disposition of each case.

Subpart C—Subpoenas and Depositions

§ 571.8 Subpoena of witnesses.

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any matter under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

§ 571.9 Subpoena of documents and other items.

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

§ 571.10 Geographical location.

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

§ 571.11 Depositions.

(a) Any party wishing to depose a witness shall file a request with the Commission or, if a presiding official has been designated under part 577 of this chapter, to the presiding official. Such a request shall not be granted except for good cause shown. A Commissioner or a presiding official may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation, except that Commission personnel may not be questioned by deposition for the purposes of discovery, but may be questioned by written interrogatories as authorized by the Commission or a presiding official. Commission records are not subject to discovery under this chapter. The inspection of Commission records is governed by § 571.3 of this part and the Freedom of Information Act, 5 U.S.C. 552. Depositions under this section may be taken before any person designated by the Commission or a presiding official, and who has the power to administer oaths.

(b) A party or a Commissioner (or a person designated by a Commissioner under paragraph (a) of this section) proposing to take a deposition under this section shall give reasonable notice to the Commission and the parties, if any, of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be notified of his or her right to be represented by counsel during the deposition, and shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission or, if a presiding official has been designated, with the presiding official.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

Subpart D—Audits**§ 571.12 Audit standards.**

A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

§ 571.13 Copies of audit reports.

A tribe shall submit to the Commission a copy of the report(s) and management letter(s) setting forth the results of each annual audit within 120 days after the end of each fiscal year of the gaming operation.

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

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

PART 572 [RESERVED]**PART 573—ENFORCEMENT**

Sec.

573.1 Scope.

573.3 Notice of violation.

573.6 Order of temporary closure.

AUTHORITY: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

SOURCE: 58 FR 5844, Jan. 22, 1993, unless otherwise noted.

§ 573.1 Scope.

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chairman under part 522 or 523

of this chapter. Civil fines in connection with notice of violation issued under this part are addressed in part 575 of this chapter.

§ 573.3 Notice of violation.

(a) The Chairman may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(b) A notice of violation shall contain:

(1) A citation to the federal or tribal requirement that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

§ 573.6 Order of temporary closure.

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under § 573.3 of this part, the Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

(1) The respondent fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after a tribe provides notice of a violation.

(2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(4) A gaming operation operates for business without a license from a tribe, in violation of part 558 of this chapter.

(5) A gaming operation operates for business without either background in-

vestigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in § 558.3(b) of this chapter.

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe or a customer.

(7) A management contractor operates for business without a contract that the Chairman has approved under part 533 of this chapter.

(8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in § 558.2 of this chapter, in violation of § 558.5 of this chapter.

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chairman.

(1) The Chairman shall complete the expedited review provided for by this

paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chairman shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chairman serves an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chairman for good cause.

PART 574 [RESERVED]

PART 575—CIVIL FINES

Sec.

575.1 Scope.

575.3 How assessments are made.

575.4 When civil fine will be assessed.

575.5 Procedures for assessment of civil fines.

575.6 Settlement, reduction, or waiver of civil fine.

575.9 Final assessment.

AUTHORITY: 25 U.S.C. 2705(a), 2706, 2713, 2715.

SOURCE: 58 FR 5844, Jan. 22, 1993, unless otherwise noted.

§ 575.1 Scope.

This part addresses the assessment of civil fines under section 2713(a) of the Act with respect to notices of violation issued under § 573.3 of this chapter.

§ 575.3 How assessments are made.

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil fine will be assessed, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.

§ 575.4 When civil fine will be assessed.

The Chairman may assess a civil fine, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under § 573.3 of this chapter after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.

(c) *History of violations.* The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years.

(1) A violation cited by the Chairman shall not be considered unless the associated notice of violation is the subject of a final order of the Commission and has not been vacated; and

(2) Each violation shall be considered whether or not it led to a civil fine.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may reduce the amount of a civil fine based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

§ 575.5 Procedures for assessment of civil fines.

(a) Within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice of violation was issued, when practicable.

(c) The Chairman may review and reassess any civil fine if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

§ 575.6 Settlement, reduction, or waiver of civil fine.

(a) *Reduction or waiver.* (1) Upon written request of a respondent received at any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman may reduce or waive a civil fine if he or she determines that, taking into account exceptional factors present in a particular case, the fine is demonstrably unjust.

(2) All petitions for reduction or waiver shall contain:

(i) A detailed description of the violation that is the subject of the fine;

(ii) A detailed recitation of the facts that support a finding that the fine is demonstrably unjust, accompanied by underlying documentation, if any; and

(iii) A declaration, signed and dated by the respondent and his or her counsel or representative, if any, as follows: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this petition are true and correct.

(3) The Chairman shall serve the respondent with written notice of his or her determination under paragraph (a) of this section, including a statement of the grounds for the Chairman's decision.

(b) *Settlement.* At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman and the respondent may agree to settle

an enforcement action, including the amount of the associated civil fine. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chairman and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the violation or civil fine in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the assessed civil fine before the Commission in accordance with part 577 of this chapter.

§ 575.9 Final assessment.

(a) If the respondent fails to request a hearing as provided in part 577 of this chapter, the proposed civil fine assessment shall become a final order of the Commission.

(b) Civil fines assessed under this part shall be paid by the person assessed and shall not be treated as an operating expense of the operation.

(c) The Commission shall transfer civil fines paid under this subchapter to the U.S. Treasury.

