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Code of Federal Regulations

25

Part 300 to End

Revised as of April 1, 2009

Indians

Containing a codification of documents of general applicability and future effect

As of April 1, 2009

With Ancillaries

Published by
Office of the Federal Register
National Archives and Records
Administration

A Special Edition of the Federal Register

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As of April 1, 2009

Title 25

Revised as of April 1, 2008

Is Replaced by

Title 25, Parts 1 to 299

and

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 25 CFR 301.1 *refers to title 25, part 301, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
April 1, 2009.

THIS TITLE

Title 25—INDIANS is composed of two volumes. The parts in these volumes are arranged in the following order: parts 1-299, and part 300 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of April 1, 2009.

For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

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CHAPTER II—INDIAN ARTS AND CRAFTS BOARD, DEPARTMENT OF THE INTERIOR

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PART 300 [Reserved]

PART 301—NAVAJO, PUEBLO, AND HOPI SILVER AND TURQUOISE PRODUCTS; STANDARDS

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301.1 Eligibility for use of Government stamp.
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301.3 Specifications of dies.
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301.8 Finish.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this part 301 contained in standards for Navajo, Pueblo, and Hopi silver and turquoise products, Mar. 9, 1937, unless otherwise noted.

§ 301.1 Eligibility for use of Government stamp.

Subject to the detailed requirements that follow, the Government stamp shall be affixed only to work individually produced and to work entirely hand-made. No object produced under conditions resembling a bench work system, and no object in whose manufacture any power-driven machinery has been used, shall be eligible for the use of the Government stamp.

§ 301.2 Specifications of material.

Silver slugs of 1 ounce weight or other silver objects may be used, provided their fineness is at least 900, and provided further that no silver sheet shall be used. Unless cast, the slug or other object is to be hand hammered to thickness and shape desired. The only exceptions here are pins on brooches or similar objects; ear screws for earrings; backs for tie clasps and chains which may be of silver of different fineness and mechanically made.

§ 301.3 Specifications of dies.

Dies used are to be entirely hand-made, with no tools more mechanical than hand tools and vise. Dies shall contain only a single element of the design.

§ 301.4 Application of dies.

Dies are to be applied to the object with the aid of nothing except hand tools.

§ 301.5 Applique elements in design.

All such parts of the ornament are to be hand-made. If wire is used, it is to be hand-made with no tool other than a hand-made draw plate. These requirements apply to the boxes for stone used in the design.

§ 301.6 Stone for ornamentation.

In addition to turquoise, the use of other local stone is permitted. Turquoise, if used, must be genuine stone, uncolored by any artificial means.

§ 301.7 Stonecutting.

All stone used, including turquoise, is to be hand-cut and polished. This permits the use of hand- or foot-driven wheels.

§ 301.8 Finish.

All silver is to be hand polished.

PART 304—NAVAJO, PUEBLO, AND HOPI SILVER, USE OF GOVERNMENT MARK

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304.1 Penalties for imitation or unauthorized use.
304.2 Marking and ownership of dies.
304.3 Classifying and marking of silver.
304.4 Standards and additional requirements.
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304.7 Eligibility of silver meeting standards.
304.8 Use of label by dealer.
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AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this part 304 contained in regulations governing use of Government mark on Navajo, Pueblo, and Hopi silver, April 2, 1937, unless otherwise noted.

§ 304.1 Penalties for imitation or unauthorized use.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is

subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d).

§ 304.2 Marking and ownership of dies.

All dies used to mark silver will be provided by and owned by the Indian Arts and Crafts Board.

§ 304.3 Classifying and marking of silver.

For the present the Indian Arts and Crafts Board reserves to itself the sole right to judge what silver complying with its standards shall bear the Government mark. All such marking of silver shall, for the present, be done by an agent of the Indian Arts and Crafts Board.

§ 304.4 Standards and additional requirements.

No piece of silver, though made in compliance with the standards set forth by the Indian Arts and Crafts Board, shall bear the Government mark unless:

(a) Its weight is substantially in accord with Indian usage and custom.

(b) Its design elements are substantially in accord with Indian usage and tradition.

(c) Its workmanship is substantially that expected in good hand craftsmanship.

§ 304.5 Dies to identify tribe.

Dies are marked with name of tribe. A Navajo stamp will be used where the marker is a Navajo Indian; similarly, for Zuni, Hopi, and Rio Grande Pueblo.

§ 304.6 Responsibility of dealer.

All dies will be numbered, and each wholesaler or dealer will be held responsible for any violation of standards in silver that bears his mark. Until such time as the Board relinquishes its sole right to mark silver, the responsibility of the dealer for whom silver is marked will be confined to misrepresentations as to quality of silver and of stones used for ornament and to methods of production.

§ 304.7 Eligibility of silver meeting standards.

In addition to silver currently made in compliance with the standards of the Indian Arts and Crafts Board, other silver products made prior to the promulgation of the regulations in this part may be stamped, provided the maker thereof is known to be an Indian, and the product satisfies the requirements in § 304.4.

§ 304.8 Use of label by dealer.

Any dealer offering for sale silver bearing the Government mark may, if he wishes, attach to silver so marked a label or ticket calling attention to the Government mark.

§ 304.9 Placards; display of regulations.

Every dealer offering for sale silver bearing the Government mark may display in a prominent place a placard setting forth the standards and the regulations in this part, such placard to be furnished by the Indian Arts and Crafts Board.

[Regs., Apr. 2, 1937, as amended Feb. 21, 1938]

PART 307—NAVAJO ALL-WOOL WOVEN FABRICS; USE OF GOVERNMENT CERTIFICATE OF GENUINENESS

Sec.

307.1 Penalties.
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307.3 Granting of licenses, contract, and bond requirements.
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307.10 Period of license.
307.11 Certificates fastened to fabrics.
307.12 Certificates, dating, and signing thereof.
307.13 Licensee's responsibility.

AUTHORITY: Sec. 3, 49 Stat. 892 (25 U.S.C. 305b). Interpret or apply sec. 2, 49 Stat. 891, as amended (25 U.S.C. 305a).

SOURCE: The provisions of this part 307 contained in regulations governing the use of Government certificate of genuineness for Navajo all-wool woven fabrics, Oct. 20, 1937, unless otherwise noted.

§ 307.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d), which provides:

> Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $20,000, or imprisonment not exceeding six months, or both such fine and imprisonment.

§ 307.2 Certificates of genuineness; by whom affixed.

Government certificates of genuineness for Navajo all-wool woven fabrics may be affixed to fabrics meeting the conditions specified in § 307.4 by persons duly authorized to affix such certificates, under license issued by the Indian Arts and Crafts Board.

§ 307.3 Granting of licenses, contract, and bond requirements.

A license may be granted to any person desiring to use the Government certificate of genuineness for Navajo all-wool woven fabrics who shall make application therefor and shall execute a contract acceptable to the Indian Arts and Crafts Board providing for the use of such certificates in conformity with the regulations in this part, which contract shall be accompanied by an indemnity bond acceptable to the Indian Arts and Crafts Board, in the amount of $500, conditioned upon faithful performance of such contract.

§ 307.4 Standards for fabrics.

No fabric may carry the Government certificate of genuineness for Navajo all-wool woven fabric unless all of the following conditions are met:

(a) The fabric is made entirely of local wool that is locally hand-spun and is entirely woven on a native Navajo loom;

(b) The fabric is made by a member of the Navajo Tribe working under conditions not resembling a workshop or factory system;

(c) The size of the fabric is indicated in the certificate;

(d) The licensee signs the certificate.

[Regs., Oct. 20, 1937, as amended at 4 FR 2436, June 17, 1939]

§ 307.5 Hand seal press and certificates to be furnished.

Each licensee will be furnished, upon payment of the registration and license fees specified in § 307.6 one hand seal press and a supply of blank Government certificates, which shall be used only in accordance with this license, and shall remain at all times the property of the Board.

§ 307.6 Fees.

Each licensee shall pay a registration fee of $2, together with a license fee which shall be determined on the basis of $1 for each 40 Government certificates ordered by the licensee from the Board.

§ 307.7 Suspension of license.

In the event that complaint is made to the Board that any provision of any license or of the regulations in this part has been violated by any licensee, the Board may suspend the license and all authority conferred thereby, in its discretion, for a period of 30 days, by notifying the licensee of such suspension, by mail, by telegraph, or in any other manner.

§ 307.8 Revocation of license.

In the event that the Board, after giving a licensee written notice of charges and affording an opportunity to reply to such charges, orally or in writing, is satisfied that any provision of any license or of the regulations in this part has been violated by any licensee, the Board may revoke the license by notifying the licensee of such revocation, by mail, by telegraph, or in any other manner. Upon notice of such

revocation all authority conferred by the license so revoked shall forthwith terminate, but the validity of actions taken while the license was in force shall not be affected.

§ 307.9 Surrender of license.

Any license may be surrendered by the licensee at any time by surrendering to the Board the Government hand seal press and unused certificates of genuineness entrusted to the licensee, accompanied by a copy of the license marked ''surrendered'' and signed by the licensee. Such surrender shall take effect as of the time that such property and document have been received by the Board.

§ 307.10 Period of license.

Each license shall be in effect from the date of execution thereof and until 1 year thereafter, unless sooner surrendered or canceled in accordance with the foregoing provisions.

§ 307.11 Certificates fastened to fabrics.

Certificates shall be fastened to the woven fabric by wire caught in a lead seal disc that shall be impressed and made fast with the hand seal press furnished by the Indian Arts and Crafts Board.

§ 307.12 Certificates, dating, and signing thereof.

When the certificate is first affixed the lower of the two spaces provided for the purpose shall be signed by the licensee. In the event the ultimate retailer of any fabric so marked is not the person who originally attached the certificate, that ultimate retailer may sign the upper of the two spaces provided for the purpose and detach the original signature.

[4 FR 2436, June 17, 1939]

§ 307.13 Licensee's responsibility.

Certificates may be attached only to products which are in the ownership or possession of the licensee. Certificates will be consecutively numbered and records of the allocation of such certificates will be maintained by the Indian Arts and Crafts Board. Each licensee will be held responsible for the proper use of such certificates and of the Government hand seal press furnished to such licensee.

PART 308—REGULATIONS FOR USE OF CERTIFICATES OF THE INDIAN ARTS AND CRAFTS BOARD TO BE ATTACHED TO THEIR TRADE-MARKS BY INDIAN ENTERPRISES CONCERNED WITH THE PRODUCTION AND SALE OF GENUINE HANDICRAFTS

Sec.
308.1 Penalties.
308.2 Certificates of genuineness to be attached to trade-marks.
308.3 Conditions of eligibility to attach certificates.
308.4 Revocation of privilege of attaching certificates.

AUTHORITY: Sec. 3, 49 Stat. 892 (25 U.S.C. 305b). Interpret or apply sec. 2, 49 Stat. 891, as amended (25 U.S.C. 305a).

SOURCE: 8 FR 8736, June 26, 1943, unless otherwise noted.

§ 308.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d), which provides:

> Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark, shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $2,000, or imprisonment not exceeding six months, or both such fine and imprisonment.

§ 308.2 Certificates of genuineness to be attached to trade-marks.

(a) To insure the widest distribution of genuine Indian handicraft products, and to protect the various enterprises organized by individual Indian craftsmen, or by groups of Indian craftsmen, for the purpose of the production and sale of such handicraft products, the Indian Arts and Crafts Board offers each such enterprise the privilege of attaching to its trademark a certificate declaring that it is recognized by the Indian Arts and Crafts Board as an Indian enterprise dealing in genuine Indian-made handicraft products, and that its trade-mark has the approval of the Board.

(b) The certificate shall consist of a border around the trade-mark bearing the words ''Certified Indian Enterprise Genuine Handicrafts, U.S. Indian Arts and Crafts Board, Department of the Interior,'' and these words may be used wherever the trade-mark appears.

§ 308.3 Conditions of eligibility to attach certificates.

To be eligible to attach the certificate, an enterprise must meet the following conditions:

(a) It must offer for sale only Indian-made genuine handicraft products, i.e., objects produced by Indian craftsmen with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(b) It must be entirely Indian owned and organized either by individual Indians or by groups of Indians.

(c) It must agree to apply certificates of genuineness only to such products as meet the standards of quality prescribed by the Indian Arts and Crafts Board at the time of the application of the enterprise for the privilege of attaching the certificate.

(d) It must agree to obtain the approval of the Indian Arts and Crafts Board as to the manner of production of the certificates.

§ 308.4 Revocation of privilege of attaching certificates.

If an enterprise, after securing the privilege of attaching the certificates, should fail to meet the above-named conditions, the Board reserves the right to revoke the privilege.

PART 309—PROTECTION OF INDIAN ARTS AND CRAFTS PRODUCTS

Sec.

309.1 How do the regulations in this part carry out the Indian Arts and Crafts Act of 1990?
309.2 What are the key definitions for purposes of the Act?
309.6 When does a commercial product become an Indian product?
309.7 How should a seller disclose the nature and degree of Indian labor when selling, offering, or displaying art and craft work for sale?
309.8 For marketing purposes, what is the recommended method of identifying authentic Indian products?
309.9 When can non-Indians make and sell products in the style of Indian arts and crafts?
309.10 What are some sample categories and examples of Indian products?
309.11 What are examples of jewelry that are Indian products?
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309.23 Does this part apply to products made before 1935?
309.24 How will statements about Indian origin of art or craft products be interpreted?
309.25 How can an individual be certified as an Indian artisan?
309.26 What penalties apply?
309.27 How are complaints filed?

AUTHORITY: 18 U.S.C. 1159, 25 U.S.C. 305 *et seq.*

SOURCE: 61 FR 54555, Oct. 21, 1996, unless otherwise noted.

§ 309.1 How do the regulations in this part carry out the Indian Arts and Crafts Act of 1990?

These regulations define the nature and Indian origin of products protected by the Indian Arts and Crafts Act of 1990 (18 U.S.C. 1159, 25 U.S.C. 305 et seq.) from false representations, and specify how the Indian Arts and Crafts Board will interpret certain conduct for enforcement purposes. The Act makes it unlawful to offer or display for sale or sell any good in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian, or Indian tribe, or Indian arts and crafts organization resident within the United States.

§ 309.2 What are the key definitions for purposes of the Act?

(a) *Indian* as applied to an individual means a person who is a member of an Indian tribe or for purposes of this part is certified by an Indian tribe as a non-member Indian artisan (in accordance with the provisions of § 309.4).

(b) *Indian artisan* means an individual who is certified by an Indian tribe as a non-member Indian artisan.

(c) *Indian arts and crafts organization* means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) *Indian product*—(1) *In general*. The term ''Indian product'' means any art or craft product made by an Indian. For this purpose, the term ''made by an Indian'' means that an Indian has provided the artistic or craft work labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. This may include more than one Indian working together. The labor component of the product, however, must be entirely Indian for the Indian art or craft object to be an ''Indian product.''

(2) *Illustrations*. The term ''Indian product'' includes, but is not limited to:

(i) Art made by an Indian that is in a traditional or non-traditional style or medium;

(ii) Craft work made by an Indian that is in a traditional or non-traditional style or medium;

(iii) Handcraft made by an Indian, *i.e.* an object created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(3) *Examples of non-qualifying products*. An ''Indian product'' under the Act does not include any of the following, for example:

(i) A product in the style of an Indian art or craft product made by non-Indian labor;

(ii) A product in the style of an Indian art or craft product that is designed by an Indian but produced by non-Indian labor;

(iii) A product in the style of an Indian art or craft product that is assembled from a kit;

(iv) A product in the style of an Indian art or craft product originating from a commercial product, without substantial transformation provided by Indian artistic or craft work labor;

(v) Industrial products, which for this purpose are defined as goods that have an exclusively functional purpose, do not serve as a traditional artistic medium, and that do not lend themselves to Indian embellishment, such as appliances and vehicles. An industrial product may not become an Indian product.

(vi) A product in the style of an Indian art or craft product that is produced in an assembly line or related production line process using multiple workers not all whom are Indians. For example, if twenty people make up the labor to create the product(s), and one person is not Indian, the product is not an ''Indian product.''

(e) *Indian tribe* means—

(1) Any Indian tribe, band, nation, Alaska Native village, or any organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority.

(f) *Product of a particular Indian tribe or Indian arts and crafts organization* means that the origin of a product is identified as a named Indian tribe or

named Indian arts and crafts organization.

[61 FR 54555, Oct. 21, 1996; 61 FR 57002, Nov. 5, 1996, as amended at 68 FR 35169, June 12, 2003]

§ 309.6 When does a commercial product become an Indian product?

In addressing Indian embellishments to originally commercial products, the Indian labor expended to add art or craft work to those objects must be sufficient to substantially transform the qualities and appearance of the original commercial item. ''Commercial products,'' under this part, are consumer goods designed for profit and mass distribution that lend themselves to Indian embellishment, for example clothing and accessories. Through substantial transformation due to Indian labor, a product changes from a commercial product to an Indian product. Examples of formerly commercial products that become Indian products include tennis shoes to which an Indian applies beadwork and denim jackets to which an Indian applies ribbon appliqués.

[68 FR 35170, June 12, 2003]

§ 309.7 How should a seller disclose the nature and degree of Indian labor when selling, offering, or displaying art and craft work for sale?

The Indian Arts and Crafts Act is a truth-in-marketing law. Those who produce and market art and craft work should honestly represent and clarify the degree of Indian involvement in the production of the art and craft work when it is sold, displayed or offered for sale. The following guidelines illustrate the way in which art and craft work may be characterized for marketing purposes and gives examples of products that may be marketed as Indian products.

If . . .	then . . .
(a) An Indian conceives, designs, and makes the art or craft work.	it is an ''Indian product.''
(b) An Indian produces a product that is ''handcrafted,'' as explained in 309.3(d)(iii).	it can be marketed as such and it meets the definition of ''Indian product.''
(c) An Indian makes an art or craft work using some machine made parts.	it is ''Indian made'' and meets the definition of ''Indian product.''
(d) An Indian designs a product, such as a bracelet, which is then produced by non-Indians.	it does not meet the definition of ''Indian product'' under the Act.
(e) A product, such as jewelry, is made with non-artistic Indian labor, from assembled or ''fit together parts''.	it does not meet the definition of ''Indian product'' under the Act. [1]
(f) A product in the style of an Indian product is assembled by non-Indian labor from a kit.	it does not meet the definition of ''Indian product'' under the Act.
(g) A product is in the style of an Indian art or craft product, but not made by an Indian.	it does not meet the definition of ''Indian product'' under the Act.
(h) An Indian and a non-Indian jointly undertake the art or craft work to produce an art or craft product, for example a concho belt.	less than all of the labor is Indian and hence it does not meet the definition of ''Indian product'' under the Act. [2]

[1] For example, a necklace strung with overseas manufactured fetishes or heshi. If an Indian assembled the necklace, in keeping with the truth-in-marketing focus of the Act, it can be marketed as ''Indian assembled.'' It does not meet the definition of ''Indian product'' under the Act. Similarly, if a product, such as a dream catcher is assembled by an Indian from a kit, it can be marketed as ''Indian assembled.'' It does not meet the definition of ''Indian product'' under the Act.

[2] In order to be an ''Indian product,'' the labor component of the product must be entirely Indian. In keeping with this truth-in-marketing law, a collaborative work should be marketed as such. Therefore, it should be marketed as produced by ''X'' (name of artist or artisan), ''Y'' (Tribe of individual's enrollment) or (name of Tribe providing official written certification the individual is a non-member Indian artisan and date upon which such certification was issued by the Tribe), and ''Z'' (name of artist or artisan with no Tribe listed) to avoid providing false suggestions to consumers.

[68 FR 35170, June 12, 2003]

§ 309.8 For marketing purposes, what is the recommended method of identifying authentic Indian products?

(a) The recommended method of marketing authentic Indian products is to include the name of the artist or artisan, the name of the Tribe in which the artist or artisan is enrolled, and the individual's Tribal enrollment number. If the individual is a certified non-member Indian artisan, rather than an enrolled Tribal member, the product identification should include the name of the Tribe providing official written certification that the individual is a non-member Indian artisan and the date upon which such certification was issued by the Tribe. In order for an individual to be certified by an Indian Tribe as a non-member Indian artisan, the individual must be of Indian lineage of one or more members of such Indian Tribe and the certification must be issued in writing by the governing

body of an Indian Tribe or by a certifying body delegated this function by the governing body of the Indian Tribe.

(b) For example, the Indian product should include a label, hangtag, provenance card, or similar identification that includes W (name of the artist or artisan), and X (name of the Tribe in which the individual is enrolled) and Y (individual's Tribal enrollment number), or a statement that the individual is a certified non-member Indian artisan of Z (name of the Tribe providing certification and the date upon which the certification was issued by the Tribe).

[68 FR 35170, June 12, 2003]

§ 309.9 When can non-Indians make and sell products in the style of Indian arts and crafts?

A non-Indian can make and sell products in the style of Indian art or craft products only if the non-Indian or other seller does not falsely suggest to consumers that the products have been made by an Indian.

[68 FR 35170, June 12, 2003]

§ 309.10 What are some sample categories and examples of Indian products?

What constitutes an Indian product is potentially very broad. However, to provide guidance to persons who produce, market, or purchase items marketed as Indian products, §§ 309.11 through 309.22 contain a sample listing of ''specific examples'' of objects that meet the definition of Indian products. There is some repetition, due to the interrelated nature of many Indian products when made by Indian artistic labor. The lists in these sections contain examples and are not intended to be all-inclusive. Additionally, although the Indian Arts and Crafts Act of 1990 and the Indian Arts and Crafts Enforcement Act of 2000 do not address materials used in Indian products, some materials are included for their descriptive nature only. This is not intended to restrict materials used or to exclude materials not listed.

[68 FR 35170, June 12, 2003]

§ 309.11 What are examples of jewelry that are Indian products?

(a) Jewelry and related accessories made by an Indian using a wide variety of media, including, but not limited to, silver, gold, turquoise, coral, lapis, jet, nickel silver, glass bead, copper, wood, shell, walrus ivory, whale baleen, bone, horn, horsehair, quill, seed, and berry, are Indian products.

(b) Specific examples include, but are not limited to: ivory and baleen scrimshaw bracelets, abalone shell necklaces, nickel silver scissortail pendants, silver sand cast bracelets, silver overlay bolos, turquoise channel inlay gold rings, cut glass bead rosette earrings, wooden horse stick pins, and medicine wheel quilled medallions.

[68 FR 35170, June 12, 2003]

§ 309.12 What are examples of basketry that are Indian products?

(a) Basketry and related weavings made by an Indian using a wide variety of media, including, but not limited to, birchbark, black ash, brown ash, red cedar, yellow cedar, alder, vine maple, willow, palmetto, honeysuckle, river cane, oak, buck brush, sumac, dogwood, cattail, reed, raffia, horsehair, pine needle, spruce root, rye grass, sweet grass, yucca, bear grass, beach grass, rabbit brush, fiber, maidenhair fern, whale baleen, seal gut, feathers, shell, devil's claw, and porcupine quill, are Indian products.

(b) Specific examples include, but are not limited to: double weave river cane baskets, yucca winnowing trays, willow burden baskets, honeysuckle sewing baskets, black ash picnic baskets, cedar capes and dresses, pine needle/raffia effigy baskets, oak splint and braided sweet grass fancy baskets, birchbark containers, baleen baskets, rye grass dance fans, brown ash strawberry baskets, sumac wedding baskets, cedar hats, fiber basket hats, yucca wicker basketry plaques, and spruce root tobacco pouches.

[68 FR 35170, June 12, 2003]

§ 309.13 What are examples of other weaving and textiles that are Indian products?

(a) Weavings and textiles made by an Indian using a wide variety of media,

including, but not limited to, cornhusk, raffia, tule, horsehair, cotton, wool, fiber, linen, rabbit skin, feather, bison fur, and qiviut (musk ox) wool, are Indian products.

(b) Specific examples include, but are not limited to: corn husk bags, twined yarn bags, cotton mantas, willow cradle boards, horsehair hatbands, Chiefs Blankets, Two Grey Hills rugs, horse blankets, finger woven sashes, brocade table runners, star quilts, pictorial appliqué wall hangings, fiber woven bags, embroidered dance shawls, rabbit skin blankets, and feather blankets.

[68 FR 35170, June 12, 2003]

§ 309.14 What are examples of beadwork, quillwork, and moose hair tufting that are Indian products?

(a) Beadwork, quillwork, and moose hair tufting made by an Indian to decorate a wide variety of materials, including, but not limited to, bottles, baskets, bags, pouches, and other containers; belts, buckles, jewelry, hatbands, hair clips, barrettes, bolos, and other accessories; moccasins, vests, jackets, and other articles of clothing; and dolls and other toys and collectibles, are Indian products.

(b) Specific examples include, but are not limited to: quilled pipe stems, loom beaded belts, pictorial bags adorned with cut glass beads, deer skin moccasins decorated with moose hair tufting, beaded miniature dolls, and quilled and beaded amulets.

[68 FR 35170, June 12, 2003]

§ 309.15 What are examples of apparel that are Indian products?

(a) Apparel made or substantially decorated by an Indian, including, but not limited to, parkas, jackets, coats, moccasins, boots, slippers, mukluks, mittens, gloves, gauntlets, dresses, and shirts, are Indian products.

(b) Specific examples include, but are not limited to: seal skin parkas, ribbon appliqué dance shawls, smoked moose hide slippers, deer skin boots, patchwork jackets, calico ribbon shirts, wing dresses, and buckskin shirts.

[68 FR 35170, June 12, 2003]

§ 309.16 What are examples of regalia that are Indian products?

(a) Regalia are ceremonial clothing, modern items with a traditional theme, and accessories with historical significance made or significantly decorated by an Indian, including, but not limited to, that worn to perform traditional dances, participate in traditional socials, used for dance competitions, and worn on special occasions of tribal significance. If these items are made or significantly decorated by an Indian, they are Indian products.

(b) Specific examples include, but are not limited to: hide leggings, buckskin dresses, breech cloths, dance shawls, frontlets, shell dresses, button blankets, feather bustles, porcupine roaches, beaded pipe bags, nickel silver stamped armbands, quilled breast plates, coup sticks, horse sticks, shields, headdresses, dance fans, and rattles.

[68 FR 35170, June 12, 2003]

§ 309.17 What are examples of woodwork that are Indian products?

(a) Woodwork items made by an Indian, including, but not limited to, sculpture, drums, furniture, containers, hats, and masks, are Indian products.

(b) Specific examples include, but are not limited to: hand drums, totem poles, animal figurines, folk carvings, kachinas, embellished long house posts, clan house carved doors, chairs, relief panels, bentwood boxes, snow goggles, red and yellow cedar seagoing canoe paddles, hunting hats, spirit masks, bows and arrows, atlatls, redwood dug out canoes, war clubs, flutes, dance sticks, talking sticks, shaman staffs, cradles, decoys, spiral pipe stems, violins, Native American Church boxes, and maple ladles, spoons, and soup bowls.

[68 FR 35170, June 12, 2003]

§ 309.18 What are examples of hide, leatherwork, and fur that are Indian products?

(a) Hide, leatherwork, and fur made or significantly decorated by an Indian, including, but not limited to, parfleches, tipis, horse trappings and

tack, pouches, bags, and hide paintings, are Indian products.

(b) Specific examples include, but are not limited to: narrative painted hides, martingales, saddles, bonnet cases, drapes, quirts, forelocks, rosettes, horse masks, bridles, head stalls, cinches, saddle bags, side drops, harnesses, arm bands, belts, and other hand crafted items with studs and tooling.

[68 FR 35170, June 12, 2003]

§ 309.19 What are examples of pottery and ceramics that are Indian products?

(a) Pottery, ceramics, and related arts and crafts items made or significantly decorated by an Indian, including, but not limited to, a broad spectrum of clays and ceramic material, are Indian products.

(b) Specific examples include, but are not limited to: ollas, pitch vessels, pipes, raku bowls, pitchers, canteens, effigy pots, wedding vases, micaceous bean pots, seed pots, masks, incised bowls, blackware plates, redware bowls, polychrome vases, and storytellers and other figures.

[68 FR 35170, June 12, 2003]

§ 309.20 What are examples of sculpture, carving, and pipes that are Indian products?

(a) Sculpture, carving, and pipes made by an Indian, including, but not limited to, wood, soapstone, alabaster, pipestone, argillite, turquoise, ivory, baleen, bone, antler, and shell, are Indian products.

(b) Specific examples include, but are not limited to: kachina dolls, fetishes, animal figurines, pipestone pipes, moose antler combs, argillite bowls, ivory cribbage boards, whalebone masks, elk horn purses, and clamshell gorgets.

[68 FR 35170, June 12, 2003]

§ 309.21 What are examples of dolls and toys that are Indian products?

Dolls, toys, and related items made by an Indian, including, but not limited to, no face dolls, corn husk dolls, patchwork and palmetto dolls, reindeer horn dolls, lacrosse sticks, stick game articles, gambling sticks, gaming dice, miniature cradle boards, and yo-yos, are Indian products.

[68 FR 35170, June 12, 2003]

§ 309.22 What are examples of painting and other fine art forms that are Indian products?

Painting and other fine art forms made by an Indian including but, not limited to, works on canvas, photography, sand painting, mural, computer generated art, graphic art, video art work, printmaking, drawing, bronze casting, glasswork, and art forms to be developed in the future, are Indian products.

[68 FR 35170, June 12, 2003]

§ 309.23 Does this part apply to products made before 1935?

The provisions of this part do not apply to any art or craft products made before 1935.

[68 FR 35170, June 12, 2003]

§ 309.24 How will statements about Indian origin of art or craft products be interpreted?

(a) *In general.* The unqualified use of the term ''Indian'' or of the term ''Native American'' or the unqualified use of the name of an Indian tribe, in connection with an art or craft product, is interpreted to mean for purposes of this part that—

(1) The maker is a member of an Indian tribe, is certified by an Indian tribe as a non-member Indian artisan, or is a member of the particular Indian tribe named; and

(2) The art or craft product is an Indian product.

(b) *Products of Indians of foreign tribes*—(1) *In general.* The unqualified use of the term ''Indian'' or of the term ''Native American'' or the unqualified use of the name of a foreign tribe, in connection with an art or craft product, regardless of where it is produced and regardless of any country-of-origin marking on the product, is interpreted to mean for purposes of this part that—

(i) The maker is a member of an Indian tribe, is certified by an Indian tribe as a non-member Indian artisan, or is a member of the particular Indian tribe named;

(ii) The tribe is resident in the United States; and

(iii) The art or craft product is an Indian product.

(2) *Exception where country of origin is disclosed.* Paragraph (b) of this section does not apply to any art or craft for which the name of the foreign country of tribal ancestry is clearly disclosed in conjunction with marketing of the product.

Example. X is a lineal descendant of a member of Indian Tribe A. However, X is not a member of Indian Tribe A, nor is X certified by Indian Tribe A as a non-member Indian artisan. X may not be described in connection with the marketing of an art or craft product made by X as an Indian, a Native American, a member of an Indian tribe, a member of Tribe A, or as a non-member Indian artisan of an Indian tribe. However, the true statement may be used that X is of Indian descent, Native American descent, or Tribe A descent.

[61 FR 54555, Oct. 21, 1996; 61 FR 57002, Nov. 5, 1996. Redesignated at 68 FR 35170, June 12, 2003]

§309.25 How can an individual be certified as an Indian artisan?

(a) In order for an individual to be certified by an Indian tribe as a non-member Indian artisan for purposes of this part—

(1) The individual must be of Indian lineage of one or more members of such Indian tribe; and

(2) The certification must be documented in writing by the governing body of an Indian tribe or by a certifying body delegated this function by the governing body of the Indian tribe.

(b) As provided in section 107 of the Indian Arts and Crafts Act of 1990, Public Law 101–644, a tribe may not impose a fee for certifying an Indian artisan.

[61 FR 54555, Oct. 21, 1996. Redesignated at 68 FR 35170, June 12, 2003]

§309.26 What penalties apply?

A person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States:

(a) Is subject to the criminal penalties specified in section 1159, title 18, United States Code; and

(b) Is subject to the civil penalties specified in section 305e, title 25, United States Code.

[61 FR 54555, Oct. 21, 1996. Redesignated at 68 FR 35170, June 12, 2003]

§309.27 How are complaints filed?

Complaints about protected products alleged to be offered or displayed for sale or sold in a manner that falsely suggests they are Indian products should be made in writing and addressed to the Director, Indian Arts and Crafts Board, Room 4004–MIB, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

[61 FR 54555, Oct. 21, 1996. Redesignated at 68 FR 35170, June 12, 2003]

PART 310—USE OF GOVERNMENT MARKS OF GENUINENESS FOR ALASKAN INDIAN AND ALASKAN ESKIMO HAND-MADE PRODUCTS

Sec.
310.1 Penalties.

ALASKAN INDIAN

310.2 Certificates of genuineness, authority to affix.
310.3 Conditions.
310.4 Application of mark.

ALASKAN ESKIMO

310.5 Certificates of genuineness, authority to affix.
310.6 Conditions.
310.7 Application of mark.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: 4 FR 515, Feb. 4, 1939, unless otherwise noted.

§310.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C., 305d), which provides:

Any person who shall counterfeit or colorably imitate any Government trade-

mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark, shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $2,000 or imprisonment not exceeding six months or both such fine and imprisonment.

ALASKAN INDIAN

§ 310.2 Certificates of genuineness, authority to affix.

Government marks of genuineness for Alaskan Indian hand-made products may be affixed to articles meeting the conditions specified in § 310.3 by persons duly authorized by the Indian Arts and Crafts Board to affix such marks.

§ 310.3 Conditions.

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

(a) The article is hand-made by an Alaskan Indian.

(b) The article is hand-made under conditions not resembling a workshop or factory system.

(c) All raw materials used in carving, basketry and mat making, and all furs and hides used in the manufacture of hand-made artifacts, must be of native origin.

§ 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:

( )

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.
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502.12 Indian lands.
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502.17 Person having a direct or indirect financial interest in a management contract.
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502.21 Tribal-State compact.
502.22 Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.
502.23 Facility license.

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 players:

(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 Chariman;

(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.

(a) *Electronic, computer or other technologic aid* means any machine or device that:

(1) Assists a player or the playing of a game;

(2) Is not an electronic or electromechanical facsimile; and

(3) Is operated in accordance with applicable Federal communications law.

(b) Electronic, computer or other technologic aids include, but are not limited to, machines or devices that:

(1) Broaden the participation levels in a common game;

(2) Facilitate communication between and among gaming sites; or

(3) Allow a player to play a game with or against other players rather than with or against a machine.

(c) Examples of electronic, computer or other technologic aids include pull tab dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, or electronic cards for participants in bingo games.

[67 FR 41172, June 17, 2002]

§ 502.8 Electronic or electromechanical facsimile.

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo,

lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.

[67 FR 41172, June 17, 2002]

§ 502.9 Other games similar to bingo.

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.

[67 FR 41172, June 17, 2002]

§ 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).

§ 502.22 Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety means a tribe has identified and enforces laws, resolutions, codes, policies, standards or procedures applicable to each gaming place, facility or location that protect the environment and the public health and safety, including standards under a tribal-state compact or Secretarial procedures. Laws, resolutions, codes, policies, standards or procedures in this area shall cover, at a minimum:

(a) Emergency preparedness, including but not limited to fire suppression, law enforcement, and security;

(b) Food and potable water;

(c) Construction and maintenance;

(d) Hazardous materials;

(e) Sanitation (both solid waste and wastewater); and

(f) Other environmental or public health and safety standards adopted by the tribe in light of climate, geography, and other local conditions and applicable to its gaming facilities, places or locations.

[73 FR 6029, Feb. 1, 2008]

§ 502.23 Facility license.

Facility license means a separate license issued by a tribe to each place, facility, or location on Indian lands where the tribe elects to allow class II or III gaming.

[73 FR 6029, Feb. 1, 2008]

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
§ 577.14 (objections)	3141–0001	7/31/95

PARTS 504–512 [RESERVED]

PART 513—DEBT COLLECTION

Subpart A—General Provisions

Sec.
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513.2 What is the Commission's authority to issue these regulations?
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513.37 What will the Commission do as the paying agency?

Subpart D—Administrative Wage Garnishment

513.40 How will the Commission handle debt collection through administrative wage garnishment?

AUTHORITY: 31 U.S.C. 3711, 3716–3718, 3720A, 3720D; 5 U.S.C. 5514; 25 U.S.C. 2713(a)(1).

SOURCE: 66 FR 58057, Nov. 20, 2001, unless otherwise noted.

Subpart A—General Provisions

§ 513.1 What definitions apply to the regulations in this part?

As used in this part:

(a) *Administrative offset* means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a State government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

(c) *Chairman* means the Chairman of the Commission, or his or her designee.

(d) *Commission* means the National Indian Gaming Commission.

(e) *Creditor agency* means a Federal agency that is owed a debt.

(f) *Day* means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

(g) *Debt and claim* are synonymous and interchangeable. They refer to, among other things, fines, fees, and penalties that a Federal agency has determined are due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716 and subpart B of this part, the terms ''debt'' and ''claims'' include money, funds, or property owed to a State, the District of Columbia, American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(h) *Debtor* means a person, contractor, Tribe, or other entity that owes a debt to the Commission.

(i) *Delinquent debt* means a debt that has not been paid within the time limit prescribed by the applicable Act, law, or contract.

(j) *Disposable pay* means the part of an employee's pay that remains after deductions that must be withheld by law have been made (other than deductions to execute garnishment orders for child support and/or alimony, in accordance with 5 CFR part 581, and for commercial garnishment of federal employees' pay, in accordance with 5 CFR part 582). ''Pay'' includes current basic pay, special pay, incentive pay, retired pay, and retainer pay.

(k) *Employee* means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(l) *DOJ* means the U.S. Department of Justice.

(m) *FCCS* means the Federal Claims Collection Standards, which are published at 31 CFR parts 900–904.

(n) *FMS* means the Federal Management Service, a bureau of the U.S. Department of the Treasury.

(o) *Paying agency* means the agency that makes payment to an individual who owes a debt to the United States.

(p) *Payroll office* means the office in an agency that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

(q) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust,

estate, consortium, tribe, or other entity that owes a debt to the United States, excluding the United States.

(r) *Salary offset* means a payroll procedure to collect debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without the employee's consent.

(s) *Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt.

§513.2 What is the Commission's authority to issue these regulations?

(a) The Commission has authority to issue these regulations under 25 U.S.C. 2713(a)(1) of the Indian Gaming Regulatory Act. The Commission is issuing the regulations in this part under the authority of: The FCCS, the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716–3718, and 3720A. In addition, the salary offset provisions are issued in conformity with 5 U.S.C. 5514 and its implementing regulations published at 5 CFR part 550, subpart K.

(b) The Commission hereby adopts the provisions of the FCCS (31 CFR parts 900–904). The Commission's regulations supplement the FCCS as necessary.

§513.3 What happens to delinquent debts owed to the Commission?

(a) The Commission will collect debts in accordance with these regulations in this part.

(b) The Commission will transfer to the Department of the Treasury any past due, legally enforceable nontax debt that has been delinquent for 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

(c) The Commission may transfer any past due, legally enforceable nontax debt that has been delinquent for fewer than 180 days to the Department of Treasury for collection in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FFCS, 5 CFR 550.1108, and 31 CFR part 285.

§513.4 What notice will the Commission give to a debtor of the Commission's intent to collect debts?

(a) When the Chairman determines that a debt is owed to the Commission, the Chairman will send a written notice (Notice), also known as a demand letter. The Notice will be sent by facsimile or mail to the most current address known to the Commission. The Notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) The methods of offset that may be employed;

(3) The debtor's opportunity to inspect and copy agency records related to the debt;

(4) The debtor's opportunity to enter into a written agreement with the Commission to repay the debt;

(5) The Commission's policy concerning interest, penalty charges, and administrative costs, as set out in §513.5, including a statement that such assessments must be made against the debtor unless excused in accordance with the FCCS and this part;

(6) The date by which payment should be made to avoid late charges and enforced collection;

(7) The name, address, and telephone number of a contact person or office at the Commission that is available to discuss the debt; and

(8) The debtor's opportunity for review.

(b) A debtor whose debt arises from a notice of violation and/or civil fine assessment that has become a final order and that was subject to the Commission's appeal procedures at 25 CFR part 577 may not re-litigate matters that were the subject of the final order.

§513.5 What is the Commission's policy on interest, penalty charges, and administrative costs?

(a) Interest.

(1) The Commission will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Commission

will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717.

(b) Penalties. The Commission will assess a penalty charge of 6 percent a year on any portion of a delinquent debt.

(c) Administrative costs. The Commission will assess charges to cover administrative costs incurred as a result of the debtor's failure to pay a debt before it becomes delinquent. Administrative costs include the cost of providing a copy of the file to the debtor and costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Commission.

(d) Interest, penalties, and administrative costs will continue to accrue throughout any appeal process.

(e) Allocation of payments. A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(f) Additional authority. The Commission may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(g) Waiver. (1) Regardless of the amount of the debt, the Chairman may decide to waive collection of all or part of the accrued interest, penalty charges, or administrative costs if collection of these charges would be against equity and good conscience or not in the Commission's best interest.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, when charges have been collected before the waiver decision, they will not be refunded. The Chairman's decision whether to waive collection of these charges is final and not subject to further review.

§ 513.6 What are the requirements for offset review?

(a) The Commission will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Commission determines that the question of indebtedness cannot be resolved by review of the documentary evidence.

(b) Unless otherwise required by law, an oral hearing is not required to be a formal evidentiary hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(c) When an oral hearing is not required, the Commission will review the request for reconsideration based on the written record.

§ 513.7 What is the Commission's policy on revoking a debtor's ability to engage in Indian gaming for failure to pay a debt?

The Chairman of the Commission may revoke a debtor's ability to operate, manage, or otherwise participate in the operation of an Indian gaming facility if the debtor inexcusably or willfully fails to pay a debt. The revocation of ability to engage in gaming may last only as long as the debtor's indebtedness.

Subpart B—Administrative and Tax Refund Offset

§ 513.20 What debts can the Commission refer to Treasury for collection by administrative and tax refund offset?

(a) The Commission may refer any past due, legally enforceable nonjudgment debt of a person to the Treasury for administrative and tax refund offset if the debt:

(1) Has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(2) Is at least $25.00 or another amount established by Treasury.

(b) Debts reduced to judgment may be referred to Treasury for tax refund offset at any time.

§ 513.21 What notice will a debtor be given of the Commission's intent to collect a debt through administrative and tax refund offset?

(a) The Commission will give the debtor written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the debtor's last known address as determined by the Commission.

(b) The notice will state the amount of the debt and notify the debtor that:

(1) The debt is past due and, unless repaid within 60 days after the date of the notice, the Commission will refer the debt to Treasury for administrative and tax refund offset;

(2) The debtor has 60 calendar days to present evidence that all or part of the debt is not past-due or legally enforceable; and

(3) The debtor has an opportunity to make a written agreement to repay the debt.

Subpart C—Salary Offset

§ 513.30 When may the Commission use salary offset to collect debts?

(a) The Commission collects debts owed by employees to the Federal Government by means of salary offset under the authority of: 5 U.S.C. 5514; 31 U.S.C. 3716; 5 CFR part 550, subpart K; 31 CFR 285.7; and this subpart. Salary offset is applicable when the Commission is attempting to collect a debt owed by an individual employed by the Commission or another agency.

(b) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the Federal Claims Collection Standards.

(c) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d) and 31 U.S.C. 3716.

(d) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly prohibited by another statute.

(e) This subpart's regulations covering notice, hearing, written responses, and final decisions do not apply to:

(1) Any routine intra-agency adjustment in pay that is attributable to clerical or administrative error or delay in processing pay documents that have occurred within the four pay periods preceding the adjustment, or any adjustment to collect a debt amounting to $50 or less. However, at the time of any adjustment, or as soon thereafter as possible, the Commission's payroll agency will provide the employee with a written notice of the nature and amount of the adjustment and a contact point for appealing the adjustment.

(2) Any negative adjustment to pay that arises from the debtor's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four or fewer pay periods. However, at the time of the adjustment, the Commission's payroll agent will provide in the debtor's earnings statement a clear statement informing the debtor of the previous overpayment.

(f) An employee's involuntary payment of all or any of the debt through salary offset will not be construed as a waiver of any rights that the employee may have under the law, unless there are statutory or contractual provisions to the contrary.

§ 513.31 What notice will the Commission, as the creditor agency, give a debtor that salary offset will occur?

(a) Deductions from a debtor's salary will not be made unless the Commission sends the debtor a written Notice of Intent at least 30 calendar days before the salary offset is initiated.

(b) The Notice of Intent will include the following:

(1) Notice that the Commission has reviewed the records relating to the debt and has determined that the employee owes the debt;

(2) Notice that, after a 30-day period, the Commission will begin to collect the debt by deductions from the employee's current disposable pay account and the date on which deductions from salary will start;

(3) The amount of the debt and the facts giving rise to it;

(4) The frequency and the amount of the intended deduction stated as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of the disposable pay, and the intention to continue the deductions until the debt and all accumulated interest are paid in full or resolved;

(5) The name, address, and telephone number of the person to whom the debtor may propose a written alternative schedule for voluntary repayment in lieu of salary offset. The debtor must include a justification for the alternative schedule in the proposal;

(6) The Commission's policy concerning interest, penalties, and administrative costs, set out at § 513.5, and a statement that assessments will be made unless excused in accordance with the FCCS;

(7) Notice of the employee's right to inspect and copy all Commission records pertaining to the debt and the name, address, and telephone number of the Commission employee to whom requests for access must be made;

(8) Notice of the employee's opportunity to a hearing conducted by an individual who does not work for the Commission on the Commission's determination of the existence or amount of the debt and the terms of the repayment schedule;

(9) Notice that filing a request for a hearing on or before the 15th calendar day following the debtor's receiving the Notice of Intent will stay collection proceedings and that a final decision will be issued at the earliest practical date, but not later than 60 days after the filing of the petition for hearing, unless the employee requests, and a hearing official grants, a delay in proceedings;

(10) An explanation of the effect of submitting knowingly false or frivolous statements; and

(11) Notice that amounts paid on or deducted from debts that are later waived or found not to be owed will be promptly refunded to the employee.

§ 513.32 What are the hearing procedures when the Commission is the creditor agency?

(a) To request a hearing, the debtor must file, within 15 days of receiving the Commission's notice of intent to offset, a written petition signed by the debtor and addressed to the Commission stating why the debtor believes the Commission's determination of the existence or amount of the debt is in error. The Commission may waive the 15-day time limit for filing a request for hearing if the employee shows that the delay was due to circumstances beyond his or her control or because the employee did not receive notice of the 15-day time limit. A debtor who has previously obtained a hearing to contest a debt that arose from a notice of violation or proposed civil fine assessment matters under 25 CFR part 577 may not re-litigate matters that were at issue in that hearing.

(b) Regardless of whether the debtor is a Commission employee, the Commission will provide a prompt and appropriate hearing before a hearing official who is not from the Commission.

(c) The hearing will be conducted according to the FCCS review requirements at 31 CFR 901.3(e).

(d) Unless the employee requests, and a hearing official grants, a delay in proceedings, within 60 days after the petition for hearing the hearing official will issue a written decision on:

(1) The determination of the creditor agency concerning the existence or amount of the debt; and

(2) The repayment schedule, if a schedule was not established by written agreement between the employee and the creditor agency.

(e) If the hearing official determines that a debt may not be collected by salary offset but the Commission has determined that the debt is valid, the Commission may seek collection of the debt through other means in accordance with applicable law and regulations.

(f) The form of hearings, written responses, and final decisions will be according to the Commission's review requirements at § 513.7. Written decisions regarding salary offset that are provided after a request for hearing must state: The facts purported to evidence the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions as to the employee's or creditor agency's grounds; the amount and validity of the alleged

debt; and, where applicable, the repayment schedule.

§ 513.33 Will the Commission issue a certification when the Commission is the creditor agency?

Yes. Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514, the Commission will submit a certification to Treasury or to a paying agency in the form prescribed by the paying agency.

§ 513.34 What opportunity is there for a voluntary repayment agreement when the Commission is the creditor agency?

(a) In response to a Notice of Intent, an employee may propose to repay the debt voluntarily in lieu of salary offset by submitting a written proposed repayment schedule to the Commission. A proposal must be received by the Commission within 15 calendar days after the employee is sent the Notice of Intent.

(b) The Commission will notify the employee whether, within the Commission's discretion, the proposed repayment schedule is acceptable.

(c) If the proposed repayment schedule is unacceptable, the employee will have 15 calendar days from the date the notice of the decision is received in which to file a request for a hearing.

(d) If the proposed repayment schedule is acceptable or the employee agrees to a modification proposed by the Commission, the agreement will be put in writing and signed by the employee and the Commission.

§ 513.35 What special review is available when the Commission is the creditor agency?

(a)(1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Commission of the amount of the salary offset or voluntary repayment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.

(2) The request for special review must include an alternative proposed offset or payment schedule and a detailed statement, with supporting documents, that shows why the current salary offset or payment results in extreme financial hardship to the employee, spouse, or dependents. The statement must indicate:

(i) Income from all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing, and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(b) The Commission will evaluate the statement and documentation and determine whether the current offset or repayment schedule imposes extreme financial hardship on the employee. The Commission will notify the employee in writing within 30 calendar days of its determination, including, if appropriate, a revised offset or payment schedule. If the special review results in a revised offset or repayment schedule, the Commission will provide a new certification to the paying agency.

§ 513.36 Under what conditions will the Commission refund amounts collected by salary offset?

(a) As the creditor agency, the Commission will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The Commission determines that the debt is not owed; or

(2) An administrative or judicial order directs the Commission to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 513.37 What will the Commission do as the paying agency?

(a) When the Commission receives a certification from a creditor agency that has complied with the Office of Personnel Management's requirements set out at 5 CFR 550.1109, the Commission will send the employee a written notice of salary offset.

(b) If the Commission receives an incomplete certification from a creditor agency, the Commission will return the certification with notice that the procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and a properly certified claim submitted before the Commission will take action to

collect the debt from the employee's current pay account.

(c) Notice to a debtor will include:

(1) The Commission's receipt of a certification from a creditor agency;

(2) The amount of the debt and the deductions to be made, which may be stated as a percentage of disposable pay; and

(3) The date and pay period when the salary offset will begin.

(d) The Commission will provide a copy of the notice of salary offset to a creditor agency.

(e) The Commission will coordinate salary deductions under this subpart as appropriate.

(f) The Commission's payroll officer will determine the amount of the debtor's disposable pay and will implement the salary offset.

(g) The Commission may use the following types of salary debt collection:

(1) Lump sum offset. If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump sum offset.

(2) Installment deductions. The amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. If possible, installment payments will liquidate the debt in three years or less.

(3) Deductions from final check. A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, in order to liquidate the debt, whether the employee is leaving voluntarily or involuntarily.

(4) Deductions from other sources. If an employee subject to salary offset is leaving the Commission and the balance of the debt cannot be liquidated by offset of the final salary check, then the Commission may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards.

(h) When two or more creditor agencies are seeking salary offsets, the Commission's payroll office may, in its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(i) The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

Subpart D—Administrative Wage Garnishment

§ 513.40 How will the Commission handle debt collection through administrative wage garnishment?

This part adopts all the provisions of the administrative wage garnishment regulations contained in 31 CFR 285.11, promulgated by Treasury, which allow Federal agencies to collect debts from a debtor's non-Federal pay by means of administrative wage garnishment authorized by 31 U.S.C. 3720D, and in 5 CFR parts 581 and 582, promulgated by the Office of Personnel Management, which provides for garnishment orders for child support and/or alimony and commercial garnishment of federal employees' pay.

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
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
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—¼; 2nd quarter—½ (2/4); 3rd quarter—¾; and 4th quarter—1 (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—¼ or	.25
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—¾ or	.75
Fees for first three quarters	50,625
Deduct amounts already remitted ...	[1] 35.000
Amount to be remitted	$15,625

[1] This amount may be other than $33,750 ($67,500×.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—$1,500,000×1%=	$15,000
2nd tier revenues—3,500,000×1%=	35,000
Annual fees	50,000
Multiply for fraction of year—1/4 or	.25
Fees for first quarter	12,500
Deduct amounts already remitted ...	-0-
Amount to be remitted ..	$12,500

(8) Quarterly 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 the statutory maximum imposed by Congress. 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; 69 FR 2505, Jan. 16, 2004]

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 furnish 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;

(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 interest 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—TESTIMONY OF COMMISSIONERS AND EMPLOYEES AND FORMER COMMISSIONERS AND FORMER EMPLOYEES RESPECTING OFFICIAL DUTIES; RESPONSE TO SUBPOENA

Sec.

516.1 What is the purpose of this part and to whom does it apply?
516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?
516.3 When may a person to whom this part applies produce records?
516.4 How are records certified or authenticated?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2706; 25 U.S.C. 2716(a); 18 U.S.C. 1905.

SOURCE: 64 FR 54542, Oct. 7, 1999, unless otherwise noted.

§516.1 What is the purpose of this part and to whom does it apply?

(a) The purpose of this part is to promulgate regulations regarding the release of official National Indian Gaming Commission information and provision of testimony by National Indian Gaming Commission personnel with respect to litigation or potential litigation and to prescribe conduct on the part of National Indian Gaming Commission personnel in response to a litigation-related request or demand.