[58 FR 5844, Jan. 22, 1993, as amended at 58 FR 16495, Mar. 29, 1993]

PART 576 [RESERVED]

PART 577—APPEALS BEFORE THE COMMISSION

- Sec.
- 577.1 Scope.
- 577.3 Request for hearing.
- 577.4 Hearing deadline.
- 577.6 Service.
- 577.7 Conduct of hearing.
- 577.8 Request to limit disclosure of confidential information.
- 577.9 Consent order or settlement.
- 577.12 Intervention.
- 577.13 Transcript of hearing.
- 577.14 Recommended decision of presiding official.
- 577.15 Review by Commission.

AUTHORITY: 25 U.S.C. 2706, 2713, 2715.

SOURCE: 58 FR 5845, Jan. 22, 1993, unless otherwise noted.

§ 577.1 Scope.

(a) This part provides procedures for appeals to the Commission regarding:

- (1) A violation alleged in a notice of violation;
- (2) Civil fines assessed by the Chairman;
- (3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and
- (4) The Chairman's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval.

(b) Appeals from determinations of the Chairman under 25 U.S.C. 2710 and 2711 (regarding management contracts) and 2710 (regarding tribal gaming ordinances) are addressed in parts 539 and 524 of this chapter respectively.

§ 577.3 Request for hearing.

(a) A respondent may request a hearing to contest the matters listed in § 577.1(a)(1)–(4) by submitting a notice of appeal to the Commission within thirty (30) days after service of:

- (1) A notice of violation;
- (2) A proposed civil fine assessment or reassessment;
- (3) An order of temporary closure; or
- (4) An order voiding or modifying a management contract subsequent to initial approval.

(b) A notice of appeal shall reference the notice or order from which the appeal is taken.

(c) Within ten (10) days after filing a notice of appeal, the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits. If the respondent wishes to present oral testimony or witnesses at the hearing, the respondent shall include a request to do so with the supplemental statement. The request to present oral testimony or witnesses shall specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The respondent may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Commission

solely on the basis of written submissions.

§ 577.4 Hearing deadline.

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal from the respondent. At the request of the respondent, the presiding official may order the hearing to commence at a time more than 30 days after the respondent files a notice of appeal. The Commission shall transmit the administrative record of the case to the presiding official upon designation.

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

§ 577.6 Service.

(a) A respondent who initiates an appeal under this part shall serve copies of the initiating documents on the Commission at the address indicated in the notice or order that is the subject of the appeal. All filings shall be made with the Commission until a presiding official is designated and the parties are so notified, after which all filings shall be made with the presiding official. Any party or other person who subsequently files any other document with the Commission or the presiding officer shall simultaneously serve copies of that document on any other parties to the proceeding, except to that extent § 577.8 of this part may govern the disclosure of confidential information contained in a filing.

(b) Copies of documents by which a proceeding is initiated shall be served on all known parties personally, by facsimile, or by registered or certified

mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, or by first class mail.

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

(d) Whenever a representative (including an attorney) has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative.

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

(f)(1) The presiding official may extend the time for filing or serving any document except a notice of appeal.

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

(3) For good cause the presiding official may grant an extension of time on his or her own initiative.

§ 577.7 Conduct of hearing.

(a) Once designated by the Commission, the presiding official shall set the case for hearing. The respondent may appear at the hearing personally, through counsel, or personally with counsel. The respondent shall have the right to introduce relevant written materials and to present an oral argument. At the discretion of the presiding official, a hearing under this section may include an opportunity to submit oral and documentary evidence and cross-examine witnesses.

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

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

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

(4) Authorize exchanges of information (including depositions and interrogatories in accordance with 25 CFR part 571, subpart C) among the parties

when to do so would expedite the proceeding;

(5) Regulate the course of the hearing;

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

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

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 577.14 of this part; and

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

(c) The presiding official may order the record to be kept open for a reasonable period following the hearing (normally five days), during which time the parties may make additional submissions to the record. Thereafter, the record shall be closed and the hearing shall be deemed concluded. Within 30 days after the record closes, the presiding official shall issue a recommended decision in accordance with § 577.14 of this part.

§ 577.8 Request to limit disclosure of confidential information.

(a) If any person submitting a document in a proceeding that involves more than two parties claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905 (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person shall:

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

(2) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chairman, whose actions regarding

the disclosure of confidential information are governed by §571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

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

(ii) A statement explaining why the information is confidential.

(b) A party to a proceeding may request that the presiding official direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding official shall so direct if the party requesting the information agrees under oath and in writing:

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

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

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

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known addresses. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public

record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under §577.7 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

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

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

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

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

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

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

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

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

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§ 577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings;

(3) Their interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

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

(c) A person not named as a party and who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a part at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner wishes to present witnesses.

(d) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

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

(f) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each

petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and may then treat the petition as a request for participation as *amicus curiae* (that is, "friend of the court").

§ 577.13 Transcript of hearing.

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

§ 577.14 Recommended decision of presiding official.

(a) *Recommended decision.* Within thirty (30) days after the record closes, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall be based upon the whole record and shall include findings of fact and conclusions of law upon each material issue of fact or law presented on the record.

(b) *Filing of objections.* Within ten (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

§ 577.15 Review by Commission.

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed except that, if the subject of the appeal is an order of temporary closure issued under § 573.6 of this chapter, the order of temporary closure shall be dissolved.

PARTS 578–579 [RESERVED]

National Indian Gaming Commission, Interior

§ 577.15

SUBCHAPTER H [RESERVED]

PARTS 580–589 [RESERVED]

SUBCHAPTER I [RESERVED]

PARTS 590–599 [RESERVED]