(b) This part applies to requests or demands that are litigation-related or otherwise arise out of judicial, administrative or other legal proceedings (including subpoena, order or other demand) for interview, testimony (including by deposition) or other statement, or for production of documents relating to the business of the National Indian Gaming Commission, whether or not the National Indian Gaming Commission or the United States is a party to the litigation. It does not, however, apply to document requests covered by 25 CFR parts 515 and 517.

(c) To the extent the request or demand seeks official information or documents, the provisions of this part are applicable to Commissioners, employees, and former Commissioners and former employees, of the National Indian Gaming Commission.

§516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?

(a) No person to whom this part applies, except as authorized by the Chairman or the General Counsel pursuant to this regulation, shall provide testimony, make a statement or submit to interview.

(b) Whenever a subpoena commanding the giving of any testimony has been lawfully served upon a person to whom this part applies, such individual shall, unless otherwise authorized by the Chairman or the General Counsel, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this regulation.

(c) A person who desires testimony or other statement from any person to

whom this part applies may make written request therefor, verified by oath, directed to the Chairman setting forth his or her interest in the matter to be disclosed and designating the use to which such statement or testimony will be put in the event of compliance with such request: provided, that a written request therefor by an official of any federal, state or tribal entity, acting in his or her official capacity need not be verified by oath. If it is determined by the Chairman or the General Counsel that such statement or testimony will be in the public interest, the request may be granted. Where a request for a statement or testimony is granted, one or more persons to whom this part applies may be authorized or designated to appear and testify or give a statement with respect thereto.

§ 516.3 When may a person to whom this part applies produce records?

(a) Any request for records of the National Indian Gaming Commission shall be handled pursuant to the procedures established in 25 CFR parts 515 and 517 and shall comply with the rules governing public disclosure as provided in 25 CFR parts 515 and 517.

(b) Whenever a subpoena duces tecum commanding the production of any record has been lawfully served upon a person to whom this part applies, such person shall forward the subpoena to the General Counsel. If commanded to appear in response to any such subpoena, a person to whom this part applies shall respectfully decline to produce the record on the ground that production is prohibited by this part and state that the production of the record(s) of the National Indian Gaming Commission is a matter to be determined by the Chairman or the General Counsel.

§ 516.4 How are records certified or authenticated?

(a) Upon request, the person having custody and responsibility for maintenance of records which are to be released under this part or 25 CFR parts 515 or 517 may certify the authenticity of copies of records that are requested to be provided in such format.

(b) A request for certified copies of records or for authentication of copies of records shall be sent to the National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005, Attention: Freedom of Information Act Officer.

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

517.1 General provisions.
517.2 Public reading room.
517.3 Definitions.
517.4 Requirements for making requests.
517.5 Responsibility for responding to requests.
517.6 Timing of responses to requests.
517.7 Confidential commercial information.
517.8 Appeals.
517.9 Fees.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 71 FR 20007, Apr. 19, 2006, unless otherwise noted.

§ 517.1 General provisions.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended. These regulations provide procedures by which you 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. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by the Commission.

§ 517.2 Public reading room.

Records that are required to be maintained by the Commission shall be available for public inspection and copying at 1441 L Street, NW., Suite 9100 Washington, DC. Reading room records created on or after November 1, 1996, shall be made available electronically via the Web site.

§ 517.3 Definitions.

(a) *Commercial use requester* means a requester seeking information for a use

or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for 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 contains material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* mean those expenditures by the Commission actually incurred in searching for and duplicating records in response to the 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 space, 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 the FOIA request. Such copies can take the form of, among other things, paper copy, microfilm, audio-visual materials, or machine readable documentation. The copies provided shall be in a form that is reasonably usable by the requester.

(e) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further 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 paragraph (a) of this section, 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. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(h) *Record* means all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by the Commission under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Commission or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

(i) *Representative of the news media* means 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. For a ''freelance journalist'' to be regarded as working for a news organization, the requester

must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent such showing, the requester may provide documentation establishing the requester's past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

(j) *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.

(k) *Review* means the process of examining a record in response to a FOIA request to determine if any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. Review time includes time spent considering any formal objection to disclosure made by a business submitter under Sec. 517.7 (c). Review time does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(l) *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 and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(m) *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.

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

§ 517.4 Requirements for making requests.

(a) *How to make a FOIA request.* Requests for records made pursuant to the FOIA must be in writing. Requests should be sent to the National Indian Gaming Commission, Attn: FOIA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Requests may be mailed, dropped off in person, or faxed to (202) 632–7066 (not a toll free number). If the requester is making a request for records about himself/herself, the requester should see 25 CFR 515.3 for additional information. If the requester is making a request for records about another individual, the requester must provide either a written authorization signed by that individual authorizing disclosure of the records to the requester or provide proof that the individual is deceased (for example, a copy of the death certificate or a copy of the obituary).

(b) *Description of records sought.* Requests for records shall describe the records requested with as much specificity as possible to enable Commission employees to locate the information requested with a reasonable amount of effort.

(c) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information, or a request for a waiver or reduction of fees. If the requester is requesting a waiver or reduction of fees the requester must include justification for such waiver or reduction (see Sec. 517.9 (c) for more information). If the request for a fee waiver is denied, the requester will be notified of this decision and advised that fees associated with the processing of the request will be assessed. The requester must send an acknowledgment to the FOIA Officer indicating his/her willingness to pay the fees. Absent such acknowledgment within the specified time frame, the request will be considered incomplete, no further work shall be done, and the request will be administratively closed.

(d) *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.

§517.5 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the FOIA Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer shall make initial determinations either to grant or deny in whole or in part a request for records.

(c) *Consultations and referrals.* (1) When a requested record has been created by another Federal Government agency that record shall be referred to the originating agency for direct response to the requester. The requester shall be informed of the referral. As this is not a denial of a FOIA request, no appeal rights accrue to the requester.

(2) When a requested record is identified as containing information originating with another Federal Government agency, the record shall be referred to the originating agency for review and recommendation on disclosure.

§517.6 Timing of responses to requests.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The FOIA Officer may use multi-track processing in responding to requests. Multi-track processing means placing simple requests requiring rather limited review in one processing track and placing more voluminous and complex requests in one or more other tracks. Request in either track are processed on a first-in/first-out basis.

(2) The FOIA Officer may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of faster track(s). The FOIA Officer will do so either by contacting the requester by letter or telephone, whichever is more efficient in each case.

(c) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and notify the requester within twenty (20) working days after receipt of the request. This 20 day period may be extended 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 (c)(1) of this section, the FOIA Officer shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made. The requester will then have the opportunity to modify the request or arrange for an alternative time frame for completion of the request.

(3) If the FOIA Officer has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Multiple

requests involving unrelated matters will not be aggregated.

(4) If no initial determination has been made at the end of the 20 day period provided for in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(5) If the FOIA Officer determines that another agency is responsible for the records, the FOIA Officer shall refer such records to the appropriate agency for direct response to the requester. 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.

(d) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, the FOIA Officer shall notify the requester in writing and provide copies of the requested records in whole or in part once any fees charged under Sec. 517.9 have been paid in full. Records disclosed in part shall be marked or annotated to show the exemption applied to the withheld information and the amount of information withheld unless to do so would harm the interest protected by an applicable exemption. If a requested record contains exempted material along with nonexempt material, all reasonable segregable material shall be disclosed.

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

(f) *Expedited processing of request.* The FOIA Officer must determine whether to grant the request for expedited processing within (10) calendar days of its receipt. Requests will receive expedited processing if one of the following compelling needs is met:

(1) The requester can establish that failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

§ 517.7 Confidential commercial information.

(a) *Notice to submitters.* The FOIA Officer shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the FOIA Officer, 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 FOIA Officer shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *Where 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 FOIA Officer shall afford a submitter a reasonable period of time to provide the FOIA Officer with a detailed 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 submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. In the event a submitter fails to respond to the notice in the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is received after the disclosure decision has been made will not be considered. 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 specific disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

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

(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 pursuant to Exemption 4 and/or any other exemption of the FOIA;

(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.

§517.8 Appeals.

(a) *Right of appeal*. The requester has the right to 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. Prior to submitting an appeal any outstanding fees associated with FOIA requests must be paid in full.

(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 initial denial. To expedite the appellate process and give the requester an opportunity to present his/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 National Indian Gaming Commission, Attn: FOIA Appeals Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005.

(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 his/her right to obtain judicial review in the appropriate Federal district court.

§ 517.9 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. Payment of fees should be 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 FOIA Officer shall charge $0.15 per page for copies of documents up to 8½ x 14. For copies prepared by computer, the FOIA Officer will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the FOIA Officer shall charge the actual costs of producing the documents.

(2) *Searches*. (i) *Manual searches*. Whenever feasible, the FOIA Officer 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 FOIA Officer shall charge $4.45 per quarter hour for clerical time and $7.75 per quarter hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches*. The FOIA Officer 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 FOIA Officer 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 paragraph (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; representative of the news media; and all other requesters. These terms are defined in Sec. 517.3. The following specific levels of fees are prescribed 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 categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total costs 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 shall 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 charges will be assessed when requested records are not found or when 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 the 31st day following the day on which the bill was sent to you. 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, as amended, and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests*. The 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 FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer 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 $250.00. 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 requester 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.

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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″×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 Office 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 eligiblity criteria of §518.2, the approval criteria of §518.4, the requirements 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″×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.

(i) A tribe shall provide Indian lands or environmental and public health and safety documentation that the Chairman may in his or her discretion request as needed.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993; 73 FR 6029, Feb. 1, 2008]

§ 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″×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 notify 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 contract assignments and subcontracting are permissible.

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

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

§531.2 Prohibited provisions.

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

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, objectives, budgets, financial plans, and related matters; or

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

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

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

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

§ 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 management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

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

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

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

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

(1) *List of individuals.* (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

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

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

(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.

(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 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—HUMAN SERVICES

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 establish in a Tribal-State compact?
542.5 How do these regulations affect state jurisdiction?
542.6 Does this part apply to small and charitable gaming operations?
542.7 What are the minimum internal control standards for bingo?
542.8 What are the minimum internal control standards for pull tabs?
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542.12 What are the minimum internal control standards for table games?
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542.14 What are the minimum internal control standards for the cage?
542.15 What are the minimum internal control standards for credit?
542.16 What are the minimum internal control standards for information technology?
542.17 What are the minimum internal control standards for complimentary services or items?
542.18 How does a gaming operation apply for a variance from the standards of the part?
542.19 What are the minimum internal control standards for accounting?
542.20 What is a Tier A gaming operation?
542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?
542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?
542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?
542.30 What is a Tier B gaming operation?
542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?
542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?
542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?
542.40 What is a Tier C gaming operation?
542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?
542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?
542.43 What are the minimum internal control standards for surveillance for a Tier C gaming operation?

AUTHORITY: 25 U.S.C. 2702(c), 2706(b)(10).

SOURCE: 67 FR 43400, June 27, 2002, 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?

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

Account access card means an instrument used to access customer accounts for wagering at a gaming machine. Account access cards are used in connection with a computerized account database. Account access cards are not ''smart cards.''

Accountability means all items of cash, chips, coins, tokens, plaques, 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 (number of credits wagered). Can be calculated for individual tables or gaming machines, type of table games, or gaming machines on a per day or cumulative basis.

Ante means a player's initial wager or predetermined contribution to the pot before the dealing of the first hand.

Betting station means the area designated in a pari-mutuel area that accepts wagers 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 acceptor means the device that accepts and reads cash by denomination in order to accurately register customer credits.

Bill acceptor canister means the box attached to the bill acceptor used to contain cash received by bill acceptors.

Bill acceptor canister release key means the key used to release the bill acceptor canister from the bill acceptor device.

Bill acceptor canister storage rack key means the key used to access the storage rack where bill acceptor canisters are secured.

Bill acceptor drop means cash contained in bill acceptor canisters.

Bill-in meter means a meter included on a gaming machine accepting cash that tracks the number of bills put in the machine.

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

Breakage means the difference between actual bet amounts paid out by a racetrack 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 form means a document, 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 cash or chips, reserved for a known customer 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 game 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, 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 cash amount owed to a customer at a specific gaming machine. This instrument may be wagered at other machines by depositing the cash-out ticket in the machine bill acceptor.

Chips means cash substitutes, in various denominations, issued by a gaming operation and used for wagering.

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

Coin meter count machine means a device used in a coin room to count coin.

Coin room means an area where coins and tokens are stored.

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

Commission means the National Indian Gaming Commission.

Complimentary means a service or item provided at no cost, or at a reduced cost, to a customer.

Count means the total funds counted for a particular game, gaming machine, 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.

Count team means personnel that perform either the count of the gaming machine drop and/or the table game drop.

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

Counter Game means a game in which the gaming operation is a party to wagers and wherein the gaming operation documents all wagering activity. The term includes, but is not limited to, bingo, keno, and pari-mutuel race books. The term does not include table games, card games and gaming machines.

Credit means the right granted by a gaming operation to a customer 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.

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

Deal means a specific pull tab game that has a specific serial number associated with each game.

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

Dedicated camera means a video camera required to continuously record a specific activity.

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

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 (for gaming machines) means the total amount of cash, cash-out tickets, coupons, coins, and tokens removed from drop buckets and/or bill acceptor canisters.

Drop (for table games) means the total amount of cash, chips, and tokens removed from drop boxes, plus the amount of credit issued at the tables.

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 access the storage rack where drop boxes are secured.

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 means the wooden or metal base of the gaming machine that contains the gaming machine drop bucket.

Drop period means the period of time that occurs between sequential drops.

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 or other equivalent game software media.

Fill means a transaction whereby a supply of chips, coins, or tokens is transferred from a bankroll to a table game or gaming machine.

Fill slip means a document evidencing a fill.

Flare means the information sheet provided by the manufacturer that sets forth the rules of a particular pull tab game and that is associated with a specific deal of pull tabs. 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 pull tabs by denomination, with their respective winning symbols, numbers, or both.

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

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

Gaming machine means an electronic or electromechanical machine that allows a player to play games of chance, some of which may be affected by skill, which contains a microprocessor with random number generator capability for outcome selection or computer terminal that accesses an outcome that is subsequently and randomly selected in drawings that are electronically conducted by central computer or other such methods of chance selection, whether mechanical or electronic. The machine is activated by the insertion of cash or cash equivalents and which awards cash, cash equivalents, merchandise, or a written statement of the player's accumulated credits, which written statements may be 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 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, tokens, and cash removed from a gaming machine. The amount counted is entered on the Gaming Machine Count Sheet and is considered the drop. Also, the procedure of counting the coins, tokens, and cash or the process of verifying gaming machine coin and token inventory.

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

Gross gaming revenue means annual total amount of cash 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 pari-mutuel wagering operation information related to horse racing that is used to determine winners of races or payoffs on wagers accepted by the pari-mutuel wagering operation.

Internal audit means persons 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. 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.

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 before 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.

Linked electronic game means any game linked to two (2) or more gaming operations that are physically separate and not regulated by the same Tribal gaming regulatory authority.

Main card room bank means a fund of cash, coin, and chips used primarily for poker and pan card game areas. Used to make even cash transfers between various games as needed. May be used

similarly in other areas of the gaming operation.

Marker means a document, 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 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 persons extending the credit.

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

Master game 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.

MICS means minimum internal control standards in this part 542.

Motion activated dedicated camera means a video camera that, upon its detection of activity or motion in a specific area, begins to record the activity or area.

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

Multi-race ticket means a keno ticket that is played in multiple games.

On-line gaming machine monitoring system means a system used by a gaming operation to monitor gaming machine meter readings and/or other activities on an on-line basis.

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 that is documented on a credit slip.

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

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 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.

Payout means a transaction associated with a winning event.

PIN means the personal identification number used to access a player's account.

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

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 customers.

Post time means the time when a pari-mutuel 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 jackpot means deferred payout from a progressive gaming machine.

Progressive table game means table games that offer progressive jackpots.

Promotional payout means merchandise or awards given to players by the gaming operation based on a wagering activity.

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

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 or from a gaming table and a cashier.

SAM means a screen-automated machine used to accept pari-mutuel wagers. SAM's also pay winning tickets in the form of a voucher, which is redeemable for cash.

Series number means the unique identifying number printed on each sheet of bingo paper that identifies the bingo paper as a series or packet. The series number is not the free space or center space number located on the bingo paper.

Shift means an eight-hour period, unless otherwise approved by the Tribal gaming regulatory authority, not to exceed twenty-four (24) hours.

Shill 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 gaming machine that is less than the listed amount.

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

Statistical drop means total amount of money, chips and tokens contained in the drop boxes, plus pit credit issued, minus pit credit payments in cash in the pit.

Statistical win means closing bankroll, plus credit slips for cash, chips or tokens returned to the cage, plus drop, minus opening bankroll, minus fills to the table, plus marker credits.

Sufficient clarity means use of monitoring and recording at a minimum of twenty (20) frames per second. Multiplexer tape recordings are insufficient to satisfy the requirement of sufficient clarity.

Surveillance room means a secure location(s) in a gaming operation used primarily for casino surveillance.

Surveillance system means a system of video cameras, monitors, recorders, video printers, switches, selectors, and other ancillary equipment used for casino surveillance.

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 inventory form 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.

Table tray means the container located on gaming tables where chips, coins, or cash are stored that are used in the game.

Take means the same as earned and unearned take.

Theoretical hold means the intended hold percentage or win of an individual 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 that 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 credits that may be played, the payout schedule, the number of reels and other information descriptive of the particular type of gaming machine.

Tier A means gaming operations with annual gross gaming revenues of more than $1 million but not more than $5 million.

Tier B means gaming operations with annual gross gaming revenues of more than $5 million but not more than $15 million.

Tier C means gaming operations with annual gross gaming revenues of more than $15 million.

Tokens means a coin-like cash substitute, in various denominations, used for gambling transactions.

Tribal gaming regulatory authority means the tribally designated entity responsible for gaming regulation.

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

Weigh/count means the value of coins and tokens 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 is linked to machines in other operations and play on the machines affect the progressive amount. As wagers are placed, the progressive meters on all of the linked machines increase.

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 win divided by write to determine hold percentage.

Wrap means the method of storing coins after the count process has been completed, including, but not limited to, wrapping, racking, or bagging. May also refer to the total amount or value of the counted and stored coins.

Write means the total amount wagered in keno, bingo, pull tabs, and pari-mutuel operations.

Writer means an employee who writes keno, bingo, pull tabs, or pari-mutuel tickets. A keno writer usually also makes payouts.

[67 FR 43400, June 27, 2002, as amended at 70 FR 23021, May 4, 2005; 71 FR 27391, May 11, 2006]

§ 542.3 How do I comply with this part?

(a) *Compliance based upon tier*. (1) Tier A gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.20 through 542.23.

(2) Tier B gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.30 through 542.33.

(3) Tier C gaming operations must comply with §§ 542.1 through 542.18, and §§ 542.40 through 542.43.

(b) *Determination of tier*. (1) The determination of tier level shall be made based upon the annual gross gaming revenues indicated within the gaming operation's audited financial statements. Gaming operations moving from one tier to another shall have nine (9) months from the date of the independent certified public accountant's audit report to achieve compliance with the requirements of the new tier.

(2) The Tribal gaming regulatory authority may extend the deadline by an additional six (6) months if written notice is provided to the Commission no later than two weeks before the expiration of the nine (9) month period.

(c) *Tribal internal control standards*. Within six (6) months of June 27, 2002, each Tribal gaming regulatory authority shall, in accordance with the Tribal gaming ordinance, establish and implement tribal internal control standards that shall:

(1) Provide a level of control that equals or exceeds 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 that are not addressed in this part; and

(4) Establish a deadline, which shall not exceed nine (9) months from June 27, 2002, by which a gaming operation must come into compliance with the tribal internal control standards. However, the Tribal gaming regulatory authority may extend the deadline by an additional six (6) months if written notice is provided to the Commission no later than two weeks before the expiration of the nine (9) month period.

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

(1) *Existing gaming operations*. All gaming operations that are operating on or before June 27, 2002, shall comply with this part within the time requirements established in paragraph (c) of this section. In the interim, such operations shall continue to comply with existing tribal internal control standards.

(2) *New gaming operations*. All gaming operations that commence operations after August 26, 2002, shall comply with this part before commencement of operations.

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

(f) *CPA testing*. (1) An independent certified public accountant (CPA) shall be engaged to perform ''Agreed-Upon Procedures'' to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a Tribally approved variance thereto that has received Commission concurrence. The CPA shall report each event and procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or Tribally approved variance that has received Commission concurrence. The ''Agreed-Upon Procedures'' may be performed in conjunction with the annual audit. The CPA shall report its findings to the Tribe, Tribal gaming regulatory authority, and management. The Tribe shall submit two copies of the report to the Commission within 120 days of the gaming operation's fiscal year end. This regulation is intended to communicate the Commission's position on the minimum agreed-upon procedures to be performed by the CPA. Throughout these regulations, the CPA's engagement and reporting are based on Statements on Standards for Attestation Engagements (SSAEs) in effect as of December 31, 2003, specifically SSAE 10 (''Revision and Recodification Agreed-Upon Procedures Engagements.''). If future revisions are made to the SSAEs or new SSAEs are adopted that are applicable to this type of engagement, the CPA is to comply with any new or revised professional standards in conducting engagements pursuant to these regulations and the issuance of the agreed-upon procedures report. The CPA shall perform the ''Agreed-Upon Procedures'' in accordance with the following:

(i) As a prerequisite to the evaluation of the gaming operation's internal control systems, it is recommended that the CPA obtain and review an organization chart depicting segregation of functions and responsibilities, a description of the duties and responsibilities of each position shown on the organization chart, and an accurate, detailed narrative description of the gaming operation's procedures in effect that demonstrate compliance.

(ii) Complete the CPA NIGC MICS Compliance checklists or other comparable testing procedures. The checklists should measure compliance on a sampling basis by performing walkthroughs, observations and substantive testing. The CPA shall complete separate checklists for each gaming revenue center, cage and credit, internal audit, surveillance, information technology and complimentary services or items. All questions on each applicable checklist should be completed. Workpaper references are suggested for all ''no'' responses for the results obtained during testing (unless a note in the ''W/P Ref'' can explain the exception).

(iii) The CPA shall perform, at a minimum, the following procedures in conjunction with the completion of the checklists:

(A) At least one unannounced observation of each of the following: Gaming machine coin drop, gaming machine currency acceptor drop, table games drop, gaming machine coin count, gaming machine currency acceptor count, and table games count. The AICPA's ''Audits of Casinos'' Audit and Accounting Guide states that ''observations of operations in the casino cage and count room should not be announced in advance * * *'' For purposes of these procedures, ''unannounced'' means that no officers, directors, or employees are given advance information regarding the dates or times of such observations. The independent accountant should make arrangements with the gaming operation and Tribal gaming regulatory authority to ensure proper identification of the CPA's personnel and to provide for their prompt access to the count rooms.

(*1*) The gaming machine coin count observation would include a weigh scale test of all denominations using pre-counted coin. The count would be in process when these tests are performed, and would be conducted prior to the commencement of any other walk-through procedures. For computerized weigh scales, the test can be conducted at the conclusion of the count, but before the final totals are generated.

(*2*) The checklists should provide for drop/count observations, inclusive of hard drop/count, soft drop/count and currency acceptor drop/count. The count room would not be entered until the count is in process and the CPA would not leave the room until the monies have been counted and verified to the count sheet by the CPA and accepted into accountability. If the drop teams are unaware of the drop observations and the count observations would be unexpected, the hard count and soft count rooms may be entered simultaneously. Additionally, if the gaming machine currency acceptor count begins immediately after the table games count in the same location, by the same count team, and using the same equipment, the currency acceptor count observation can be conducted on the same day as the table games count observation, provided the CPA remains until monies are transferred to the vault/cashier.

(B) Observations of the gaming operation's employees as they perform their duties.

(C) Interviews with the gaming operation's employees who perform the relevant procedures.

(D) Compliance testing of various documents relevant to the procedures. The scope of such testing should be indicated on the checklist where applicable.

(E) For new gaming operations that have been in operation for three months or less at the end of their business year, performance of this regulation, section 542.3(f), is not required for the partial period.

(*2*) Alternatively, at the discretion of the Tribe, the Tribe may engage an independent certified public accountant (CPA) to perform the testing, observations and procedures reflected in paragraphs (f)(1)(i), (ii), and (iii) of this section utilizing the Tribal internal control standards adopted by the Tribal gaming regulatory authority or Tribally approved variance that has received Commission concurrence. Accordingly, the CPA will verify compliance by the gaming operation with the Tribal internal control standards. Should the Tribe elect this alternative, as a prerequisite, the CPA will perform the following:

(i) The CPA shall compare the Tribal internal control standards to the MICS to ascertain whether the criteria set forth in the MICS or Commission approved variances are adequately addressed.

(ii) The CPA may utilize personnel of the Tribal gaming regulatory authority to cross-reference the Tribal internal control standards to the MICS, provided the CPA performs a review of the Tribal gaming regulatory authority personnel's work and assumes complete responsibility for the proper completion of the work product.

(iii) The CPA shall report each procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy paragraph (f)(2)(i) of this section.

(3) *Reliance on Internal Auditors.* (i) The CPA may rely on the work of an internal auditor, to the extent allowed by the professional standards, for the performance of the recommended procedures specified in paragraphs (f)(1)(iii)(B), (C), and (D) of this section, and for the completion of the checklists as they relate to the procedures covered therein provided that the internal audit department can demonstrate to the satisfaction of the CPA that the requirements contained within § 542.22, 542.32, or 542.42, as applicable, have been satisfied.

(ii) Agreed-upon procedures are to be performed by the CPA to determine that the internal audit procedures performed for a past 12-month period (includes two 6-month periods) encompassing a portion or all of the most recent business year has been properly completed. The CPA will apply the following Agreed-Upon Procedures to the gaming operation's written assertion:

(A) Obtain internal audit department work-papers completed for a 12-month period (includes two 6-month periods) encompassing a portion or all of the most recent business year and determine whether the CPA NIGC MICS Compliance Checklists or other comparable testing procedures were included in the internal audit work-papers and all steps described in the checklists were initialed or signed by an internal audit representative.

(B) For the internal audit work-papers obtained in paragraph (f)(3)(ii)(A) of this section, on a sample basis, reperform the procedures included in CPA NIGC MICS Compliance Checklists or other comparable testing procedures prepared by internal audit and determine if all instances of noncompliance noted in the sample were documented as such by internal audit. The CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the applicable Drop and Count procedures are not included in the sample reperformance of procedures because the CPA is required to perform the drop and count observations as required under paragraph (f)(1)(iii)(A) of this section of the Agreed-Upon Procedures. The CPA's sample should comprise a minimum of 3 percent of the procedures required in each CPA NIGC MICS Compliance Checklist or other comparable testing procedures for the gaming machine and table game departments and 5 percent for the other departments completed by internal audit in compliance with the internal audit MICS. The reperformance of procedures is performed as follows:

(*1*) For inquiries, the CPA should either speak with the same individual or an individual of the same job position as the internal auditor did for the procedure indicated in their checklist.

(*2*) For observations, the CPA should observe the same process as the internal auditor did for the procedure as indicated in their checklist.

(*3*) For document testing, the CPA should look at the same original document as tested by the internal auditor for the procedure as indicated in their checklist. The CPA need only retest the minimum sample size required in the checklist.

(C) The CPA is to investigate and resolve any differences between their reperformance results and the internal audit results.

(D) Documentation is maintained for 5 years by the CPA indicating the procedures reperformed along with the results.

(E) When performing the procedures for paragraph (f)(3)(ii)(B) of this section in subsequent years, the CPA must select a different sample so that the CPA will reperform substantially all of the procedures after several years.

(F) Any additional procedures performed at the request of the Commission, the Tribal gaming regulatory authority or management should be included in the Agreed-Upon Procedures report transmitted to the Commission.

(4) *Report Format.* (i) The NIGC has concluded that the performance of these procedures is an attestation engagement in which the CPA applies such Agreed-Upon Procedures to the gaming operation's assertion that it is in compliance with the MICS and, if applicable under paragraph (f)(2) of this section, the Tribal internal control standards and approved variances, provide a level of control that equals or exceeds that of the MICS. Accordingly,

the Statements on Standards for Attestation Engagements (SSAE's), specifically SSAE 10, issued by the Auditing Standards Board is currently applicable. SSAE 10 provides current, pertinent guidance regarding agreed-upon procedure engagements, and the sample report formats included within those standards should be used, as appropriate, in the preparation of the CPA's agreed-upon procedures report. If future revisions are made to this standard or new SSAEs are adopted that are applicable to this type of engagement, the CPA is to comply with any revised professional standards in issuing their agreed upon procedures report. The Commission will provide an Example Report and Letter Formats upon request that may be used and contain all of the information discussed below:

(A) The report must describe all instances of procedural noncompliance regardless of materiality) with the MICS or approved variations, and all instances where the Tribal gaming regulatory authority's regulations do not comply with the MICS. When describing the agreed-upon procedures performed, the CPA should also indicate whether procedures performed by other individuals were utilized to substitute for the procedures required to be performed by the CPA. For each instance of noncompliance noted in the CPA's agreed-upon procedures report, the following information must be included:

(*1*) The citation of the applicable MICS for which the instance of noncompliance was noted.

(*2*) A narrative description of the noncompliance, including the number of exceptions and sample size tested.

(5) *Report Submission Requirements.* (i) The CPA shall prepare a report of the findings for the Tribe and management. The Tribe shall submit 2 copies of the report to the Commission no later than 120 days after the gaming operation's business year. This report should be provided in addition to any other reports required to be submitted to the Commission.

(ii) The CPA should maintain the work-papers supporting the report for a minimum of five years. Digital storage is acceptable. The Commission may request access to these work-papers, through the Tribe.

(6) *CPA NIGC MICS Compliance Checklists.* In connection with the CPA testing pursuant to this section and as referenced therein, the Commission will provide CPA MICS Compliance Checklists upon request.

(g) *Enforcement of Commission Minimum Internal Control Standards.* (1) Each Tribal gaming regulatory authority is required to establish and implement internal control standards pursuant to paragraph (c) of this section. Each gaming operation is then required, pursuant to paragraph (d) of this section, to develop and implement an internal control system that complies with the Tribal internal control standards. Failure to do so may subject the Tribal operator of the gaming operation, and/or the management contractor, to penalties under 25 U.S.C. 2713.

(2) Recognizing that Tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the Tribe and Tribal gaming regulatory authority of deficiencies in the internal controls of its gaming operation and allowing a reasonable period of time to address such deficiencies. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47104, Aug. 12, 2005]

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

(a) 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.

(b) If an internal control standard in a Tribal-State compact provides a level of control that equals or exceeds the level of control under an internal control standard or requirement set forth in this part, then the Tribal-State compact standard shall prevail.

(c) If an internal control standard or a requirement set forth in this part provides a level of control that exceeds the level of control under an internal control standard established in a Tribal-State compact, then the internal control standard or requirement set forth in this part shall prevail.

§ 542.5 How do these regulations affect state jurisdiction?

Nothing in this part shall be construed to grant to a state jurisdiction in class II gaming or extend a state's jurisdiction in class III gaming.

§ 542.6 Does this part apply to small and charitable gaming operations?

(a) *Small gaming operations.* This part shall not apply to small gaming operations provided that:

(1) The Tribal gaming regulatory authority permits the operation to be exempt from this part;

(2) The annual gross gaming revenue of the operation does not exceed $1 million; and

(3) The Tribal gaming regulatory authority develops and the operation complies with alternate procedures that:

(i) Protect the integrity of games offered; and

(ii) Safeguard the assets used in connection with the operation.

(b) *Charitable gaming operations.* This part shall not apply to charitable gaming operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The Tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(3) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers;

(4) The annual gross gaming revenue of the charitable gaming operation does not exceed $100,000;

(i) Where the annual gross gaming revenues of the charitable gaming operation exceed $100,000, but are less than $1 million, paragraph (a) of this section shall also apply; and

(ii) [Reserved]

(5) The Tribal gaming regulatory authority develops and the charitable gaming operation complies with alternate procedures that:

(i) Protect the integrity of the games offered; and

(ii) Safeguard the assets used in connection with the gaming operation.

(c) *Independent operators.* Nothing in this section shall exempt gaming operations conducted by independent operators for the benefit of a charitable organization.

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

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *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, initials, or identification number of at least one seller (if manually documented); and

(vi) Signature, initials, or identification number of a person independent of the 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 win and write shall be computed and recorded by shift (or session, if applicable).

(4) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall 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 customers. For speed bingo games not

verified by camera equipment, each ball drawn shall be verified by a person independent of the bingo caller responsible for calling the speed bingo game.

(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 twenty-four (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 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.

(c) *Promotional payouts or awards.* (1) If the gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(i) Date and time;

(ii) Dollar amount of payout or description of personal property (*e.g.*, jacket, toaster, car, etc.), including fair market value;

(iii) Type of promotion; and

(iv) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(d) *Accountability form.* (1) All funds used to operate the bingo department shall be recorded on an accountability form.

(2) All funds used to operate the bingo department shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session. Unverified transfers of cash and/or cash equivalents are prohibited.

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

(2) The procedures established by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall include standards relating to the inspection of 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 a person or persons independent of the bingo sales;

(ii) The issue of paper to the cashiers shall be documented and signed for by the person responsible for inventory control and a cashier. The document log shall include the series number 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 for sale that day (electronic verification satisfies this standard);

(iv) At the end of each month, a person or persons independent of bingo sales and inventory control shall verify the accuracy of the ending balance in the bingo paper control by reconciling the paper on-hand;

(v) A monthly comparison for reasonableness shall be made of the amount of paper sold from the bingo paper control log to the amount of revenue recognized.

(f) *Standards for statistical reports.* (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) A manager independent of the bingo department shall review bingo statistical information on at least a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Investigations shall be documented, maintained for inspection, and

provided to the Tribal gaming regulatory authority upon request.

(g) *Electronic equipment.* (1) If the gaming operation utilizes electronic equipment in connection with the play of bingo, then the following standards shall also apply.

(i) If the electronic equipment contains a bill acceptor, then § 542.21(e) and (f), § 542.31(e) and (f), or § 542.41(e) and (f) (as applicable) shall apply.

(ii) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically by a person or persons independent of the bingo department to determine that it is correctly reading the bar code or the microchip.

(iii) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.13(n) (as applicable) shall apply.

(iv) If the electronic equipment utilizes patron account access cards for activation of play, then § 542.13(o) (as applicable) shall apply.

(2) [Reserved]

(h) *Standards for linked electronic games.* Management shall ensure that all agreements/contracts entered into after June 27, 2002 to provide linked electronic games shall contain language requiring the vendor to comply with the standards in this section applicable to the goods or services the vendor is providing.

(i) *Host requirements/game information (for linked electronic games).* (1) 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 Tribal gaming regulatory authority). This data may be kept in an archived manner, provided the information can be produced within twenty-four (24) hours upon request. In any event, game data for the preceding seventy-two (72) hours shall be immediately accessible.

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

(i) Date and time game start and game end;

(ii) Sales information by location;

(iii) Cash distribution by location;

(iv) Refund totals by location;

(v) Cards-in-play count by location;

(vi) Identification number of winning card(s);

(vii) Ordered list of bingo balls drawn; and

(viii) Prize amounts at start and end of game.

(j) *Host requirements/sales information (for linked electronic games).* (1) 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 Tribal gaming regulatory authority). This data may be kept in an archived manner, provided the information can be produced within twenty-four (24) hours upon request. In any event, sales data for the preceding ten (10) days shall be immediately accessible. Summary information must be accessible for at least 120 days.

(2) Sales information required shall include:

(i) Daily sales totals by location;

(ii) Commissions distribution summary by location;

(iii) Game-by-game sales, prizes, refunds, by location; and

(iv) Daily network summary, by game by location.

(k) *Remote host requirements (for linked electronic games).* (1) Linked electronic game providers shall maintain on-line records at the remote host site for any game played. These records shall remain on-line 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 seventy-two (72) hours following the close of the session. Records shall be accessible through some archived media for at least ninety (90) days from the date of the game.

(2) Game information required includes date and time of game start and game end, sales totals, cash distribution (prizes) totals, and refund totals.

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

(l) *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; or

(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 on-line throughout the active game and for at least twenty-four (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 twenty-four (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.

[67 FR 43400, June 27, 2002, as amended at 70 FR 23021, May 4, 2005; 70 FR 47106, Aug. 12, 2005; 71 FR 27392, May 11, 2006]

EFFECTIVE DATE NOTE: At 74 FR 60498, Oct. 10, 2008, § 542.7 was removed and reserved, effective Oct. 13, 2009.

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

(a) *Computer applications*. For any computer application utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Pull tab inventory*. (1) Pull tab inventory (including unused tickets) shall be controlled to assure the integrity of the pull tabs.

(2) Purchased pull tabs shall be inventoried and secured by a person or persons independent of the pull tab sales.

(3) The issue of pull tabs to the cashier or sales location shall be documented and signed for by the person responsible for inventory control and the cashier. The document log shall include the serial number of the pull tabs issued.

(4) Appropriate documentation shall be given to the redemption booth for purposes of determining if the winner purchased the pull tab from the pull tabs issued by the gaming operation. Electronic verification satisfies this requirement.

(5) At the end of each month, a person or persons independent of pull tab sales and inventory control shall verify the accuracy of the ending balance in the pull tab control by reconciling the pull tabs on hand.

(6) A monthly comparison for reasonableness shall be made of the amount of pull tabs sold from the pull tab control log to the amount of revenue recognized.

(c) *Access*. Access to pull tabs shall be restricted to authorized persons.

(d) *Transfers*. Transfers of pull tabs from storage to the sale location shall be secured and independently controlled.

(e) *Winning pull tabs*. (1) Winning pull tabs shall be verified and paid as follows:

(i) Payouts in excess of a dollar amount determined by the gaming operation, as approved by the Tribal gaming regulatory authority, shall be verified by at least two employees.

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

(iii) The winning pull tabs shall be voided so that they cannot be presented for payment again.

(2) Personnel independent of pull tab operations shall verify the amount of winning pull tabs redeemed each day.

(f) *Accountability form*. (1) All funds used to operate the pull tab game shall be recorded on an accountability form.

(2) All funds used to operate the pull tab game shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session. Unverified

transfers of cash and/or cash equivalents are prohibited.

(g) *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 each deal or type of game, for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(2) A manager independent of the pull tab operations shall review statistical information at least on a monthly basis and shall investigate any large or unusual statistical fluctuations. These investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

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

(h) *Electronic equipment.* (1) If the gaming operation utilizes electronic equipment in connection with the play of pull tabs, then the following standards shall also apply.

(i) If the electronic equipment contains a bill acceptor, then § 542.21(e) and (f), § 542.31(e) and (f), or § 542.41(e) and (f) (as applicable) shall apply.

(ii) 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.

(iii) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.13(n)(as applicable) shall apply.

(iv) If the electronic equipment utilizes patron account access cards for activation of play, then § 542.13(o) (as applicable) shall apply.

(2) [Reserved]

[67 FR 43400, June 27, 2002, as amended at 70 FR 23021, May 4, 2005; 70 FR 47106, Aug. 12, 2005; 71 FR 27392, May 11, 2006]

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

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Standards for drop and count.* The procedures for the collection of the card game drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(c) *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) Exchanges between table banks and the main card room bank (or cage, if a main card room bank is not used) in excess of $100.00 shall be authorized by a supervisor. All exchanges shall be evidenced by the use of a lammer unless the exchange of chips, tokens, and/or cash takes place at the table.

(3) Exchanges 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 collected or ante placed shall be done in accordance with the posted rules.

(d) *Standards for playing cards.* (1) Playing cards shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering.

(2) Used cards shall be maintained in a secure location until marked, scored, or destroyed, in a manner approved by the Tribal gaming regulatory authority, to prevent unauthorized access and reduce the possibility of tampering.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a reasonable time period, which shall not exceed seven (7) days, within which to mark, cancel, or destroy cards from play.

(i) This standard shall not apply where playing cards are retained for an investigation.

(ii) [Reserved]

(4) A card control log shall be maintained that documents when cards and dice are received on site, distributed to and returned from tables and removed from play by the gaming operation.

(e) *Plastic cards.* Notwithstanding paragraph (d) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are routinely inspected, and washed or cleaned in a manner and time frame approved by the Tribal gaming regulatory authority.

(f) *Standards for shills.* (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 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 that were opened during that shift shall be counted, recorded, and reconciled by a dealer or other person, and a supervisor, and shall be attested to by their signatures on the check-out form.

(h) *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 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) The amount of the jackpot shall be conspicuously displayed in the card room.

(5) At least once a day, the posted pool amount shall be updated to reflect the current pool amount.

(6) At least once a day, increases to the posted pool amount shall be reconciled to the cash previously counted or received by the cage by personnel independent of the card room.

(7) All decreases to the pool must be properly documented, including a reason for the decrease.

(i) *Promotional progressive pots and pools where funds are displayed in the card room.* (1) Promotional funds displayed in the card room shall be placed in a locked container in plain view of the public.

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

(3) The contents key shall be maintained by personnel independent of the card room.

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

(5) The locked container shall then be returned to the card room where the posted pool amount shall be updated to reflect the current pool amount.

(j) *Promotional progressive pots and pools where funds are maintained in the cage.* (1) Promotional funds removed from the card game shall be placed in a locked container.

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

(3) The contents key shall be maintained by personnel independent of the card room.

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

verified, prior to accepting the funds into cage accountability.

(5) The posted pool amount shall then be updated to reflect the current pool amount.

§ 542.10 What are the minimum internal control standards for keno?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *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) The information on the ticket shall be recorded on a restricted transaction log or computer storage media concurrently with the generation of the ticket.

(3) Keno personnel shall be precluded from having 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.

(c) *Rabbit ear or wheel system.* (1) The following standards shall apply if a rabbit ear or wheel system is utilized:

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

(A) Empty rabbit ears or wheel;

(B) Date and time;

(C) Game number; and

(D) Full rabbit ears or wheel.

(ii) The film of the rabbit ears or wheel shall provide a legible identification of the numbers on the balls drawn.

(iii) 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.

(iv) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that prevent unauthorized access to keno balls in play.

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

(vi) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for inspecting new keno balls put into play as well as for those in use.

(2) [Reserved]

(d) *Random number generator.* (1) The following standards shall apply if a random number generator is utilized:

(i) The random number generator shall be linked to the computer system and shall directly relay the numbers selected into the computer without manual input.

(ii) Keno personnel shall be precluded from access to the random number generator.

(2) [Reserved]

(e) *Winning tickets.* 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 customer.

(2) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that preclude payment on tickets previously presented for payment, unclaimed winning tickets (sleepers) after a specified period of time, voided tickets, and tickets that 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 that 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 video recording and/or digital record of the rabbit ears or wheel to verify the legitimacy of the draw and the accuracy of the draw ticket (for rabbit ear or wheel 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 a person independent of the keno department.

(f) *Check out standards at the end of each keno shift.* (1) For each writer station, a cash summary report (count sheet) shall be prepared that includes:

(i) Computation of net cash proceeds for the shift and the cash turned in; and

(ii) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in. Unverified transfers of cash and/or cash equivalents are prohibited.

(2) [Reserved]

(g) *Promotional payouts or awards.* (1) If a gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(i) Date and time;

(ii) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.), including fair market value;

(iii) Type of promotion; and

(iv) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(h) *Standards for statistical reports.* (1) Records shall be maintained that include win and write by individual writer for each day.

(2) Records shall be maintained that include 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) A manager independent of the keno department 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 ±3%. The base level shall be defined as the gaming operation's win percentage for the previous business year or the previous twelve (12) months.

(5) Such investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(i) *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) Personnel 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.

(j) *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 (b)(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, including:

(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, including:

(A) Employee name or employee identification number; and

(B) Listing of functions employee can perform or equivalent means of identifying same.

(k) *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 video recording and/or digital record of the rabbit ears or wheel 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 that 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 video recording and/or digital record of rabbit ears or wheel shall be randomly compared to the computer game information report for at least 10% of the games during the shift; and

(iii) Keno audit personnel shall review winning tickets for proper authorization pursuant to paragraph (e)(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 (k)(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.) that evidences the performance of all keno audit procedures shall be maintained.

(8) A manager independent of the keno department shall review keno audit exceptions, and perform and document investigations into unresolved exceptions. These investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(9) When a multi-game ticket is part of the sample in paragraphs (k)(3)(ii), (k)(5)(i) and (k)(6) of this section, the procedures may be performed for ten

(10) games or ten percent (10%) of the games won, whichever is greater.

(l) *Access*. 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.).

(m) *Equipment standards*. (1) 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).

(2) Keno equipment maintenance (excluding keno balls) shall be independent of the operation of the keno game.

(3) Keno maintenance personnel shall report irregularities to management personnel independent of the keno department.

(4) If the gaming operation utilizes a barcode or microchip reader in connection with the play of keno, the reader shall be tested at least annually by personnel independent of the keno department to determine that it is correctly reading the barcode or microchip.

(n) *Document retention*. (1) 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:

(i) Video recordings and/or digital records of rabbit ears or wheel;

(ii) All copies of winning keno tickets of less than $1,500.00.

(2) [Reserved]

(o) *Multi-race tickets*. (1) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with standards in paragraph (e)(5) of this section.

(2) Procedures shall be established to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(p) *Manual keno*. For gaming operations that conduct manual keno games, alternate procedures that provide at least the level of control described by the standards in this section shall be developed and implemented.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47106, Aug. 12, 2005]

§ 542.11 What are the minimum internal control standards for pari-mutuel wagering?

(a) *Exemptions*. (1) The requirements of this section shall not apply to gaming operations who house pari-mutuel wagering operations conducted entirely by a state licensed simulcast service provider pursuant to an approved tribal-state compact if:

(i) The simulcast service provider utilizes its own employees for all aspects of the pari-mutuel wagering operation;

(ii) The gaming operation posts, in a location visible to the public, that the simulcast service provider and its employees are wholly responsible for the conduct of pari-mutuel wagering offered at that location;

(iii) The gaming operation receives a predetermined fee from the simulcast service provider; and

(iv) In addition, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with standards that ensure that the gaming operation receives, from the racetrack, its contractually guaranteed percentage of the handle.

(2) Gaming operations that contract directly with a state regulated racetrack as a simulcast service provider, but whose on-site pari-mutuel operations are conducted wholly or in part by tribal gaming operation employees, shall not be required to comply with paragraphs (h)(5) thru (h)(9) of this section.

(i) If any standard contained within this section conflicts with state law, a tribal-state compact, or a contract, then the gaming operation shall document the basis for noncompliance and shall maintain such documentation for inspection by the Tribal gaming regulatory authority and the Commission.

(ii) In addition, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with standards that ensure that the gaming operation receives, from the racetrack, its contractually guaranteed percentage of the handle.

(b) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(c) *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 (or identification number), station number, the writer/cashier identifier, and the date and time.

(3) A betting ticket shall consist of at least two parts:

(i) An original, which shall be transacted and issued through a printer and given to the customer; and

(ii) A copy that shall be recorded concurrently with the generation of the original ticket either on paper or other storage media (e.g., tape or diskette).

(4) Upon accepting a wager, the betting ticket that is created shall contain the following:

(i) A unique transaction identifier;

(ii) Gaming operation name (or identification number) 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 gaming operation voids a betting ticket written prior to post time, it shall be immediately entered into the system.

(7) Future wagers shall be accepted and processed in the same manner as regular wagers.

(d) *Payout standards.* (1) Prior to making payment on a ticket, the writer/cashier shall input the ticket for verification and payment authorization.

(2) The computer shall be incapable of authorizing payment on a ticket that has been previously paid, a voided ticket, a losing ticket, or an unissued ticket.

(e) *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 (or identification number), 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) Signature of two employees who have verified the cash turned in for the shift. Unverified transfers of cash and/or cash equivalents are prohibited.

(f) *Employee wagering.* Pari-mutuel employees shall be prohibited from wagering on race events while on duty, including during break periods.

(g) *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 for each day's operation and shall include, but is not limited to:

(i) Unique transaction identifier;

(ii) Date/time of transaction;

(iii) Type of wager;

(iv) Animal 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 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 the unique transaction identifier(s), description, ticket cost and value, and date purged.

(h) *Accounting and auditing functions.* A gaming operation shall perform the following accounting and auditing functions:

(1) The parimutuel audit shall be conducted by personnel independent of the parimutuel operation.

(2) Documentation shall be maintained evidencing the performance of all parimutuel accounting and auditing procedures.

(3) An accounting employee shall review handle, commission, and breakage for each day's play and recalculate the net amount due to or from the systems operator on a weekly basis.

(4) The accounting employee shall verify actual cash/cash equivalents turned in to the system's summary report for each cashier's drawer (Beginning balance, (+) fills (draws), (+) net write (sold less voids), (−) payouts (net of IRS withholding), (−) cashbacks (paids), (=) cash turn-in).

(5) An accounting employee shall produce a gross revenue recap report to calculate gross revenue for each day's play and for a 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.

(6) All winning tickets and vouchers shall be physically removed from the SAM's for each day's play.

(7) In the event a SAM does not balance for a day's play, the auditor shall perform the following procedures:

(i) 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) Verify the results as produced by the system to the results provided by an independent source;

(vi) Regrade 1% of paid (cashed) tickets to ensure accuracy and propriety; and

(vii) When applicable, reconcile the totals of future tickets written to the totals produced by the system for both earned and unearned take, and review the reports to ascertain that future wagers are properly included on the day of the event.

(8) At least annually, the auditor shall foot the wagers for one day and trace to the total produced by the system.

(9) At least one day per quarter, the auditor shall recalculate and verify the change in the unpaid winners to the total purged tickets.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47106, Aug. 12, 2005]

§ 542.12 What are the minimum internal control standards for table games?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Standards for drop and count.* The procedures for the collection of the table game drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(c) *Fill and credit standards.* (1) Fill slips and credit slips shall be in at least triplicate form, and in a continuous, prenumbered series. Such slips shall be 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 their distribution, use, and control. Personnel from the cashier or pit departments shall have no access to the secured (control) 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 pit supervisory personnel before the issuance of fill slips and transfer of chips, tokens, or cash equivalents. The fill request shall be communicated to the cage where the fill slip is prepared.

(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 the table game drop box;

(ii) One part shall be retained in the cage for reconciliation of the cashier bank; and

(iii) For computer systems, one part shall be retained in a secure manner to insure that only authorized persons may gain access to it. For manual systems, one part shall be retained in a secure manner in a continuous unbroken form.

(6) For Tier C gaming operations, the part of the fill slip that is placed in the table game 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 a person who is independent of the cage or pit.

(9) The fill slip shall be signed by at least the following persons (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 cash equivalent;

(ii) Runner who carried the chips, tokens, or cash equivalents from the cage to the pit;

(iii) Dealer or boxperson who received the chips, tokens, or cash equivalents at the gaming table; and

(iv) Pit supervisory personnel who supervised the fill transaction.

(10) Fills shall be broken down and verified by the dealer or boxperson in public view before the dealer or boxperson places the fill in the table tray.

(11) 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.

(12) Table credit transactions shall be authorized by a pit supervisor before the issuance of credit slips and transfer of chips, tokens, or other cash equivalent. The credit request shall be communicated to the cage where the credit slip is prepared.

(13) At least three parts of each credit slip shall be utilized as follows:

(i) Two parts of the credit slip shall be transported by the runner to the pit. After signatures of the runner, dealer, and pit supervisor are obtained, one copy shall be deposited in the table game drop box and the original shall accompany transport of the chips, tokens, markers, or cash equivalents from the pit to the cage for verification and signature of the cashier.

(ii) For computer systems, one part shall be retained in a secure manner to insure that only authorized persons may gain access to it. For manual systems, one part shall be retained in a secure manner in a continuous unbroken form.

(14) 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.

(15) Chips, tokens, and/or cash equivalents shall be removed from the table tray by the dealer or boxperson and shall be broken down and verified by the dealer or boxperson in public view prior to placing them in racks for transfer to the cage.

(16) All chips, tokens, and cash equivalents removed from the tables and markers removed from the pit shall be carried to the cashier's cage by a person who is independent of the cage or pit.

(17) The credit slip shall be signed by at least the following persons (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;

(iii) Dealer who had custody of the items prior to transfer to the cage; and

(iv) Pit supervisory personnel who supervised the credit transaction.

(18) The credit slip shall be inserted in the drop box by the dealer.

(19) Chips, tokens, or other cash equivalents shall be deposited on or removed from gaming tables only when accompanied by the appropriate fill/credit or marker transfer forms.

(20) Cross fills (the transfer of chips between table games) and even cash exchanges are prohibited in the pit.

(d) *Table inventory forms.* (1) At the close of each shift, for those table banks that were opened during that shift:

(i) The 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 the dealer. Alternatively, if the dealer is not available, such verification may be provided by 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 a person other than a pit supervisor.

(e) *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:

(i) System exception information (*e.g.*, appropriate system parameter information, corrections, voids, etc.); and

(ii) Personnel access listing, which includes, at a minimum:

(A) Employee name or employee identification number (if applicable); and

(B) Listing of functions employees can perform or equivalent means of identifying the same.

(f) *Standards for playing cards and dice.* (1) Playing cards and dice shall be maintained in a secure location to prevent unauthorized access and to reduce the possibility of tampering.

(2) Used cards and dice shall be maintained in a secure location until marked, scored, or destroyed, in a manner as approved by the Tribal gaming regulatory authority, to prevent unauthorized access and reduce the possibility of tampering.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a reasonable time period, which shall not exceed seven (7) days, within which to mark, cancel, or destroy cards and dice from play.

(i) This standard shall not apply where playing cards or dice are retained for an investigation.

(ii) [Reserved]

(4) A card control log shall be maintained that documents when cards and dice are received on site, distributed to and returned from tables and removed from play by the gaming operation.

(g) *Plastic cards.* Notwithstanding paragraph (f) of this section, if a gaming operation uses plastic cards (not plastic-coated cards), the cards may be used for up to three (3) months if the plastic cards are routinely inspected, and washed or cleaned in a manner and time frame approved by the Tribal gaming regulatory authority.

(h) *Standards for supervision.* Pit supervisory personnel (with authority equal to or greater than those being supervised) shall provide supervision of all table games.

(i) *Analysis of table game performance standards.* (1) Records shall be maintained by day and shift indicating any single-deck blackjack games that 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 (i)(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, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Accounting/auditing standards.* (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 acceptor, 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 documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(6) A daily recap shall be prepared for the day and month-to-date, which shall include the following information:

(i) Drop;

(ii) Win; and

(iii) Gross revenue.

(k) *Marker credit play.* (1) If a gaming operation allows marker credit play (exclusive of rim credit and call bets), the following standards shall apply:

(i) A marker system shall allow for credit to be both issued and repaid in the pit.

(ii) 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.

(iii) Proper authorization of credit extension in excess of the previously established limit shall be documented.

(iv) 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.

(v) 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 (k)(1)(vi) 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.)

(vi) At least three parts of each separately numbered marker form shall be utilized as follows:

(A) Original shall be maintained in the pit until settled or transferred to the cage;

(B) 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 game drop box. If not paid in the pit, the slip shall be transferred to the cage with the original;

(C) Issue slip shall be inserted into the appropriate table game drop box when credit is extended or when the player has signed the original.

(vii) 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 boxperson at the table.

(viii) A record shall be maintained that details the following (e.g., master credit record retained at the pit podium):

(A) The signature or initials of the person(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

(B) The legible name of the person receiving the credit;

(C) The date and shift of granting the credit;

(D) The table on which the credit was extended;

(E) The amount of credit issued;

(F) The marker number;

(G) The amount of credit remaining after each issuance or the total credit available for all issuances;

(H) The amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

(I) The signature or initials of the person receiving payment/settlement.

(ix) The forms required in paragraphs (k)(1)(v), (vi), and (viii) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

(x) 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.

(xi) Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

(xii) Lammer buttons shall be removed only by the dealer or boxperson employed at the table upon completion of a marker transaction.

(xiii) The original marker shall contain at least the following information:

(A) Marker number;

(B) Player's name and signature;

(C) Date; and

(D) Amount of credit issued.

(xiv) 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 person extending the credit, and the signature or initials of the dealer or boxperson at the applicable table, unless this information is included on another document verifying the issued marker.

(xv) 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 pit supervisory personnel acknowledging payment, and the signature or initials of the dealer or boxperson receiving payment, unless this information is included on another document verifying the payment of the marker.

(xvi) 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.

(xvii) When partial payments are made in the pit, the payment slip of the marker that was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (k)(1)(xv) of this section, and inserted into the drop box.

(xviii) 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 customer's play is completed or at shift end, whichever is earlier.

(xix) 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.

(xx) An investigation shall be performed to determine the cause and responsibility for loss whenever marker forms, or any part thereof, are missing. These investigations shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(xxi) 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 supervisory personnel releasing instruments from the pit, and the signature of cashier verifying receipt of instruments at the cage.

(xxii) All markers shall be transferred to the cage within twenty-four (24) hours of issuance.

(xxiii) Markers shall be transported to the cashier's cage by a person who is independent of the marker issuance and payment functions (pit clerks may perform this function).

(2) [Reserved]

(l) *Name credit instruments accepted in the pit.* (1) For the purposes of this paragraph, name credit instruments means personal checks, payroll checks, counter checks, hold checks, traveler's checks, or other similar instruments that are accepted in the pit as a form of credit issuance to a player with an approved credit limit.

(2) The following standards shall apply if name credit instruments are accepted in the pit:

(i) A name credit system shall allow for the issuance of credit without using markers;

(ii) 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;

(iii) 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);

(iv) The order for credit (if applicable) and the credit slip shall include the customer's name, amount of the credit instrument, the date, time, shift, table number, signature of pit supervisory personnel releasing instrument from pit, and the signature of the cashier verifying receipt of instrument at the cage;

(v) The procedures for transacting table credits at standards in paragraphs (c)(12) through (19) of this section shall be strictly adhered to; and

(vi) The acceptance of payments in the pit for name credit instruments shall be prohibited.

(m) *Call bets.* (1) The following standards shall apply if call bets are accepted in the pit:

(i) 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;

(ii) The placement of the lammer button, chips, or other identifiable designation shall be performed by supervisory/boxperson personnel. The placement may be performed by a dealer only if the supervisor physically observes and gives specific authorization;

(iii) 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; and

(iv) The removal of the lammer button, chips, or other identifiable designation shall be performed by the dealer/ boxperson upon completion of the call bet transaction.

(2) [Reserved]

(n) *Rim credit.* (1) The following standards shall apply if rim credit is extended in the pit:

(i) 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 customer for the customer to wager, or to the dealer to wager for the customer, and by the placement of a lammer button or other identifiable designation in an amount equal to that of the chips extended; and

(ii) Rim credit shall be recorded on player cards, or similarly used documents, which shall be:

(A) Prenumbered or concurrently numbered and accounted for by a department independent of the pit;

(B) 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;

(C) An indication of the settlement method (e.g., serial number of marker issued, chips, cash);

(D) Settled no later than when the customer leaves the table at which the card is prepared;

(E) Transferred to the accounting department on a daily basis; and

(F) Reconciled with other forms utilized to control the issuance of pit credit (e.g., master credit records, table cards).

(2) [Reserved]

(o) *Foreign currency*. (1) The following standards shall apply if foreign currency is accepted in the pit:

(i) Foreign currency transactions shall be authorized by a pit supervisor/boxperson who completes a foreign currency exchange form before the exchange for chips or tokens;

(ii) Foreign currency exchange forms include the country of origin, total face value, amount of chips/token extended (*i.e.*, conversion amount), signature of supervisor/boxperson, and the dealer completing the transaction;

(iii) Foreign currency exchange forms and the foreign currency shall be inserted in the drop box by the dealer; and

(iv) Alternate procedures specific to the use of foreign valued gaming chips shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(2) [Reserved]

[67 FR 43400, June 27, 2002, as amended at 70 FR 23021, May 4, 2005]

§ 542.13 What are the minimum internal control standards for gaming machines?

(a) *Standards for gaming machines*. (1) 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 customer.

(2) Coins shall include tokens.

(3) For all computerized gaming machine systems, a personnel access listing shall be maintained, which includes at a minimum:

(i) Employee name or employee identification number (or equivalent); and

(ii) Listing of functions employee can perform or equivalent means of identifying same.

(b) *Computer applications*. For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(c) *Standards for drop and count*. The procedures for the collection of the gaming machine drop and the count thereof shall comply with § 542.21, § 542.31, or § 542.41 (as applicable).

(d) *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, including fair market value. Alpha is optional if another unalterable method is used for evidencing the amount of the payout;

(iv) Game outcome (including reel symbols, card values, suits, etc.) for jackpot payouts. Game outcome is not required if a computerized jackpot/fill system is used;

(v) Preprinted or concurrently printed sequential number; and

(vi) Signatures of at least two employees verifying and witnessing the payout or gaming machine fill (except as otherwise provided in paragraphs

(d)(1)(vi)(A), (B), and (C) of this section).

(A) Jackpot payouts over a predetermined amount shall require the signature and verification of a supervisory or management employee independent of the gaming machine department (in addition to the two signatures required in paragraph (d)(1)(vi) of this section). Alternatively, if an on-line accounting system is utilized, only two signatures are required: one employee and one supervisory or management employee independent of the gaming machine department. This predetermined amount shall be authorized by management (as approved by the Tribal gaming regulatory authority), documented, and maintained.

(B) With regard to jackpot payouts and hopper fills, the signature of one employee is sufficient if an on-line accounting system is utilized and the jackpot or fill is less than $1,200.

(C) On graveyard shifts (eight-hour maximum) payouts/fills less than $100 can be made without the payout/fill being witnessed by a second person.

(2) For short pays of $10.00 or more, and payouts required for accumulated credits, the payout form shall include the following information:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of payout (both alpha and numeric); and

(iv) The signature of at least one (1) employee verifying and witnessing the payout.

(A) Where the payout amount is $50 or more, signatures of at least two (2) employees verifying and witnessing the payout. Alternatively, the signature of one (1) employee is sufficient if an on-line accounting system is utilized and the payout amount is less than $3,000.

(B) [Reserved]

(3) Computerized jackpot/fill systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by one person as required by § 542.16(a).

(4) Payout forms shall be controlled and routed in a manner that precludes any one person from producing a fraudulent payout by forging signatures or by altering the amount paid out subsequent to the payout and misappropriating the funds.

(e) *Promotional payouts or awards.* (1) If a gaming operation offers promotional payouts or awards that are not reflected on the gaming machine pay table, then the payout form/documentation shall include:

(i) Date and time;

(ii) Machine number and denomination;

(iii) Dollar amount of payout or description of personal property (*e.g.*, jacket, toaster, car, etc.), including fair market value;

(iv) Type of promotion (*e.g.*, double jackpots, four-of-a-kind bonus, etc.); and

(v) Signature of at least one employee authorizing and completing the transaction.

(2) [Reserved]

(f) *Gaming machine department funds standards.* (1) The gaming machine booths and change banks that are active during the shift shall be counted down and reconciled each shift by two employees utilizing appropriate accountability documentation. Unverified transfers of cash and/or cash equivalents are prohibited.

(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 seven (7) days.

(g) *EPROM control standards.* (1) At least annually, procedures shall be performed to insure the integrity of a sample of gaming machine game program EPROMs, or other equivalent game software media, by personnel independent of the gaming machine department or the machines being tested.

(2) The Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, shall develop and implement procedures for the following:

(i) Removal of EPROMs, or other equivalent game software media, from devices, the verification of the existence of errors as applicable, and the correction via duplication from the

master game program EPROM, or other equivalent game software media;

(ii) Copying one gaming device program to another approved program;

(iii) Verification of duplicated EPROMs before being offered for play;

(iv) Receipt and destruction of EPROMs, or other equivalent game software media; and

(v) Securing the EPROM, or other equivalent game software media, duplicator, and master game EPROMs, or other equivalent game software media, from unrestricted access.

(3) The master game program number, par percentage, and the pay table shall be verified to the par sheet when initially received from the manufacturer.

(4) Gaming machines with potential jackpots in excess of $100,000 shall have the game software circuit boards locked or physically sealed. The lock or seal shall necessitate the presence of a person independent of the gaming machine department to access the device game program EPROM, or other equivalent game software media. If a seal is used to secure the board to the frame of the gaming device, it shall be pre-numbered.

(5) Records that document the procedures in paragraph (g)(2)(i) of this section shall include the following information:

(i) Date;

(ii) Machine number (source and destination);

(iii) Manufacturer;

(iv) Program number;

(v) Personnel involved;

(vi) Reason for duplication;

(vii) Disposition of any permanently removed EPROM, or other equivalent game software media;

(viii) Seal numbers, if applicable; and

(ix) Approved testing lab approval numbers, if available.

(6) EPROMS, or other equivalent game software media, returned to gaming devices shall be labeled with the program number. Supporting documentation shall include the date, program number, information identical to that shown on the manufacturer's label, and initials of the person replacing the EPROM, or other equivalent game software media.

(h) Standards for evaluating theoretical and actual hold percentages.

(1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For multi-game/multi-denominational 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 paytable contained in the machine; and

(iii) On an annual basis, adjust the theoretical hold percentage in the gaming machine statistical report to a weighted average based upon the ratio of coin-in for each game paytable.

(3) For those gaming operations that are unable to perform the weighted average calculation as required by paragraph (h)(2) of this section, the following procedures shall apply:

(i) On at least an annual basis, calculate the actual hold percentage for each gaming machine;

(ii) On at least an annual basis, adjust the theoretical hold percentage in the gaming machine statistical report for each gaming machine to the previously calculated actual hold percentage; and

(iii) The adjusted theoretical hold percentage shall be within the spread between the minimum and maximum theoretical payback percentages.

(4) The adjusted theoretical hold percentage for multi-game/multi-denominational machines may be combined for machines with exactly the same game mix throughout the year.

(5) The theoretical hold percentages used in the gaming machine analysis reports should be within the performance standards set by the manufacturer.

(6) Records shall be maintained for each machine indicating 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 that 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 that shall record coin-in or credit-in, or on-line gaming machine monitoring system that captures similar data.

(9) All gaming machines with bill acceptors shall contain functioning billing meters that 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 and Tier B gaming operations) immediately prior to or subsequent to a gaming machine drop. On-line gaming machine monitoring systems can satisfy this requirement. 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 (6) days.

(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 bill acceptors by a person 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 that do not appear reasonable shall be reviewed with gaming machine department employees or other appropriate designees, 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 (previous twelve (12) months data preferred), 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), except for adjustments made in accordance with paragraph (h)(2) of this section.

(16) If promotional payouts or awards are included on the gaming machine statistical reports, it shall be in a manner that prevents distorting the actual hold percentages of the affected machines.

(17) 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.

(18) For those machines that have experienced at least 100,000 wagering transactions, large variances (three percent (3%) recommended) between theoretical hold and actual hold shall be investigated and resolved by a department independent of the gaming machine department with the findings documented and provided to the Tribal gaming regulatory authority upon request in a timely manner.

(19) Maintenance of the on-line 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.

(20) Updates to the on-line 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.

(i) *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.

(j) *Player tracking system.* (1) The following standards apply if a player tracking system is utilized:

(i) 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.).

(ii) 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.

(iii) Booth employees who redeem points for members shall be allowed to receive lost players club cards, provided that they are immediately deposited into a secured container for retrieval by independent personnel.

(iv) 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.

(v) All other changes to the player tracking system shall be appropriately documented.

(2) [Reserved]

(k) *In-house progressive gaming machine 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.

(2) At least once each day, each gaming operation shall record the amount shown on each progressive jackpot meter at the gaming operation except for those jackpots that can be paid directly from the machine's hopper;

(3) 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

(4) Each gaming operation shall record the base amount of each progressive jackpot the gaming operation offers.

(5) The Tribal gaming regulatory authority shall approve procedures specific to the transfer of progressive amounts in excess of the base amount to other gaming machines. Such procedures may also include other methods of distribution that accrue to the benefit of the gaming public via an award or prize.

(l) *Wide area progressive gaming machine 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.

(2) As applicable to participating gaming operations, the wide area progressive gaming machine system shall be adequately restricted to prevent unauthorized access (e.g., changing passwords at least quarterly, restrict access to EPROMs or other equivalent game software media, and restrict physical access to computer hardware, etc.).

(3) The Tribal gaming regulatory authority shall approve procedures for the wide area progressive system that:

(i) Reconcile meters and jackpot payouts;

(ii) Collect/drop gaming machine funds;

(iii) Verify jackpot, payment, and billing to gaming operations on prorata basis;

(iv) System maintenance;

(v) System accuracy; and

(vi) System security.

(4) Reports, where applicable, adequately documenting the procedures required in paragraph (l)(3) of this section shall be generated and retained.

(m) *Accounting/auditing standards.* (1) Gaming machine accounting/auditing procedures shall be performed by employees who are independent of the transactions being reviewed.

(2) For on-line 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.

(3) For weigh scale and currency interface systems, for at least one drop period per month accounting/auditing employees shall make such comparisons as necessary to the system generated count as recorded in the gaming machine statistical report. Discrepancies shall be resolved prior to generation/distribution of gaming machine reports.

(4) 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 on-line gaming machine monitoring system statistical reports.

(5) Follow-up shall be performed for any one machine having an unresolved variance between actual coin drop and coin-to-drop meter reading in excess of three percent (3%) and over $25.00. The follow-up performed and results of the investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(6) For each drop period, accounting/auditing employees shall compare the bill-in meter reading to the total bill acceptor drop amount for the period. Discrepancies shall be resolved before the generation/distribution of gaming machine statistical reports.

(7) Follow-up shall be performed for any one machine having an unresolved variance between actual currency drop and bill-in meter reading in excess of an amount that is both more than $25 and at least three percent (3%) of the actual currency drop. The follow-up performed and results of the investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(8) At least annually, accounting/auditing personnel shall randomly verify that EPROM or other equivalent game software media changes are properly reflected in the gaming machine analysis reports.

(9) Accounting/auditing employees shall review exception reports for all computerized gaming machine systems on a daily basis for propriety of transactions and unusual occurrences.

(10) All gaming machine auditing procedures and any follow-up performed shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(n) *Cash-out tickets.* For gaming machines that utilize cash-out tickets, the following standards apply. This standard is not applicable to Tiers A and B. Tier A and B gaming operations shall develop adequate standards governing the security over the issuance of the cash-out paper to the gaming machines and the redemption of cash-out slips.

(1) In addition to the applicable auditing and accounting standards in paragraph (m) of this section, on a quarterly basis, the gaming operation shall foot all jackpot cash-out tickets equal to or greater than $1,200 and trace totals to those produced by the host validation computer system.

(2) The customer may request a cash-out ticket from the gaming machine that reflects all remaining credits. The cash-out ticket shall be printed at the gaming machine by an internal document printer. The cash-out ticket shall be valid for a time period specified by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority. Cash-out tickets may be redeemed for payment or inserted in another gaming machine and wagered, if applicable, during the specified time period.

(3) The customer shall redeem the cash-out ticket at a change booth or cashiers' cage. Alternatively, if a gaming operation utilizes a remote computer validation system, the Tribal gaming regulatory authority, or the gaming operation as approved by the

Tribal gaming regulatory authority, shall develop alternate standards for the maximum amount that can be redeemed, which shall not exceed $2,999.99 per cash-out transaction.

(4) Upon presentation of the cash-out ticket(s) for redemption, the following shall occur:

(i) Scan the bar code via an optical reader or its equivalent; or

(ii) Input the cash-out ticket validation number into the computer.

(5) The information contained in paragraph (n)(4) of this section shall be communicated to the host computer. The host computer shall verify the authenticity of the cash-out ticket and communicate directly to the redeemer of the cash-out ticket.

(6) If valid, the cashier (redeemer of the cash-out ticket) 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. The host validation computer system shall electronically reconcile the cashier's banks for the paid cashed-out tickets.

(7) If invalid, the host computer shall notify the cashier (redeemer of the cash-out ticket). The cashier (redeemer of the cash-out ticket) shall refuse payment to the customer and notify a supervisor of the invalid condition. The supervisor shall resolve the dispute.

(8) If the host validation computer system temporarily goes down, cashiers may redeem cash-out tickets at a change booth or cashier's cage after recording the following:

(i) Serial number of the cash-out ticket;

(ii) Date and time;

(iii) Dollar amount;

(iv) Issuing gaming machine number;

(v) Marking ticket ''paid''; and

(vi) Ticket shall remain in cashier's bank for reconciliation purposes.

(9) Cash-out tickets shall be validated as expeditiously as possible when the host validation computer system is restored.

(10) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures to control cash-out ticket paper, which shall include procedures that:

(i) Mitigate the risk of counterfeiting of cash-out ticket paper;

(ii) Adequately control the inventory of the cash-out ticket paper; and

(iii) Provide for the destruction of all unused cash-out ticket paper.

(iv) Alternatively, if the gaming operation utilizes a computer validation system, this standard shall not apply.

(11) If the host validation computer system is down for more than four (4) hours, the gaming operation shall promptly notify the Tribal gaming regulatory authority or its designated representative.

(12) These gaming machine systems shall comply with all other standards (as applicable) in this part including:

(i) Standards for bill acceptor drop and count;

(ii) Standards for coin drop and count; and

(iii) Standards concerning EPROMS or other equivalent game software media.

(o) *Account access cards.* For gaming machines that utilize account access cards to activate play of the machine, the following standards 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 server shall be housed in a game server room or a secure locked cabinet.

(3) *Customer 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) Customers may access their accounts on the computer system by means of an account access card at the player terminal. Each player terminal may be equipped with a card reader and personal identification number (PIN) pad or touch screen array for this purpose;

(iii) All communications between the player terminal, or bank of player terminals, and the account server shall be encrypted for security reasons.

(4) *Customer account generation standards.* (i) A computer file for each customer shall be prepared by a clerk, with no incompatible functions, prior to the customer being issued an account access card to be utilized for machine play. The customer may select his/her PIN to be used in conjunction with the account access card.

(ii) For each customer file, an employee shall:

(A) Record the customer's name and current address;

(B) The date the account was opened; and

(C) At the time the initial deposit is made, account opened, or credit extended, the identity of the customer shall be verified by examination of a valid driver's license or other reliable identity credential.

(iii) The clerk shall sign-on with a unique password to a terminal equipped with peripherals required to establish a customer account. Passwords are issued and can only be changed by information technology personnel at the discretion of the department director.

(iv) After entering a specified number of incorrect PIN entries at the cage or player terminal, the customer shall be directed to proceed to a clerk to obtain a new PIN. If a customer forgets, misplaces or requests a change to their PIN, the customer shall proceed to a clerk for assistance.

(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 information technology personnel at the discretion of the department director.

(ii) The customer shall present cash, chips, coin or coupons along with their account access card to a cashier to deposit credits.

(iii) The cashier shall complete the transaction by utilizing a card scanner that the cashier shall slide the customer's account access card through.

(iv) The cashier shall accept the funds from the customer 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 customer to sign the deposit slip receipt. One copy of the deposit slip shall be given to the customer. The other copy of the deposit slip shall be secured in the cashier's cash drawer.

(vi) The cashier shall verify the customer's balance before completing the transaction. The cashier shall secure the funds in their cash drawer and return the account access card to the customer.

(vii) Alternatively, if a kiosk is utilized to accept a deposit of credits, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that safeguard the integrity of the kiosk system.

(6) *Prize standards.* (i) Winners at the gaming machines may receive cash, prizes redeemable for cash or merchandise.

(ii) If merchandise prizes are to be awarded, the specific type of prize or prizes that may be won shall be disclosed to the player before the game begins.

(iii) The redemption period of account access cards, as approved by the Tribal gaming regulatory authority,

shall be conspicuously posted in the gaming operation.

(7) *Credit withdrawal.* The customer shall present their account access card to a cashier to withdraw their credits. The cashier shall perform the following:

(i) Scan the account access card;

(ii) Request the customer to enter their PIN, if the PIN was selected by the customer;

(iii) The cashier shall ascertain the amount the customer 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 customer to sign the withdrawal slip;

(v) The cashier shall verify that the account access card and the customer match by:

(A) Comparing the customer to image on the computer screen;

(B) Comparing the customer to image on customer's picture ID; or

(C) Comparing the customer signature on the withdrawal slip to signature on the computer screen.

(vi) The cashier shall verify the customer's balance before completing the transaction. The cashier shall pay the customer the appropriate amount, issue the customer the original withdrawal slip and return the account access card to the customer;

(vii) The 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 copy of the withdrawal slip shall be forwarded to the accounting department at the end of the gaming day; and

(viii) In the event the imaging function is temporarily disabled, customers shall be required to provide positive ID for cash withdrawal transactions at the cashier stations.

(p) *Smart cards.* All smart cards (i.e., cards that possess the means to electronically store and retrieve data) that maintain the only source of account data are prohibited.

[67 FR 43400, June 27, 2002, as amended at 70 FR 23021, May 4, 2005; 70 FR 47106, Aug. 12, 2005; 71 FR 27392, May 11, 2006]

§ 542.14 What are the minimum internal control standards for the cage?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Personal checks, cashier's checks, payroll checks, and counter checks.* (1) If personal checks, cashier's checks, payroll checks, or counter checks are cashed at the cage, the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with appropriate controls for purposes of security and integrity.

(2) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for the acceptance of personal checks, collecting and recording checks returned to the gaming operation after deposit, re-deposit, and write-off authorization.

(3) When counter checks are issued, the following shall be included on the check:

(i) The customer's name and signature;

(ii) The dollar amount of the counter check (both alpha and numeric);

(iii) Customer's bank name and bank account number;

(iv) Date of issuance; and

(v) Signature or initials of the person approving the counter check transaction.

(4) When traveler's 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 issuer.

(c) *Customer deposited funds.* If a gaming operation permits a customer to deposit funds with the gaming operation at the cage, the following standards shall apply.

(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 (c)(2)(i) through (v) is available, the only required information for all copies of the receipt is the receipt number.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that:

(i) Maintain a detailed record by customer name and date of all funds on deposit;

(ii) Maintain a current balance of all customer cash deposits that 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, as approved by the Tribal gaming regulatory authority, 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 Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that verify the customer's identity, including photo identification.

(8) A file for customers shall be prepared prior to acceptance of a deposit.

(d) *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 and shall be supported by documentation.

(2) The cage and vault (including coin room) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison for accuracy and maintenance of individual accountability. Such counts shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated. Unverified transfers of cash and/or cash equivalents are prohibited.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with 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 customers as they are incurred. A suggested bankroll formula will be provided by the Commission upon request.

(e) *Chip and token standards.* The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures for the receipt, inventory, storage, and destruction of gaming chips and tokens.

(f) *Coupon standards.* Any program for the exchange of coupons for chips, tokens, and/or another coupon program shall be approved by the Tribal gaming regulatory authority prior to implementation. If approved, the gaming operation shall establish and comply with procedures that account for and control such programs.

(g) *Accounting/auditing 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 customer and current balance, shall be prepared at least

monthly for active, inactive, settled or written-off accounts.

(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, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(4) On a monthly basis an evaluation of the collection percentage of credit issued to identify unusual trends shall be performed.

(5) All cage and credit accounting procedures and any follow-up performed shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(h) *Extraneous items*. The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures to address the transporting of extraneous items, such as coats, purses, and/or boxes, into and out of the cage, coin room, count room, and/or vault.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.15 What are the minimum internal control standards for credit?

(a) *Computer applications*. For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Credit standards*. The following standards shall apply if the gaming operation authorizes and extends credit to customers:

(1) At least the following information shall be recorded for customers that have credit limits or are issued credit (excluding personal checks, payroll checks, cashier's checks, and traveler's checks):

(i) Customer's name, current address, and signature;

(ii) Identification verifications;

(iii) Authorized credit limit;

(iv) Documentation of authorization by a person designated by management to approve credit limits; and

(v) Credit issuances and payments.

(2) Prior to extending credit, the customer'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 customer (except for known customers).

(3) Credit extensions over a specified dollar amount shall be approved by personnel designated by management.

(4) Proper approval of credit extensions over ten percent (10%) of the previously established limit shall be documented.

(5) The job functions of credit approval (i.e., establishing the customer's credit worthiness) and credit extension (*i.e.*, advancing customer's credit) shall be segregated for credit extensions to a single customer 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 customer in an amount exceeding $2,500, appropriate gaming personnel shall be notified on a timely basis of the customers 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:

(i) Marker number;

(ii) Player's name and signature; and

(iii) 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.

(c) *Payment standards*. (1) All payments received on outstanding credit instruments shall be recorded in ink or other permanent form of recordation 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) that contains:

(i) The same preprinted number on all copies;

(ii) Customer'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 a person 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 be 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; and

(iii) The total amount of the listing of mail receipts shall be reconciled with the total mail receipts recorded on the appropriate accountability form by the accounting department on a random basis (for at least three (3) days per month).

(d) *Access to credit documentation.* (1) Access to credit documentation shall be restricted as follows:

(i) The credit information shall be restricted to those positions that require access and are so authorized by management;

(ii) Outstanding credit instruments shall be restricted to persons authorized by management; and

(iii) Written-off credit instruments shall be further restricted to persons specified by management.

(2) [Reserved]

(e) *Maintenance of credit documentation.* (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.

(f) *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.

(g) *Collection agency 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 the original credit instrument is returned or payment is received.

(2) A person independent of credit transactions and collections shall periodically review the documents in paragraph (g)(1) of this section.

(h) *Accounting/auditing standards.* (1) A person independent of the cage, credit, and collection functions shall perform all of the following at least three (3) times per year:

(i) Ascertain compliance with credit limits and other established credit issuance procedures;

(ii) Randomly reconcile outstanding balances of both active and inactive accounts on the accounts receivable listing to individual credit records and physical instruments;

(iii) Examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded; and

(iv) 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.

(2) [Reserved]

§ 542.16 What are the minimum internal control standards for information technology?

(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 that could cause errors or compromise data or processing integrity.

(i) Management shall ensure that all new gaming vendor hardware and software agreements/contracts contain language requiring the vendor to adhere to tribal internal control standards applicable to the goods and services the vendor is providing.

(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 information technology procedures to go undetected or fraud to be concealed.

(5) Non-information technology 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;

(ii) Passwords shall be changed at least quarterly with changes documented; and

(iii) For computer systems that automatically force a password change on a quarterly basis, documentation shall be maintained listing the systems and the date the user was given access.

(8) Adequate backup and recovery procedures shall be in place that 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 on a sample basis at least annually with documentation of results.

(9) Adequate information technology system documentation shall be maintained, including descriptions of hardware and software, operator manuals, etc.

(b) *Independence of information technology personnel.* (1) The information technology personnel shall be independent of the gaming areas (*e.g.*, cage, pit, count rooms, etc.). Information technology personnel procedures and controls should be documented and responsibilities communicated.

(2) Information technology 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) Information technology personnel shall be restricted from:

(i) Having unauthorized access to cash or other liquid assets; and

(ii) Initiating general or subsidiary ledger entries.

(c) *Gaming program changes.* (1) 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

information technology 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 shall 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.

(2) [Reserved]

(d) *Security logs.* (1) If computer security logs are generated by the system, they shall be reviewed by information technology 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.

(2) This paragraph shall not apply to personal computers.

(e) *Remote dial-up.* (1) If remote dial-up to any associated equipment is allowed for software support, the gaming operation shall maintain an access log that includes:

(i) Name of employee authorizing modem access;

(ii) Name of authorized programmer or manufacturer representative;

(iii) Reason for modem access;

(iv) Description of work performed; and

(v) Date, time, and duration of access.

(2) [Reserved]

(f) *Document storage.* (1) Documents may be scanned or directly stored to an unalterable storage medium under the following conditions.

(i) The storage medium shall contain the exact duplicate of the original document.

(ii) All documents stored on the storage medium shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available upon request by the Commission.

(iii) Upon request and adequate notice by the Commission, hardware (terminal, printer, etc.) shall be made available in order to perform auditing procedures.

(iv) Controls shall exist to ensure the accurate reproduction of records up to and including the printing of stored documents used for auditing purposes.

(v) The storage medium shall be retained for a minimum of five years.

(2) [Reserved]

[67 FR 43400, June 27, 2002, as amended at 71 FR 27392, May 11, 2006]

EFFECTIVE DATE NOTE: At 74 FR 60498, Oct. 10, 2008, § 542.16 was removed and reserved, effective Oct. 13, 2009.

§ 542.17 What are the minimum internal control standards for complimentary services or items?

(a) Each Tribal gaming regulatory authority or gaming operation shall establish and the gaming operation shall comply with procedures for the authorization, issuance, and tracking of complimentary services and items, including cash and non-cash gifts. Such procedures must be approved by the Tribal gaming regulatory authority and 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 monthly, accounting, information technology, or audit personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information for all complimentary items and services equal to or exceeding $100 or an amount established by the Tribal gaming regulatory authority, which shall not be greater than $100:

(1) Name of customer who received the complimentary service or item;

(2) Name(s) of authorized issuer of 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 monthly. These reports shall be made available to the Tribe, Tribal gaming regulatory authority, audit committee, other entity designated by the Tribe, and the Commission upon request.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.18 How does a gaming operation apply for a variance from the standards of the part?

(a) *Tribal gaming regulatory authority approval.* (1) A Tribal gaming regulatory authority may approve a variance for a gaming operation if it has determined that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the Tribal gaming regulatory authority approves a variance, it shall submit to the Chairman of the NIGC, within thirty (30) days, a detailed report, which shall include the following:

(i) A detailed description of the variance;

(ii) An explanation of how the variance achieves a level of control sufficient to accomplish the purpose of the standard it is to replace; and

(iii) Evidence that the Tribal gaming regulatory authority has approved the variance.

(3) In the event that the Tribal gaming regulatory authority or the Tribe chooses to submit a variance request directly to the Chairman, it may do so without the approval requirement set forth in paragraph (a)(2)(iii) of this section and such request shall be deemed as having been approved by the Tribal gaming regulatory authority.

(b) *Review by the Chairman.* (1) Following receipt of the variance approval, the Chairman or his or her designee shall have sixty (60) days to concur with or object to the approval of the variance.

(2) Any objection raised by the Chairman shall be in the form of a written explanation based upon the following criteria:

(i) There is no valid explanation of why the gaming operation should have received a variance approval from the Tribal gaming regulatory authority on the enumerated standard; or

(ii) The variance as approved by the Tribal gaming regulatory authority does not provide a level of control sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to object in writing within sixty (60) days after the date of receipt of a complete submission, the variance shall be considered concurred with by the Chairman.

(4) The 60-day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Chairman.

(c) *Curing Chairman's objections.* (1) Following an objection by the Chairman to the issuance of a variance, the Tribal gaming regulatory authority shall have the opportunity to cure any objections noted by the Chairman.

(2) A Tribal gaming regulatory authority may cure the objections raised by the Chairman by:

(i) Rescinding its initial approval of the variance; or

(ii) Rescinding its initial approval, revising the variance, approving it, and re-submitting it to the Chairman.

(3) Upon any re-submission of a variance approval, the Chairman shall have thirty (30) days to concur with or object to the re-submitted variance.

(4) If the Chairman fails to object in writing within thirty (30) days after the date of receipt of the re-submitted variance, the re-submitted variance shall be considered concurred with by the Chairman.

(5) The thirty (30) day deadline may be extended, provided such extension is mutually agreed upon by the Tribal gaming regulatory authority and the Chairman.

(d) *Appeals*. (1) Upon receipt of objections to a re-submission of a variance, the Tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(i) Within thirty (30) days of receiving an objection to a re-submission, the Tribal gaming regulatory authority shall file its notice of appeal.

(ii) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iii) An appeal under this section shall specify the reasons why the Tribal gaming regulatory authority believes the Chairman's objections should be reviewed, and shall include supporting documentation, if any.

(iv) The Tribal gaming regulatory authority shall be provided with any comments offered by the Chairman to the Commission on the substance of the appeal by the Tribal gaming regulatory authority and shall be offered the opportunity to respond to any such comments.

(v) Within thirty (30) days after receipt of the appeal, the Commission shall render a decision based upon the criteria contained within paragraph (b)(2) of this section unless the Tribal gaming regulatory authority elects to wave the thirty (30) day requirement and to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision.

(vi) In the absence of a decision within the time provided, the Tribal gaming regulatory authority's resubmission shall be considered concurred with by the Commission and become effective.

(2) The Tribal gaming regulatory authority may appeal the Chairman's objection to the approval of a variance to the full Commission without resubmitting the variance by filling a notice of appeal with the full Commission within thirty (30) days of the Chairman's objection and complying with the procedures described in paragraph (d)(1) of this section.

(e) *Effective date of variance*. The gaming operation shall comply with standards that achieve a level of control sufficient to accomplish the purpose of the standard it is to replace until such time as the Commission objects to the Tribal gaming regulatory authority's approval of a variance as provided in paragraph (b) of this section. Concurrence in a variance by the Chairman or Commission is discretionary and 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 Chairman or Commission concurs with the Tribal gaming regulatory authority's approval of a variance.

[70 FR 23022, May 4, 2005]

§ 542.19 What are the minimum internal control standards for accounting?

(a) Each gaming operation shall prepare accurate, complete, legible, and permanent records of all transactions pertaining to revenue and gaming activities.

(b) Each gaming operation shall prepare general accounting records according to Generally Accepted Accounting Principles on a double-entry system of accounting, maintaining detailed, supporting, subsidiary records, including, but not limited to:

(1) Detailed records identifying revenues, expenses, assets, liabilities, and equity for each gaming operation;

(2) Detailed records of all markers, IOU's, returned checks, hold checks, or other similar credit instruments;

(3) Individual and statistical game records to reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop by each table game, and to reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop for each type of table game, by shift, by day, cumulative month-to-date and year-to-date, and individual and statistical game records reflecting similar information for all other games;

(4) Gaming machine analysis reports which, by each machine, compare actual hold percentages to theoretical hold percentages;

(5) The records required by this part and by the Tribal internal control standards;

(6) Journal entries prepared by the gaming operation and by its independent accountants; and

(7) Any other records specifically required to be maintained.

(c) Each gaming operation shall establish administrative and accounting procedures for the purpose of determining effective control over a gaming operation's fiscal affairs. The procedures shall be designed to reasonably ensure that:

(1) Assets are safeguarded;

(2) Financial records are accurate and reliable;

(3) Transactions are performed only in accordance with management's general and specific authorization;

(4) Transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes, and to maintain accountability of assets;

(5) Recorded accountability for assets is compared with actual assets at reasonable intervals, and appropriate action is taken with respect to any discrepancies; and

(6) Functions, duties, and responsibilities are appropriately segregated in accordance with sound business practices.

(d) *Gross gaming revenue computations.* (1) For table games, gross revenue equals the closing table bankroll, plus credit slips for cash, chips, tokens or personal/payroll checks returned to the cage, plus drop, less opening table bankroll and fills to the table, and money transfers issued from the game through the use of a cashless wagering system.

(2) For gaming machines, gross revenue equals drop, less fills, jackpot payouts and personal property awarded to patrons as gambling winnings. Additionally, the initial hopper load is not a fill and does not affect gross revenue. The difference between the initial hopper load and the total amount that is in the hopper at the end of the gaming operation's fiscal year should be adjusted accordingly as an addition to or subtraction from the drop for the year.

(3) For each counter game, gross revenue equals:

(i) The money accepted by the gaming operation on events or games that occur during the month or will occur in subsequent months, less money paid out during the month to patrons on winning wagers (''cash basis''); or

(ii) The money accepted by the gaming operation on events or games that occur during the month, plus money, not previously included in gross revenue, that was accepted by the gaming operation in previous months on events or games occurring in the month, less money paid out during the month to patrons as winning wagers (''modified accrual basis'').

(4) For each card game and any other game in which the gaming operation is not a party to a wager, gross revenue equals all money received by the operation as compensation for conducting the game.

(i) A gaming operation shall not include either shill win or loss in gross revenue computations.

(ii) In computing gross revenue for gaming machines, keno and bingo, the actual cost to the gaming operation of any personal property distributed as losses to patrons may be deducted from winnings (other than costs of travel, lodging, services, food, and beverages), if the gaming operation maintains detailed documents supporting the deduction.

(e) Each gaming operation shall establish internal control systems sufficient to ensure that currency (other than tips or gratuities) received from a patron in the gaming area is promptly placed in a locked box in the table, or, in the case of a cashier, in the appropriate place in the cashier's cage, or on those games which do not have a locked drop box, or on card game tables, in an appropriate place on the table, in the cash register or in another approved repository.

(f) If the gaming operation provides periodic payments to satisfy a payout resulting from a wager, the initial installment payment, when paid, and the actual cost of a payment plan, which is funded by the gaming operation, may be deducted from winnings. The gaming operation is required to obtain the approval of all payment plans from the TGRA. For any funding method which merely guarantees the gaming operation's performance, and under which the gaming operation makes payments

out of cash flow (e.g. irrevocable letters of credits, surety bonds, or other similar methods), the gaming operation may only deduct such payments when paid to the patron.

(g) For payouts by wide-area progressive gaming machine systems, a gaming operation may deduct from winnings only its pro rata share of a wide-area gaming machine system payout.

(h) Cash-out tickets issued at a gaming machine or gaming device shall be deducted from gross revenue as jackpot payouts in the month the tickets are issued by the gaming machine or gaming device. Tickets deducted from gross revenue that are not redeemed within a period, not to exceed 180 days of issuance, shall be included in gross revenue. An unredeemed ticket previously included in gross revenue may be deducted from gross revenue in the month redeemed.

(i) A gaming operation may not deduct from gross revenues the unpaid balance of a credit instrument extended for purposes other than gaming.

(j) A gaming operation may deduct from gross revenue the unpaid balance of a credit instrument if the gaming operation documents, or otherwise keeps detailed records of, compliance with the following requirements. Such records confirming compliance shall be made available to the TGRA or the Commission upon request:

(1) The gaming operation can document that the credit extended was for gaming purposes;

(2) The gaming operation has established procedures and relevant criteria to evaluate a patron's credit reputation or financial resources and to then determine that there is a reasonable basis for extending credit in the amount or sum placed at the patron's disposal;

(3) In the case of personal checks, the gaming operation has established procedures to examine documentation, which would normally be acceptable as a type of identification when cashing checks, and has recorded the patron's bank check guarantee card number or credit card number, or has satisfied paragraph (j)(2) of this section, as management may deem appropriate for the check-cashing authorization granted;

(4) In the case of third-party checks for which cash, chips, or tokens have been issued to the patron, or which were accepted in payment of another credit instrument, the gaming operation has established procedures to examine documentation, normally accepted as a means of identification when cashing checks, and has, for the check's maker or drawer, satisfied paragraph (j)(2) of this section, as management may deem appropriate for the check-cashing authorization granted;

(5) In the case of guaranteed drafts, procedures should be established to ensure compliance with the issuance and acceptance procedures prescribed by the issuer;

(6) The gaming operation has established procedures to ensure that the credit extended is appropriately documented, not least of which would be the patron's identification and signature attesting to the authenticity of the individual credit transactions. The authorizing signature shall be obtained at the time credit is extended.

(7) The gaming operation has established procedures to effectively document its attempt to collect the full amount of the debt. Such documentation would include, but not be limited to, letters sent to the patron, logs of personal or telephone conversations, proof of presentation of the credit instrument to the patron's bank for collection, settlement agreements, or other documents which demonstrate that the gaming operation has made a good faith attempt to collect the full amount of the debt. Such records documenting collection efforts shall be made available to the TGRA or the commission upon request.

(k) Maintenance and preservation of books, records and documents. (1) All original books, records and documents pertaining to the conduct of wagering activities shall be retained by a gaming operation in accordance with the following schedule. A record that summarizes gaming transactions is sufficient, provided that all documents containing an original signature(s) attesting to the accuracy of a gaming related transaction are independently preserved. Original books, records or documents shall not include copies of originals, except for copies that contain

original comments or notations on parts of multi-part forms. The following original books, records and documents shall be retained by a gaming operation for a minimum of five (5) years:

(i) Casino cage documents;

(ii) Documentation supporting the calculation of table game win;

(iii) Documentation supporting the calculation of gaming machine win;

(iv) Documentation supporting the calculation of revenue received from the games of keno, pari-mutuel, bingo, pull-tabs, card games, and all other gaming activities offered by the gaming operation;

(v) Table games statistical analysis reports;

(vi) Gaming machine statistical analysis reports;

(vii) Bingo, pull-tab, keno and pari-mutuel wagering statistical reports;

(viii) Internal audit documentation and reports;

(ix) Documentation supporting the write-off of gaming credit instruments and named credit instruments;

(x) All other books, records and documents pertaining to the conduct of wagering activities that contain original signature(s) attesting to the accuracy of the gaming related transaction.

(2) Unless otherwise specified in this part, all other books, records, and documents shall be retained until such time as the accounting records have been audited by the gaming operation's independent certified public accountants.

(3) The above definition shall apply without regards to the medium by which the book, record or document is generated or maintained (paper, computer-generated, magnetic media, etc.).

[71 FR 27392, May 11, 2006]

§ 542.20 What is a Tier A gaming operation?

A Tier A gaming operation is one with annual gross gaming revenues of more than $1 million but not more than $5 million.

§ 542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by a person independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two persons, at least one of whom is independent of the pit shift being dropped.

(5) All table game 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.

(c) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of two employees.

(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 during the count, shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the

same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, 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.

(d) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game 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.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) 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, unless the count team only has two (2) members in which case the initials of only one (1) verifying member is required.

(5) If cash 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 cash at the cash counter, including rejected cash.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game 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.

(9) Foreign currency exchange forms (if applicable) removed from the table game 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.

(10) 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 to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify

by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of 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.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(e) *Gaming machine bill acceptor drop standards.* (1) A minimum of two 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) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) The bill acceptor canisters shall be removed by a person independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two persons, at least one of whom is independent of the gaming machine department.

(4) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) 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.

(5) If cash counters are utilized and the count room table is used only to empty canisters and sort/stack contents, a count team member shall be able to observe the loading and unloading of all cash at the cash counter, including rejected cash.

(6) Canisters, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a

count team member or a person independent of 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.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) Authorized personnel in an emergency for resolution of a problem.

(g) *Gaming machine coin drop standards.* (1) A minimum of two 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) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(4) 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 drop proceeds. 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 or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(5) 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. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(6) 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.

(7) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(h) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of two employees.

(2) At no time during the weigh/count shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability.

(i) If the gaming machine count is conducted with a continuous mechanical count meter that is not reset during the count and is verified in writing by at least two employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, 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). 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 count documentation.

(i) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.13(m)(3);

(B) Components of the on-the-floor drop system shall include, but not be limited to, a weigh scale, a laptop computer through which weigh/count applications are operated, a security camera available for the mobile scale system, and a VCR to be housed within the video compartment of the mobile scale. The system may include a mule cart used for mobile weigh scale system locomotion.

(C) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(D) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(E) Prior to the drop, a videotape shall be inserted into the VCR used to record the drop in conjunction with the security camera system and the VCR shall be activated;

(F) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(G) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(H) An observer independent of the weigh/drop/count teams (independent observer) shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(I) Physical custody of the key(s) needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(J) The mule key (if applicable), the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(K) A person independent of the weigh/drop/count teams shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(L) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(M) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count; and

(N) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) 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; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor shall not perform the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not

wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coins.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine 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.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Drawing a single line through the error on the gaming machine document, writing the correct figure above the original 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

(*2*) 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.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts prior to the reconciliation of the weigh to the wrap.

(8) 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.

(9) 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.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or a person independent of 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.

(13) 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.

(14) Variances. 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. The results of such investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Security of the coin room inventory during the gaming machine coin count and wrap.* (1) 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 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 (j)(1)(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 (j)(1)(ii)(A) of this section shall be recorded on a summary report(s) that 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.

(iii) The functions described in paragraph (j)(1)(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 (j)(1)(ii)(E).

(2) 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.

(k) *Transfers during the gaming machine coin count and wrap.* (1) Transfers may be permitted during the count and wrap only if permitted under the internal control standards approved by the Tribal gaming regulatory authority.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) that shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by a person independent of the count team who is responsible for authorizing the transfer.

(l) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) 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.

(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.

(m) *Table game drop box key control standards.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming

operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(3) The involvement of at least two persons independent of the cage department shall be required to access stored empty table game drop boxes.

(4) The release keys shall be separately keyed from the contents keys.

(5) At least two count team members are required to be present at the time count room and other count keys are issued for the count.

(6) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(7) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(n) *Table game drop box release keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The table game drop box release keys shall be maintained by a department independent of the pit department.

(3) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(4) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(5) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Bill acceptor canister release keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(3) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(4) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(5) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(p) *Table game drop box storage rack keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys, with the exception of the count team.

(q) *Bill acceptor canister storage rack keys.* (1) Tier A gaming operations shall be exempt from compliance with this

paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation complies with procedures that maintain adequate key control and restricts access to the keys.

(2) Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys, with the exception of the count team.

(r) *Table game drop box contents keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation 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 table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(3) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(4) Only count team members shall be allowed access to table game drop box contents keys during the count process.

(s) *Bill acceptor canister contents keys.* (1) Tier A gaming operations shall be exempt from compliance with this paragraph if the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, establishes and the gaming operation 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 bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(3) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, one of whom must be a supervisor. The reason for access shall be documented with the signatures of all participants and observers.

(4) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(t) *Gaming machine computerized key security systems.* (1) Computerized key security systems which restrict access to the gaming machine drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (l), (o), (q) and (s) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (t)(2)(i) of this section.

(2) For computerized key security systems, the following additional gaming machine key control procedures apply:

(i) Management personnel independent of the gaming machine department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that gaming machine drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the gaming machine drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (t)(2)(ii) of this section requires the presence of two persons from separate departments

from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the gaming machine drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to gaming machine drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the gaming machine drop and count keys. Also, determine whether any gaming machine drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual gaming machine drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the gaming machine drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigation being documented.

(u) *Table games computerized key security systems.* (1) Computerized key security systems which restrict access to the table game drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (m), (n), (p) and (r) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (u)(2)(ii) of this section.

(2) For computerized key security systems, the following additional table game key control procedures apply:

(i) Management personnel independent of the table game department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that table game drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the table game drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (u)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the table games drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to table games drop and count keys, accounting/audit personnel, independent of the

system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the table games drop and count keys. Also, determine whether any table games drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual table games drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the table games drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, table game drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigations being documented.

(v) *Emergency drop procedures*. Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(w) *Equipment standards for gaming machine count*. (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) 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.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least 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 or persons performing the test.

(6) Prior to 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).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply, with procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) 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.

(i) A count team member shall test the coin meter count machine prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

[67 FR 43400, June 27, 2002, as amended at 70 FR 23021, May 4, 2005; 70 FR 47107, Aug. 12, 2005]

§ 542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?

(a) *Internal audit personnel.* (1) For Tier A gaming operations, a separate internal audit department must be maintained. Alternatively, designating personnel (who are independent with respect to the departments/procedures being examined) to perform internal audit work satisfies the requirements of this paragraph.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits.* (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following shall be reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) 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, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, unannounced testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming 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 currency or coin(s) and issue cash-out tickets or gaming machines that do not accept currency or coin(s) and do not return currency or coin(s);

(viii) 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;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(2) In addition to the observation and examinations performed under paragraph (b)(1) 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 (6) months following the date of notification.

(3) 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 American Institute of Certified Public Accountants guide.

(c) *Documentation*. (1) 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, including all instances of noncompliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports*. (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request.

(2) Such audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(e) *Material exceptions*. 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.

(f) *Role of management*. (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception.

(3) Such management responses shall be included in the internal audit report that will be delivered to management, the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(g) *Internal Audit Guidelines*. In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?

(a) Tier A gaming operations must, at a minimum, maintain and operate an unstaffed surveillance system in a secured location whereby the areas under surveillance are continually recorded.

(b) The entrance to the 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 the secured location shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be approved by the Tribal gaming regulatory authority.

(d) The surveillance system shall include date and time generators that possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(e) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(f) Each 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 customers or employees.

(g) Each camera required by the standards in this section shall possess the capability of having its picture recorded. The surveillance system shall include sufficient numbers of recorders to simultaneously record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(h) 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. The Tribal gaming regulatory authority shall be notified of any camera(s) that has malfunctioned for more than twenty-four (24) hours.

(1) In the event of a dedicated camera malfunction, the gaming operation and/or the surveillance department shall, upon identification of the malfunction, provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(i) *Bingo*. The surveillance system shall record the bingo ball drawing device, the game board, and the activities of the employees responsible for drawing, calling, and entering the balls drawn or numbers selected.

(j) *Card games*. The surveillance system shall record the general activities in each card room and be capable of identifying the employees performing the different functions.

(k) *Keno*. The surveillance system shall record the keno ball-drawing device, the general activities in each keno game area, and be capable of identifying the employees performing the different functions.

(l) *Table games*—(1) *Operations with four (4) or more table games*. Except as otherwise provided in paragraphs (l)(3), (l)(4), and (l)(5) of this section, 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 (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify customers and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games*. The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (l)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps*. All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette*. All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel*. All big wheel games shall have one (1) dedicated camera viewing the wheel.

(m) *Progressive table games*. (1) Progressive table games with a progressive jackpot of $25,000 or more shall be recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) 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.

(2) [Reserved]

(n) *Gaming machines*. (1) Except as otherwise provided in paragraphs (n)(2) and (n)(3) of this section, gaming machines offering a payout of more than $250,000 shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine*. In-house progressive gaming machines offering a base payout amount (jackpot reset amount) of more than $100,000 shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine*. Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-

line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (n)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(o) *Currency and coin.* The surveillance system shall record a general overview of all areas where currency or coin may be stored or counted.

(p) *Video recording and/or digital record retention.* (1) All video recordings and/or digital records 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.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of thirty (30) days.

(3) Duly authenticated copies of video recordings and/or digital records shall be provided to the Commission upon request.

(q) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(r) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) 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.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.30 What is a Tier B gaming operation?

A Tier B gaming operation is one with gross gaming revenues of more than $5 million but not more than $15 million.

§ 542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by a person independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two persons, at least one of whom is independent of the pit shift being dropped.

(5) All table game 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.

(6) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(c) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of two employees.

(i) The count shall be viewed live, or on video recording and/or digital record, within seven (7) days by an employee independent of the count.

(ii) [Reserved]

(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 during the count, shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, 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.

(d) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game 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.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) 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, unless the count team only has two (2) members in which case the initials of only one (1) verifying count team member is required.

(5) 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.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided the count is monitored in its entirety by a person independent of the count.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game 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.

(9) Foreign currency exchange forms (if applicable) removed from the table game 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.

(10) 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 to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of 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.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(e) *Gaming machine bill acceptor drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(4) The bill acceptor canisters shall be removed by a person independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two persons, at least one of who is independent of the gaming machine department.

(5) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine bill acceptor count standards.* (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) 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.

(5) If currency counters are utilized and the count room table is used only to empty canisters 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.

(6) Canisters, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to surveillance, provided that the count is monitored in its entirety by a person independent of the count.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of 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.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) Authorized personnel in an emergency for the resolution of a problem.

(g) *Gaming machine coin drop standards.* (1) A minimum of two employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin in order that surveillance may monitor the activities.

(4) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(5) 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 drop proceeds. 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 or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(6) 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. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(7) 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.

(8) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(h) *Hard count room personnel.* (1) The weigh/count shall be performed by a minimum of two employees.

(i) The count shall be viewed either live, or on video recording and/or digital record within seven (7) days by an employee independent of the count.

(ii) [Reserved]

(2) At no time during the weigh/count shall there be fewer than two employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(i) If the gaming machine count is conducted with a continuous mechanical count meter that is not reset during the count and is verified in writing by at least two employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same two persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than two persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, 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). 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 count documentation.

(i) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.13(m)(3);

(B) Components of the on-the-floor drop system shall include, but not be limited to, a weigh scale, a laptop computer through which weigh/count applications are operated, a security camera available for the mobile scale system, and a VCR to be housed within the video compartment of the mobile scale. The system may include a mule cart used for mobile weigh scale system locomotion.

(C) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(D) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(E) Prior to the drop, a videotape shall be inserted into the VCR used to record the drop in conjunction with the security camera system and the VCR shall be activated;

(F) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(G) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(H) An observer independent of the weigh/drop/count teams (independent observer) shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(I) Physical custody of the key(s) needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(J) The mule key (if applicable), the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(K) A person independent of the weigh/drop/count teams shall be required to accompany these keys while

they are checked out, and observe each time the laptop compartment is opened;

(L) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(M) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count; and

(N) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment, end the recording session, eject the videotape, and deliver the videotape to surveillance.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) 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; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor shall not perform the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine 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.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Drawing a single line through the error on the gaming machine document, writing the correct figure above the original 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

(*2*) 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.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts before the reconciliation of the weigh to the wrap.

(8) 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.

(9) 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.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or a person independent of 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.

(13) 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.

(14) Variances. 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. The results of such investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Security of the coin room inventory during the gaming machine coin count and wrap.* (1) 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 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 (j)(1)(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 (j)(1)(ii)(A) of this section shall be recorded on a summary report(s) that 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.

(iii) The functions described in paragraph (j)(1)(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 (j)(1)(ii)(E).

(2) 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.

(k) *Transfers during the gaming machine coin count and wrap.* (1) Transfers may be permitted during the count and wrap only if permitted under the internal control standards approved by the Tribal gaming regulatory authority.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) that shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by a person independent of the count team who is responsible for authorizing the transfer.

(l) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) 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.

(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.

(m) *Table game drop box key control standards.* (1) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(2) The involvement of at least two persons independent of the cage department shall be required to access stored empty table game drop boxes.

(3) The release keys shall be separately keyed from the contents keys.

(4) At least two count team members are required to be present at the time count room and other count keys are issued for the count.

(5) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(6) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(n) *Table game drop box release keys.* (1) The table game drop box release keys shall be maintained by a department independent of the pit department.

(2) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(3) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(4) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Bill acceptor canister release keys.* (1) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(2) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(3) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(4) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(p) *Table game drop box storage rack keys.* Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys with the exception of the count team.

(q) *Bill acceptor canister storage rack keys.* Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys with the exception of the count team.

(r) *Table game drop box contents keys.* (1) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(2) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only count team members shall be allowed access to table game drop box contents keys during the count process.

(s) *Bill acceptor canister contents keys.* (1) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(2) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least two persons from separate departments, one of whom must be a supervisor. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(t) *Gaming machine computerized key security systems.* (1) Computerized key security systems which restrict access to the gaming machine drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (l), (o), (q) and (s) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (t)(2)(i) of this section.

(2) For computerized key security systems, the following additional gaming machine key control procedures apply:

(i) Management personnel independent of the gaming machine department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that gaming machine drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the gaming machine drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (t)(2)(ii) of this section, requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the gaming machine drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to gaming

machine drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the gaming machine drop and count keys. Also, determine whether any gaming machine drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual gaming machine drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the gaming machine drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigation being documented.

(u) *Table games computerized key security systems.* (1) Computerized key security systems which restrict access to the table game drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards, refer to paragraphs (m), (n), (p) and (r) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (u)(2)(ii) of this section.

(2) For computerized key security systems, the following additional table game key control procedures apply:

(i) Management personnel independent of the table game department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that table game drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the table game drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (u)(2)(ii) of this section, requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the table games drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to table games drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the table games drop and count keys. Also, determine whether any table games drop and

count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual table games drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the table games drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, table game drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigations being documented.

(v) *Emergency drop procedures.* Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(w) *Equipment standards for gaming machine count.* (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) 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.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least 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 or persons performing the test.

(6) Prior to 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).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) 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.

(i) A count team member shall test the coin meter count machine before the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

[67 FR 43400, June 27, 2002, as amended at 70 FR 23024, May 4, 2005; 70 FR 47107, Aug. 12, 2005]

§ 542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?

(a) *Internal audit personnel.* (1) For Tier B gaming operations, a separate internal audit department must be maintained. Alternatively, designating personnel (who are independent with respect to the departments/procedures being examined) to perform internal audit work satisfies the requirements of this paragraph.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit

committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits*. (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following shall be reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) 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, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, unannounced testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming 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 currency or coin(s) and issue cash-out tickets or gaming machines that do not accept currency or coin(s) and do not return currency or coin(s);

(viii) 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;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(2) In addition to the observation and examinations performed under paragraph (b)(1) 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 (6) months following the date of notification.

(3) 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 American Institute of Certified Public Accountants guide.

(c) *Documentation*. (1) 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, including all instances of noncompliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the

MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request.

(2) Such audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(e) *Material exceptions.* 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.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception.

(3) Such management responses shall be included in the internal audit report that will be delivered to management, the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?

(a) The surveillance system shall be maintained and operated from a staffed surveillance room and shall provide surveillance over gaming areas.

(b) The entrance to the surveillance room 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 the surveillance room shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be approved by the Tribal gaming regulatory authority. The surveillance department shall maintain a sign-in log of other 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) The surveillance system shall include date and time generators that possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(f) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(g) Each 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 customers or employees.

(h) Each camera required by the standards in this section shall possess the capability of having its picture displayed on a 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.

(i) 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. The Tribal gaming regulatory authority shall be notified of any camera(s) that has malfunctioned for more than twenty-four (24) hours.

(1) In the event of a dedicated camera malfunction, the gaming operation and/or surveillance department shall

immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(j) *Bingo*. (1) The surveillance system shall possess the capability to monitor the bingo ball drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system 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.

(k) *Card games*. The surveillance system shall monitor and record general activities in each card room with sufficient clarity to identify the employees performing the different functions.

(l) *Progressive card games*. (1) Progressive card games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the posted jackpot amount.

(2) [Reserved]

(m) *Keno*. (1) The surveillance system shall possess the capability to monitor the keno ball-drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) 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.

(n) *Pari-mutuel*. The surveillance system shall monitor and record general activities in the pari-mutuel area, to include the ticket writer and cashier areas, with sufficient clarity to identify the employees performing the different functions.

(o) *Table games*—(1) *Operations with four (4) or more table games*. Except as otherwise provided in paragraphs (o)(3), (o)(4), and (o)(5) of this section, 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 (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify customers and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games*. The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (o)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps*. All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette*. All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel*. All big wheel games shall have one (1) dedicated camera viewing the wheel.

(p) *Progressive table games*. (1) Progressive table games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) 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.

(2) [Reserved]

(q) *Gaming machines.* (1) Except as otherwise provided in paragraphs (q)(2) and (q)(3) of this section, gaming machines offering a payout of more than $250,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine, and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* In-house progressive gaming machines offering a base payout amount (jackpot reset amount) of more than $100,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (q)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(r) *Cage and vault.* (1) 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 customers and employees at the counter areas.

(2) Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area.

(3) The surveillance system shall provide an overview of cash transactions. This overview should include the customer, the employee, and the surrounding area.

(s) *Fills and credits.* (1) 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.

(2) Controls provided by a computerized fill and credit system may be deemed an adequate alternative to viewing the fill and credit slips.

(t) *Currency and coin.* (1) The surveillance system shall monitor and record with sufficient clarity all areas where currency or coin may be stored or counted.

(2) The surveillance system shall provide for:

(i) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(ii) Monitoring and recording of the table game drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(iii) 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.

(iv) Monitoring and recording of soft count room, including all doors to the room, all table game drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored and recorded by a dedicated camera during the soft count.

(v) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(u) Change booths. The surveillance system shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(v) *Video recording and/or digital record retention.* (1) All video recordings and/or digital records 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.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of thirty (30) days.

(3) Duly authenticated copies of video recordings and/or digital records shall be provided to the Commission upon request.

(w) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(x) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) 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.

(y) *Surveillance log.* (1) Surveillance personnel shall maintain a log of all surveillance activities.

(2) Such log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department.

(3) At a minimum, the following information shall be recorded in a surveillance log:

(i) Date;

(ii) Time commenced and terminated;

(iii) Activity observed or performed; and

(iv) The name or license credential number of each person who initiates, performs, or supervises the surveillance.

(4) Surveillance personnel shall also record a summary of the results of the surveillance of any suspicious activity. This summary may be maintained in a separate log.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.40 What is a Tier C gaming operation?

A Tier C gaming operation is one with annual gross gaming revenues of more than $15 million.

§ 542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?

(a) *Computer applications.* For any computer applications utilized, alternate documentation and/or procedures that provide at least the level of control described by the standards in this section, as approved by the Tribal gaming regulatory authority, will be acceptable.

(b) *Table game drop standards.* (1) The setting out of empty table game drop boxes and the drop shall be a continuous process.

(2) At the end of each shift:

(i) All locked table game drop boxes shall be removed from the tables by a person independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table opened at any time during each shift or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, table game drop boxes shall be transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(3) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(4) The transporting of table game drop boxes shall be performed by a minimum of two persons, at least one of whom is independent of the pit shift being dropped.

(5) All table game 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.

(6) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(c) *Soft count room personnel.* (1) The table game soft count and the gaming machine bill acceptor count shall be performed by a minimum of three employees.

(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 during the count, shall there be fewer than three employees in the count room until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same three persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than three persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, however, an accounting representative may be used if there is an independent audit of all soft count documentation.

(d) *Table game soft count standards.* (1) The table game soft count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The table game 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.

(i) The count of each box shall be recorded in ink or other permanent form of recordation.

(ii) A second count shall be performed by an employee on the count team who did not perform the initial count.

(iii) 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.

(5) 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.

(6) Table game drop boxes, when empty, shall be shown to another member of the count team, or to another person who is observing the count, or to surveillance, provided the count is monitored in its entirety by a person independent of the count.

(7) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips. Fills and credits shall be traced to or recorded on the count sheet.

(8) Pit marker issue and payment slips (if applicable) removed from the table game 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.

(9) Foreign currency exchange forms (if applicable) removed from the table game 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.

(10) 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 to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(11) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(12) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(13) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(14) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of 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.

(15) Access to stored, full table game drop boxes shall be restricted to authorized members of the drop and count teams.

(e) *Gaming machine bill acceptor drop standards*. (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All bill acceptor canisters shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin so that surveillance may monitor the activities.

(4) The bill acceptor canisters shall be removed by a person independent of the gaming machine department then transported directly to the count room or other equivalently secure area with comparable controls and locked in a secure manner until the count takes place.

(i) Security shall be provided over the bill acceptor canisters removed from the gaming machines and awaiting transport to the count room.

(ii) The transporting of bill acceptor canisters shall be performed by a minimum of two persons, at least one of who is independent of the gaming machine department.

(5) All bill acceptor canisters shall be posted with a number corresponding to a permanent number on the gaming machine.

(f) *Gaming machine bill acceptor count standards*. (1) The gaming machine bill acceptor count shall be performed in a soft count room or other equivalently secure area with comparable controls.

(2) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(3) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(4) The bill acceptor canisters shall be individually emptied and counted in such a manner to prevent the commingling of funds between canisters until the count of the canister has been recorded.

(i) The count of each canister shall be recorded in ink or other permanent form of recordation.

(ii) 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.

(5) If currency counters are utilized and the count room table is used only to empty canisters 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.

(6) Canisters, when empty, shall be shown to another member of the count

team, or to another person who is observing the count, or to surveillance, provided that the count is monitored in its entirety by a person independent of the count.

(7) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(8) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(9) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(10) The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of 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.

(11) Access to stored bill acceptor canisters, full or empty, shall be restricted to:

(i) Authorized members of the drop and count teams; and

(ii) Authorized personnel in an emergency for the resolution of a problem.

(g) *Gaming machine coin drop standards.* (1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of who is independent of the gaming machine department.

(2) All drop buckets shall be removed only at the time previously designated by the gaming operation and reported to the Tribal gaming regulatory authority, except for emergency drops.

(3) Surveillance shall be notified when the drop is to begin in order that surveillance may monitor the activities.

(4) Security shall be provided over the buckets removed from the gaming machine drop cabinets and awaiting transport to the count room.

(5) 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 drop proceeds. 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 or in another equivalently secure area with comparable controls. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(i) Alternatively, a smart bucket system that electronically identifies and tracks the gaming machine number, and facilitates the proper recognition of gaming revenue, shall satisfy the requirements of this paragraph.

(ii) [Reserved]

(6) 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. If the gaming machine is identified with a removable tag that is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(7) 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.

(8) The collection procedures may include procedures for dropping gaming machines that have trays instead of drop buckets.

(h) *Hard count room personnel.* (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 until the drop proceeds have been accepted into cage/vault accountability. Surveillance shall be notified whenever count room personnel exit or enter the count room during the count.

(i) If the gaming machine count is conducted with a continuous mechanical count meter that is not reset during the count and is verified in writing by at least three employees at the start and end of each denomination count, then one employee may perform the wrap.

(ii) [Reserved]

(3) Count team members shall be rotated on a routine basis such that the count team is not consistently the same three persons more than four (4) days per week. This standard shall not apply to gaming operations that utilize a count team of more than three persons.

(4) The count team shall be independent of transactions being reviewed and counted. The count team shall be independent of the cage/vault departments, 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). 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 count documentation.

(i) *Gaming machine coin count and wrap standards.* (1) Coins shall include tokens.

(2) The gaming machine coin count and wrap shall be performed in a count room or other equivalently secure area with comparable controls.

(i) Alternatively, an on-the-floor drop system utilizing a mobile scale shall satisfy the requirements of this paragraph, subject to the following conditions:

(A) The gaming operation shall utilize and maintain an effective on-line gaming machine monitoring system, as described in § 542.13(m)(3);

(B) Components of the on-the-floor drop system shall include, but not be limited to, a weigh scale, a laptop computer through which weigh/count applications are operated, a security camera available for the mobile scale system, and a VCR to be housed within the video compartment of the mobile scale. The system may include a mule cart used for mobile weigh scale system locomotion.

(C) The gaming operation must obtain the security camera available with the system, and this camera must be added in such a way as to eliminate tampering.

(D) Prior to the drop, the drop/count team shall ensure the scale batteries are charged;

(E) Prior to the drop, a videotape shall be inserted into the VCR used to record the drop in conjunction with the security camera system and the VCR shall be activated;

(F) The weigh scale test shall be performed prior to removing the unit from the hard count room for the start of the weigh/drop/count;

(G) Surveillance shall be notified when the weigh/drop/count begins and shall be capable of monitoring the entire process;

(H) An observer independent of the weigh/drop/count teams (independent observer) shall remain by the weigh scale at all times and shall observe the entire weigh/drop/count process;

(I) Physical custody of the key(s) needed to access the laptop and video compartment shall require the involvement of two persons, one of whom is independent of the drop and count team;

(J) The mule key (if applicable), the laptop and video compartment keys, and the remote control for the VCR shall be maintained by a department independent of the gaming machine department. The appropriate personnel shall sign out these keys;

(K) A person independent of the weigh/drop/count teams shall be required to accompany these keys while they are checked out, and observe each time the laptop compartment is opened;

(L) The laptop access panel shall not be opened outside the hard count room, except in instances when the laptop must be rebooted as a result of a crash, lock up, or other situation requiring immediate corrective action;

(M) User access to the system shall be limited to those employees required to have full or limited access to complete the weigh/drop/count; and

(N) When the weigh/drop/count is completed, the independent observer shall access the laptop compartment,

end the recording session, eject the videotape, and deliver the videotape to surveillance.

(ii) [Reserved]

(3) Access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(4) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect that prevent the commingling of funds from different revenue centers.

(5) 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; and

(ii) Count team supervisor function, which involves the control of the gaming machine weigh and wrap process. The supervisor shall not perform the initial recording of the weigh/count unless a weigh scale with a printer is used.

(6) The gaming machine drop shall be counted, wrapped, and reconciled in such a manner to prevent the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop until the count of the gaming machine drop has been recorded. If the coins are not wrapped immediately after being weighed or counted, they shall be secured and not commingled with other coin.

(i) The amount of the gaming machine drop from each machine shall be recorded in ink or other permanent form of recordation on a gaming machine count document by the recorder or mechanically printed by the weigh scale.

(ii) Corrections to information originally recorded by the count team on gaming machine 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.

(A) If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(*1*) Drawing a single line through the error on the gaming machine document, writing the correct figure above the original 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

(*2*) 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.

(B) [Reserved]

(7) If applicable, the weight shall be converted to dollar amounts before the reconciliation of the weigh to the wrap.

(8) 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.

(9) 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.

(10) All members of the count team shall sign the count document or a summary report to attest to their participation in the count.

(11) All drop proceeds and cash 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/employee independent of the revenue generation and the count process for verification. Such person shall certify by signature as to the accuracy of the drop proceeds delivered and received.

(12) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be delivered to the accounting department by a count team member or a person independent of 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.

(13) 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.

(14) Variances. 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. The results of such investigation shall be documented, maintained for inspection, and provided to the Tribal gaming regulatory authority upon request.

(j) *Security of the count room inventory during the gaming machine coin count and wrap.* (1) 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 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 (j)(1)(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 (j)(1)(ii)(A) of this section shall be recorded on a summary report(s) that 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.

(2) 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.

(k) *Transfers during the gaming machine coin count and wrap.* (1) Transfers may be permitted during the count and wrap only if permitted under the internal control standards approved by the Tribal gaming regulatory authority.

(2) Each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) that shall be

subsequently reconciled by the accounting department to ensure the accuracy of the reconciled gaming machine drop.

(3) Each transfer must be counted and signed for by at least two members of the count team and by a person independent of the count team who is responsible for authorizing the transfer.

(l) *Gaming machine drop key control standards.* (1) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(2) 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.

(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.

(m) *Table game drop box key control standards.* (1) Procedures shall be developed and implemented to insure that unauthorized access to empty table game drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(2) The involvement of at least two persons independent of the cage department shall be required to access stored empty table game drop boxes.

(3) The release keys shall be separately keyed from the contents keys.

(4) At least three (two for table game drop box keys in operations with three tables or fewer) count team members are required to be present at the time count room and other count keys are issued for the count.

(5) All duplicate keys shall be maintained in a manner that provides the same degree of control as is required for the original keys. Records shall be maintained for each key duplicated that indicate the number of keys made and destroyed.

(6) Logs shall be maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(n) *Table game drop box release keys.* (1) The table game drop box release keys shall be maintained by a department independent of the pit department.

(2) Only the person(s) authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release keys; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.

(3) Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

(4) For situations requiring access to a table game drop box at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(o) *Bill acceptor canister release keys.* (1) The bill acceptor canister release keys shall be maintained by a department independent of the gaming machine department.

(2) Only the person(s) authorized to remove bill acceptor canisters from the gaming machines shall be allowed access to the release keys.

(3) Persons authorized to remove the bill acceptor canisters shall be precluded from having simultaneous access to the bill acceptor canister contents keys and release keys.

(4) For situations requiring access to a bill acceptor canister at a time other than the scheduled drop, the date, time, and signature of employee signing out/in the release key must be documented.

(p) *Table game drop box storage rack keys.* (1) A person independent of the pit department shall be required to accompany the table game drop box storage rack keys and observe each time table game drop boxes are removed from or placed in storage racks.

(2) Persons authorized to obtain table game drop box storage rack keys shall be precluded from having simultaneous access to table game drop box contents keys with the exception of the count team.

(q) *Bill acceptor canister storage rack keys.* (1) A person independent of the gaming machine department shall be required to accompany the bill acceptor canister storage rack keys and observe each time canisters are removed from or placed in storage racks.

(2) Persons authorized to obtain bill acceptor canister storage rack keys shall be precluded from having simultaneous access to bill acceptor canister contents keys with the exception of the count team.

(r) *Table game drop box contents keys.* (1) The physical custody of the keys needed for accessing stored, full table game drop box contents shall require the involvement of persons from at least two separate departments, with the exception of the count team.

(2) Access to the table game drop box contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only count team members shall be allowed access to table game drop box content keys during the count process.

(s) *Bill acceptor canister contents keys.* (1) The physical custody of the keys needed for accessing stored, full bill acceptor canister contents shall require involvement of persons from two separate departments, with the exception of the count team.

(2) Access to the bill acceptor canister contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, one of whom must be a supervisor. The reason for access shall be documented with the signatures of all participants and observers.

(3) Only the count team members shall be allowed access to bill acceptor canister contents keys during the count process.

(t) *Gaming machine computerized key security systems.* (1) Computerized key security systems which restrict access to the gaming machine drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (l), (o), (q) and (s) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (t)(2)(i) of this section.

(2) For computerized key security systems, the following additional gaming machine key control procedures apply:

(i) Management personnel independent of the gaming machine department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that gaming machine drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the gaming machine drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (t)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) (override key) and does not involve the accessing of the gaming machine drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to gaming machine drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds,

deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the gaming machine drop and count keys. Also, determine whether any gaming machine drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual gaming machine drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the gaming machine drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigation being documented.

(u) *Table games computerized key security systems*. (1) Computerized key security systems which restrict access to the table game drop and count keys through the use of passwords, keys or other means, other than a key custodian, must provide the same degree of control as indicated in the aforementioned key control standards; refer to paragraphs (m), (n), (p) and (r) of this section. Note: This standard does not apply to the system administrator. The system administrator is defined in paragraph (u)(2)(ii) of this section.

(2) For computerized key security systems, the following additional table game key control procedures apply:

(i) Management personnel independent of the table game department assign and control user access to keys in the computerized key security system (*i.e.*, system administrator) to ensure that table game drop and count keys are restricted to authorized employees.

(ii) In the event of an emergency or the key box is inoperable, access to the emergency manual key(s) (a.k.a. override key), used to access the box containing the table game drop and count keys, requires the physical involvement of at least three persons from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(iii) The custody of the keys issued pursuant to paragraph (u)(2)(ii) of this section requires the presence of two persons from separate departments from the time of their issuance until the time of their return.

(iv) Routine physical maintenance that requires accessing the emergency manual key(s) override key) and does not involve the accessing of the table games drop and count keys, only requires the presence of two persons from separate departments. The date, time and reason for access must be documented with the signatures of all participating employees signing out/in the emergency manual key(s).

(3) For computerized key security systems controlling access to table games drop and count keys, accounting/audit personnel, independent of the system administrator, will perform the following procedures:

(i) Daily, review the report generated by the computerized key security system indicating the transactions performed by the individual(s) that adds, deletes, and changes user's access within the system (*i.e.*, system administrator). Determine whether the transactions completed by the system administrator provide an adequate control over the access to the table games drop and count keys. Also, determine whether any table games drop and count key(s) removed or returned to the key cabinet by the system administrator was properly authorized.

(ii) For at least one day each month, review the report generated by the computerized key security system indicating all transactions performed to determine whether any unusual table

games drop and count key removals or key returns occurred.

(iii) At least quarterly, review a sample of users that are assigned access to the table games drop and count keys to determine that their access to the assigned keys is adequate relative to their job position.

(iv) All noted improper transactions or unusual occurrences are investigated with the results documented.

(4) Quarterly, an inventory of all count room, table game drop box release, storage rack and contents keys is performed, and reconciled to records of keys made, issued, and destroyed. Investigations are performed for all keys unaccounted for, with the investigations being documented.

(v) *Emergency drop procedures*. Emergency drop procedures shall be developed by the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority.

(w) *Equipment standards for gaming machine count*. (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) A person independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed. Such access shall be documented and maintained.

(3) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(4) 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.

(5) The weigh scale and weigh scale interface (if applicable) shall be tested by a person or persons independent of the cage, vault, and gaming machine departments and count team at least quarterly. At least 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 or persons performing the test.

(6) Prior to 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).

(7) If a mechanical coin counter is used (instead of a weigh scale), the Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with procedures that are equivalent to those described in paragraphs (u)(4), (u)(5), and (u)(6) of this section.

(8) 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.

(i) A count team member shall test the coin meter count machine before the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(ii) [Reserved]

[67 FR 43400, June 27, 2002, as amended at 70 FR 23026, May 4, 2005; 70 FR 47107, Aug. 12, 2005]

§ 542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?

(a) *Internal audit personnel*. (1) For Tier C gaming operations, a separate internal audit department shall be maintained whose primary function is performing internal audit work and that is independent with respect to the departments subject to audit.

(2) The internal audit personnel shall report directly to the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe in accordance with the definition of internal audit in § 542.2.

(b) *Audits*. (1) Internal audit personnel shall perform audits of all major gaming areas of the gaming operation. The following shall be reviewed at least annually:

(i) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(ii) Pull tabs, including but not limited to, statistical records, winner verification, perpetual inventory, and accountability of sales versus inventory;

(iii) Card games, including but not limited to, card games operation, cash exchange procedures, shill transactions, and count procedures;

(iv) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(v) Pari-mutual wagering, including write and payout procedures, and pari-mutual auditing procedures;

(vi) 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, unannounced testing of count room currency counters and/or currency interface, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(vii) Gaming machines, including but not limited to, jackpot payout and gaming machine fill procedures, gaming machine drop/count and bill acceptor drop/count and subsequent transfer of funds, unannounced testing of weigh scale and weigh scale interface, unannounced testing of count room currency counters and/or currency interface, gaming 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 currency or coin(s) and issue cash-out tickets or gaming machines that do not accept currency or coin(s) and do not return currency or coin(s);

(viii) 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;

(ix) Information technology functions, including review for compliance with information technology standards;

(x) Complimentary service or item, including but not limited to, procedures whereby complimentary service items are issued, authorized, and redeemed; and

(xi) Any other internal audits as required by the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(2) In addition to the observation and examinations performed under paragraph (b)(1) 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 (6) months following the date of notification.

(3) 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 American Institute of Certified Public Accountants guide.

(c) *Documentation*. (1) 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, including all instances of noncompliance.

(2) The internal audit department shall operate with audit programs, which, at a minimum, address the MICS. Additionally, the department shall properly document the work performed, the conclusions reached, and the resolution of all exceptions. Institute of Internal Auditors standards are recommended but not required.

(d) *Reports.* (1) Reports documenting audits performed shall be maintained and made available to the Commission upon request.

(2) Such audit reports shall include the following information:

(i) Audit objectives;

(ii) Audit procedures and scope;

(iii) Findings and conclusions;

(iv) Recommendations, if applicable; and

(v) Management's response.

(e) *Material exceptions.* 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.

(f) *Role of management.* (1) Internal audit findings shall be reported to management.

(2) Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception.

(3) Such management responses shall be included in the internal audit report that will be delivered to management, the Tribe, Tribal gaming regulatory authority, audit committee, or other entity designated by the Tribe.

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47107, Aug. 12, 2005]

§ 542.43 What are the minimum internal control standards for surveillance for a Tier C gaming operation?

(a) The surveillance system shall be maintained and operated from a staffed surveillance room and shall provide surveillance over gaming areas.

(b) The entrance to the surveillance room 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 the surveillance room shall be limited to surveillance personnel, designated employees, and other persons authorized in accordance with the surveillance department policy. Such policy shall be approved by the Tribal gaming regulatory authority. The surveillance department shall maintain a sign-in log of other 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) 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. Auxiliary or backup power sources such as a UPS System, backup generator, or an alternate utility supplier, satisfy this requirement.

(f) The surveillance system shall include date and time generators that possess the capability to display the date and time of recorded events on video and/or digital recordings. The displayed date and time shall not significantly obstruct the recorded view.

(g) The surveillance department shall strive to ensure staff is trained in the use of the equipment, knowledge of the games, and house rules.

(h) Each 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 customers or employees.

(i) Each camera required by the standards in this section shall possess the capability of having its picture displayed on a 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. The Tribal gaming regulatory authority shall be notified

of any camera(s) that has malfunctioned for more than twenty-four (24) hours.

(1) In the event of a dedicated camera malfunction, the gaming operation and/or the surveillance department shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(2) [Reserved]

(k) *Bingo*. (1) The surveillance system shall possess the capability to monitor the bingo ball drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) The surveillance system 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.

(l) *Card games*. The surveillance system shall monitor and record general activities in each card room with sufficient clarity to identify the employees performing the different functions.

(m) *Progressive card games*. (1) Progressive card games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) A view of the posted jackpot amount.

(2) [Reserved]

(n) *Keno*. (1) The surveillance system shall possess the capability to monitor the keno ball-drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera with sufficient clarity to identify the balls drawn or numbers selected.

(2) 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.

(o) *Pari-mutuel*. The surveillance system shall monitor and record general activities in the pari-mutuel area, to include the ticket writer and cashier areas, with sufficient clarity to identify the employees performing the different functions.

(p) *Table games*—(1) *Operations with four (4) or more table games*. Except as otherwise provided in paragraphs (p)(3), (p)(4), and (p)(5) of this section, 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 (2) tables and surveillance must be capable of taping:

(i) With sufficient clarity to identify customers and dealers; and

(ii) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values, and game outcome.

(iii) One (1) dedicated camera per table and one (1) pan-tilt-zoom camera per four (4) tables may be an acceptable alternative procedure to satisfy the requirements of this paragraph.

(2) *Operations with three (3) or fewer table games*. The surveillance system of gaming operations operating three (3) or fewer table games shall:

(i) Comply with the requirements of paragraph (p)(1) of this section; or

(ii) Have one (1) overhead camera at each table.

(3) *Craps*. All craps tables shall have two (2) dedicated cross view cameras covering both ends of the table.

(4) *Roulette*. All roulette areas shall have one (1) overhead dedicated camera covering the roulette wheel and shall also have one (1) dedicated camera covering the play of the table.

(5) *Big wheel*. All big wheel games shall have one (1) dedicated camera viewing the wheel.

(q) *Progressive table games*. (1) Progressive table games with a progressive jackpot of $25,000 or more shall be monitored and recorded by dedicated cameras that provide coverage of:

(i) The table surface, sufficient that the card values and card suits can be clearly identified;

(ii) An overall view of the entire table with sufficient clarity to identify customers and dealer; and

(iii) 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.

(2) [Reserved]

(r) *Gaming machines.* (1) Except as otherwise provided in paragraphs (r)(2) and (r)(3) of this section, gaming machines offering a payout of more than $250,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine, and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(2) *In-house progressive machine.* In-house progressive gaming machines offering a base payout amount (jackpot reset amount) of more than $100,000 shall be monitored and recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an online progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

(i) All customers and employees at the gaming machine; and

(ii) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine.

(4) Notwithstanding paragraph (r)(1) of this section, if the gaming machine is a multi-game machine, the Tribal gaming regulatory authority, or the gaming operation subject to the approval of the Tribal gaming regulatory authority, may develop and implement alternative procedures to verify payouts.

(s) *Cage and vault.* (1) 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 customers and employees at the counter areas.

(2) Each cashier station shall be equipped with one (1) dedicated overhead camera covering the transaction area.

(3) The surveillance system shall provide an overview of cash transactions. This overview should include the customer, the employee, and the surrounding area.

(t) *Fills and credits.* (1) 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.

(2) Controls provided by a computerized fill and credit system maybe deemed an adequate alternative to viewing the fill and credit slips.

(u) *Currency and coin.* (1) The surveillance system shall monitor and record with sufficient clarity all areas where currency or coin may be stored or counted.

(2) Audio capability of the soft count room shall also be maintained.

(3) The surveillance system shall provide for:

(i) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(ii) Monitoring and recording of the table game drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(iii) 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.

(iv) Monitoring and recording of soft count room, including all doors to the room, all table game drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored and recorded by a dedicated camera during the soft count.

(v) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified, or stored during the soft count process.

(v) *Change booths.* The surveillance system shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(w) *Video recording and/or digital record retention.* (1) All video recordings and/or digital records 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.

(2) Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions by security personnel, must be retained for a minimum of thirty (30) days.

(3) Duly authenticated copies of video recordings and/or digital records shall be provided to the Commission upon request.

(x) *Video library log.* A video library log, or comparable alternative procedure approved by the Tribal gaming regulatory authority, shall be maintained to demonstrate compliance with the storage, identification, and retention standards required in this section.

(y) *Malfunction and repair log.* (1) Surveillance personnel shall maintain a log or alternative procedure approved by the Tribal gaming regulatory authority that documents each malfunction and repair of the surveillance system as defined in this section.

(2) 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.

(z) *Surveillance log.* (1) Surveillance personnel shall maintain a log of all surveillance activities.

(2) Such log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department.

(3) At a minimum, the following information shall be recorded in a surveillance log:

(i) Date;

(ii) Time commenced and terminated;

(iii) Activity observed or performed; and

(iv) The name or license credential number of each person who initiates, performs, or supervises the surveillance.

(4) Surveillance personnel shall also record a summary of the results of the surveillance of any suspicious activity. This summary may be maintained in a separate log.

[67 FR 43400, June 27, 2002, as amended at 70 FR 47108, Aug. 12, 2005]

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

Sec.

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

SOURCE: 73 FR 60498, Oct. 10, 2008, unless otherwise noted.

§ 543.1 What does this part cover?

This part, along with §§ 542.14 through 542.15, 542.17 through 542.18, 542.20 through 542.23, 542.30 through 542.33, and 542.40 through 542.43 of this chapter establishes the minimum internal control standards for the conduct of Class II bingo and other games similar to bingo on Indian lands as described in 25 U.S.C. 2701 *et seq.* Throughout this part the term bingo includes other games similar to bingo.

§ 543.2 What are the definitions for this part?

The definitions in this section apply to all sections of this part unless otherwise noted.

Accountability. All financial instruments, receivables, and patron deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Actual bingo win percentage. The percentage calculated by dividing the bingo win by the bingo sales. Can be

calculated for individual prize schedules or type of player interfaces on a per-day or cumulative basis.

Agent. An employee or licensed person authorized by the gaming operation, as approved by the tribal gaming regulatory authority, designated for certain authorizations, decisions, tasks and actions in the gaming operation. This definition is not intended to eliminate nor suggest that appropriate management contracts are not required, where applicable, as referenced in 25 U.S.C. 2711.

Amount in. The total value of all financial instruments and cashless transactions accepted by the Class II gaming system.

Amount out. The total value of all financial instruments and cashless transactions paid by the Class II gaming system, plus the total value of manual payments.

Bingo paper. A consumable physical object that has one or more bingo cards on its face.

Bingo sales. The value of purchases made by players to participate in bingo.

Bingo win. The result of bingo sales minus prize payouts.

Cage. A secure work area within the gaming operation for cashiers which may include a storage area for the gaming operation bankroll.

Cash equivalents. The monetary value that a gaming operation may assign to a document, financial instrument, or anything else of representative value other than cash. A cash equivalent includes, but is not limited to, tokens, chips, coupons, vouchers, payout slips and tickets, and other items to which a gaming operation has assigned an exchange value.

Cashless system. A system that performs cashless transactions and maintains records of those cashless transactions.

Cashless transaction. A movement of funds electronically from one component to another, often to or from a patron deposit account.

Class II game. A game as described in 25 U.S.C. 2703(7)(A).

Class II Gaming System. All components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games including accounting functions mandated by part 547 of this chapter.

Commission. The National Indian Gaming Commission.

Count. The act of counting and recording the drop and/or other funds.

Count room. A secured room where the count is performed.

Coupon. A financial instrument of fixed wagering value, usually paper, that can only be used to acquire noncashable credits through interaction with a voucher system. This does not include instruments such as printed advertising material that cannot be validated directly by a voucher system.

Drop. The total amount of financial instruments removed from financial instrument storage components in Class II gaming systems.

Drop period. The period of time that occurs between sequential drops.

Electronic funds transfer. A transfer of funds to or from a Class II gaming system through the use of a cashless system, which are transfers from an external financial institution.

Financial instrument. Any tangible item of value tendered in Class II game play including but not limited to bills, coins, vouchers, and coupons.

Financial instrument acceptor. Any component that accepts financial instruments.

Financial instrument storage component. Any component that stores financial instruments.

Game software. The operational program or programs that govern the play, display of results, and/or awarding of prizes or credits for Class II games.

Gaming Equipment. All electronic, electro-mechanical, mechanical or other physical components utilized in the play of Class II games.

Independent. The separation of functions so that the person or process monitoring, reviewing or authorizing the controlled transaction(s) is separate from the persons or process performing the controlled transaction(s).

Inter-tribal prize pool. A fund to which multiple tribes contribute from which prizes are paid to winning players at a participating tribal gaming facility and which is administered by one of

the participating tribes or a third party, (*e.g.* progressive prize pools, shared prize pools, etc.).

Internal audit. The audit function of a gaming operation that is independent of the department subject to the audit. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined.

Internal auditor. The person(s) who perform an independent audit. Independence is obtained through the organizational reporting relationship, as the internal audit department must not report to management of the gaming operation. Internal audit personnel may provide audit coverage to more than one operation within a tribe's gaming operation holdings.

Kiosk. A self serve point of sale or other component capable of accepting or dispensing financial instruments and may also be capable of initiating cashless transactions of values to or from a patron deposit account or promotional account.

Manual payout. The payment to a player of some or all of a player's accumulated credits (*e.g.* short pays, cancelled credits, etc.) or an amount owed as a result of a winning event by an agent of the gaming operation.

MICS. Minimum internal control standards in this part.

Non-cashable credit. Credits given by an operator to a patron; placed on a Class II gaming system through a coupon, cashless transaction, or other approved means; and capable of activating play but not being converted to cash.

Patron deposit account. An account maintained on behalf of a patron, for the purpose of depositing and withdrawing cashable funds for the primary purpose of interacting with a gaming activity.

Patron deposits. The funds placed with a designated cashier by patrons for the patrons' use at a future time.

PIN. A personal identification number.

Player interface. Any component(s) of a Class II gaming system, including an electronic or technological aid (not limited to terminals, player stations, handhelds, fixed units, etc.) that directly enable(s) player interaction in a Class II game.

Player tracking system. A system typically used by a gaming operation to record the amount of play of an individual patron.

Prize payout. A transaction associated with a winning event.

Prize schedule. A set of prizes available to players for achieving pre-designated patterns in Class II game(s).

Progressive prize. A prize that increases by a selectable or predefined amount based on play of a Class II game.

Promotional account. A file, record, or other data structure that records transactions involving a patron or patrons that are not otherwise recorded in a patron deposit account.

Promotional prize payout. Merchandise or awards given to players by the gaming operation which is based on gaming activity.

Random number generator (RNG). A software module, hardware component or combination of these designed to produce outputs that are effectively random.

Server. A computer which controls one or more applications or environments.

Shift. An eight-hour period, unless otherwise approved by the tribal gaming regulatory authority, not to exceed 24 hours.

Short pay. The payment of the unpaid balance of an incomplete payout by a player interface.

Tier A. Gaming operations with annual gross gaming revenues of more than $1 million but not more than $5 million.

Tier B. Gaming operations with annual gross gaming revenues of more than $5 million but not more than $15 million.

Tier C. Gaming operations with annual gross gaming revenues of more than $15 million.

Tribal Gaming Regulatory Authority. The entity authorized by tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

Voucher. A financial instrument of fixed value that can only be used to acquire an equivalent value of cashable credits or cash through interaction with a voucher system.

Voucher System. A component of the Class II gaming system or an external

system that securely maintains records of vouchers and coupons; validates payment of vouchers and coupons; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 543.3 How do tribal governments comply with this part?

(a) Compliance based upon tier. [Reserved]

(b) Determination of tier. [Reserved]

(c) Tribal internal control standards. Within six months of October 10, 2008, each tribal gaming regulatory authority must, in accordance with the tribal gaming ordinance, establish or ensure that tribal internal control standards are established and implemented that must:

(1) Provide a level of control that equals or exceeds those set forth in this part; and

(2) Contain standards to identify, detect and deter money laundering in furtherance of a criminal enterprise, terrorism, tax evasion or other unlawful activity. The standards should be designed to facilitate the keeping of records and the filing of reports with the appropriate federal regulatory and law enforcement authorities.

(3) Establish a deadline, which must not exceed six months from the date the tribal gaming regulatory authority establishes internal controls by which a gaming operation must come into compliance with the tribal internal control standards. However, the tribal gaming regulatory authority may extend the deadline by an additional six months if written notice citing justification is provided to the Commission no later than two weeks before the expiration of the six month period.

(d) Gaming operations. Each gaming operation must develop and implement an internal control system that, at a minimum, complies with the tribal internal control standards.

(1) Existing gaming operations. All gaming operations that are operating on or before November 10, 2008, must comply with this part within the time requirements established in paragraph (c) of this section. In the interim, such operations must continue to comply with existing tribal internal control standards.

(2) New gaming operations. All gaming operations that commence operations after April 10, 2009, must comply with this part before commencement of operations.

(e) Submission to Commission. Tribal regulations promulgated pursuant to this part are not required to be submitted to the Commission pursuant to Sec. 522.3(b) of this chapter.

(f) CPA testing. (1) An independent certified public accountant (CPA) must be engaged to perform ''Agreed-Upon Procedures'' to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a tribally approved variance thereto that has received Commission concurrence. The CPA must report each event and procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or tribally approved variance that has received Commission concurrence. The ''Agreed-Upon Procedures'' may be performed in conjunction with the annual audit. The tribe must submit two copies of the report to the Commission within 120 days of the gaming operation's fiscal year end. In performing the compliance audit, the CPA must use the Statements on Standards for Attestation Engagements No. 10 at Sections 101 (''Attest Engagements'') and 201 (''Agreed-Upon Procedures Engagements'') (collectively ''SSAE's''), July 12, 2007, American Institute of Certified Public Accountants Inc, (AICPA). SSAE No. 10 at Sections 101 and 201 are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Commission must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. You may obtain a copy from the American Institute of Certified Public Accountants, 220 Leigh Farm Rd., Durham, NC 27707, 1–888–777–7077, at *http://www.aicpa.org*. You may inspect a copy at the National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005, 202–632–7003. All approved material is available for inspection at the National Archives and

Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The CPA must perform the ''Agreed-Upon Procedures'' in accordance with the following:

(i) As a prerequisite to the evaluation of the gaming operation's internal control systems, it is recommended that the CPA obtain and review an organization chart depicting segregation of functions and responsibilities, a description of the duties and responsibilities of each position shown on the organization chart, and an accurate, detailed narrative description of the gaming operation's procedures in effect that demonstrate compliance.

(ii) Complete the CPA NIGC MICS Compliance checklists or other comparable testing procedures. The checklists should measure compliance on a sampling basis by performing inspections, observations and substantive testing. The CPA must complete separate checklists for bingo and information technology. All questions on each applicable checklist should be completed. Work-paper references are suggested for all ''no'' responses for the results obtained during testing (unless a note in the ''W/P Ref'' can explain the exception).

(iii) The CPA must perform, at a minimum, the following procedures in conjunction with the completion of the checklists:

(A) At least one unannounced observation of each of the following: financial instrument acceptor drop and count. For purposes of these procedures, ''unannounced'' means that no officers, directors, or employees are given advance information regarding the dates or times of such observations. The independent accountant should make arrangements with the gaming operation and tribal gaming regulatory authority to ensure proper identification of the CPA's personnel and to provide for their prompt access to the count rooms. The checklists should provide for drop and count observations. The count room should not be entered until the count is in process and the CPA should not leave the room until the monies have been counted and verified to the count sheet by the CPA and accepted into accountability.

(B) Observations of the gaming operation's agents as they perform their duties.

(C) Interviews with the gaming operation's agents who perform the relevant procedures.

(D) Compliance testing of various documents relevant to the procedures. The scope of such testing should be indicated on the checklist where applicable.

(E) For new gaming operations that have been in operation for three months or less at the end of their business year, performance of this regulation, this section, is not required for the partial period.

(2) Alternatively, at the discretion of the tribe, the tribe may engage an independent CPA to perform the testing, observations and procedures reflected in paragraphs (f)(1)(i), (ii), and (iii) of this section utilizing the tribal internal control standards adopted by the tribal gaming regulatory authority or tribally approved variance that has received Commission concurrence. Accordingly, the CPA will verify compliance by the gaming operation with the tribal internal control standards. Should the tribe elect this alternative, as a prerequisite, the CPA will perform the following:

(i) The CPA must compare the tribal internal control standards to the MICS to ascertain whether the criteria set forth in the MICS or Commission approved variances are adequately addressed.

(ii) The CPA may utilize personnel of the tribal gaming regulatory authority to cross-reference the tribal internal control standards to the MICS, provided the CPA performs a review of the tribal gaming regulatory authority personnel's work and assumes complete responsibility for the proper completion of the work product.

(iii) The CPA must report each procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy paragraph (f)(2)(i) of this section.

(3) Reliance on Internal Auditors. (i) The CPA may rely on the work of an internal auditor, to the extent allowed

by the professional standards, for the performance of the recommended procedures specified in paragraphs (f)(1)(iii)(B), (C), and (D) of this section, and for the completion of the checklists as they relate to the procedures covered therein.

(ii) Agreed-upon procedures are to be performed by the CPA to determine that the internal audit procedures performed for a past 12-month period (includes two six month periods) encompassing a portion or all of the most recent business year has been properly completed. The CPA will apply the following agreed-upon procedures to the gaming operation's written assertion:

(A) Obtain internal audit department work-papers completed for a 12-month period (includes two six month periods) encompassing a portion or all of the most recent business year and determine whether the CPA NIGC MICS Compliance Checklists or other comparable testing procedures were included in the internal audit work-papers and all steps described in the checklists were initialed or signed by an internal audit representative.

(B) For the internal audit work-papers obtained in paragraph (f)(3)(ii)(A) of this section, on a sample basis, re-perform the procedures included in CPA NIGC MICS Compliance Checklists or other comparable testing procedures prepared by internal audit and determine if all instances of non-compliance noted in the sample were documented as such by internal audit. The CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the applicable Drop and Count procedures are not included in the sample re-performance of procedures because the CPA is required to perform the drop and count observations as required under paragraph (f)(1)(iii)(A) of this section of the agreed-upon procedures. The CPA's sample should comprise a minimum of three percent of the procedures required in each CPA NIGC MICS Compliance Checklist or other comparable testing procedures for the bingo department and five percent for the other departments completed by internal audit in compliance with the internal audit MICS. The re-performance of procedures is performed as follows:

(*1*) For inquiries, the CPA should either speak with the same individual or an individual of the same job position as the internal auditor did for the procedure indicated in the CPA checklist.

(*2*) For observations, the CPA should observe the same process as the internal auditor did for the procedure as indicated in their checklist.

(*3*) For document testing, the CPA should look at the same original document as tested by the internal auditor for the procedure as indicated in their checklist. The CPA need only retest the minimum sample size required in the checklist.

(C) The CPA is to investigate and document any differences between their re-performance results and the internal audit results.

(D) Documentation must be maintained for five years by the CPA indicating the procedures re-performed along with the results.

(E) When performing the procedures for paragraph (f)(3)(ii)(B) of this section in subsequent years, the CPA must select a different sample so that the CPA will re-perform substantially all of the procedures after several years.

(F) Additional procedures performed at the request of the Commission, the tribal gaming regulatory authority or management should be included in the Agreed-Upon Procedures report transmitted to the Commission.

(4) Report Format. The NIGC has concluded that the performance of these procedures is an attestation engagement in which the CPA applies such Agreed-Upon Procedures to the gaming operation's assertion that it is in compliance with the MICS and, if applicable under paragraph (f)(2) of this section, the tribal internal control standards and approved variances, provide a level of control that equals or exceeds that of the MICS. Accordingly, the Statements on Standards for Attestation Engagements (SSAE's), specifically SSAE 10, at Sections 101 and 201 are applicable. SSAE 10 provides current, pertinent guidance regarding agreed-upon procedure engagements, and the sample report formats included within those standards should be used, as appropriate, in the preparation of the CPA's agreed-upon procedures report. If future revisions are made to

this standard or new SSAE's are adopted that are applicable to this type of engagement, the CPA is to comply with any revised professional standards in issuing their agreed upon procedures report. The Commission will provide an example report and letter formats upon request that may be used and contain all of the information discussed below. The report must describe all instances of procedural noncompliance (regardless of materiality) with the MICS or approved variations, and all instances where the tribal gaming regulatory authority's regulations do not comply with the MICS. When describing the agreed-upon procedures performed, the CPA should also indicate whether procedures performed by other individuals were utilized to substitute for the procedures required to be performed by the CPA. For each instance of noncompliance noted in the CPA's agreed-upon procedures report, the following information must be included: The citation of the applicable MICS for which the instance of noncompliance was noted; a narrative description of the noncompliance, including the number of exceptions and sample size tested.

(5) Report Submission Requirements. (i) The CPA must prepare a report of the findings for the tribe and management. The tribe must submit two copies of the report to the Commission no later than 120 days after the gaming operation's business year end. This report should be provided in addition to any other reports required to be submitted to the Commission.

(ii) The CPA should maintain the work-papers supporting the report for a minimum of five years. Digital storage is acceptable. The Commission may request access to these work-papers, through the tribe.

(6) CPA NIGC MICS Compliance Checklists. In connection with the CPA testing pursuant to this section and as referenced therein, the Commission will provide CPA MICS Compliance Checklists upon request.

(g) Enforcement of Commission Minimum Internal Control Standards.

(1) Each tribal gaming regulatory authority is required to establish and implement internal control standards pursuant to paragraph (c) of this section. Each gaming operation is then required, pursuant to paragraph (d) of this section, to develop and implement an internal control system that complies with the tribal internal control standards. Failure to do so may subject the tribal operator of the gaming operation, or the management contractor, to penalties under 25 U.S.C. 2713.

(2) Recognizing that tribes are the primary regulator of their gaming operation(s), enforcement action by the Commission will not be initiated under this part without first informing the tribe and tribal gaming regulatory authority of deficiencies in the internal controls of its gaming operation and allowing a reasonable period of time to address such deficiencies. Such prior notice and opportunity for corrective action is not required where the threat to the integrity of the gaming operation is immediate and severe.

§§ 543.4–543.5 [Reserved]

§ 543.6 Does this part apply to small and charitable gaming operations?

(a) Small gaming operations. This part does not apply to small gaming operations provided that:

(1) The tribal gaming regulatory authority permits the operation to be exempt from this part;

(2) The annual gross gaming revenue of the operation does not exceed $2 million; and

(3) The tribal gaming regulatory authority develops and the operation complies with alternate procedures that:

(i) Protect the integrity of games offered;

(ii) Safeguard the assets used in connection with the operation; and

(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles.

(b) Charitable gaming operations. This part does not apply to charitable gaming operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(3) The charitable gaming operation is operated wholly by the charitable organization's agents;

(4) The annual gross gaming revenue of the charitable operation does not exceed $2 million; and

(5) The tribal gaming regulatory authority develops and the charitable gaming operation complies with alternate procedures that:

(i) Protect the integrity of the games offered;

(ii) Safeguard the assets used in connection with the gaming operation; and

(iii) Create, prepare and maintain records in accordance with Generally Accepted Accounting Principles. For more information please see *www.fasb.gov* or *www.fasb.org*.

(c) Independent operators. Nothing in this section exempts gaming operations conducted by independent operators for the benefit of a charitable organization.

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

(a) Bingo Cards—(1) Inventory of bingo paper. (i) The bingo paper inventory must be controlled so as to assure the integrity of the bingo paper being used as follows:

(A) When received, bingo paper must be inventoried and secured by an authorized agent(s) independent of bingo sales;

(B) The issue of bingo paper to the cashiers must be documented and signed for by the authorized agent(s) responsible for inventory control and a cashier. The bingo control log must include the series number of the bingo paper;

(C) The bingo control log must be utilized by the gaming operation to verify the integrity of the bingo paper being used; and

(D) Once each month, an authorized agent(s) independent of both bingo paper sales and bingo paper inventory control must verify the accuracy of the ending balance in the bingo control log by reconciling it with the bingo paper inventory.

(ii) Paragraph (a)(1) of this section does not apply where no physical inventory is applicable.

(2) Bingo sales. (i) There must be an accurate accounting of all bingo sales.

(ii) All bingo sales records must include the following information:

(A) Date;

(B) Time;

(C) Shift or session;

(D) Sales transaction identifiers, which may be the unique card identifier(s) sold or when electronic bingo card faces are sold, the unique identifiers of the card faces sold;

(E) Quantity of bingo cards sold;

(F) Dollar amount of bingo sales;

(G) Signature, initials, or identification of the agent or device who conducted the bingo sales; and

(H) When bingo sales are recorded manually, total sales are verified by an authorized agent independent of the bingo sales being verified and the signature, initials, or identification of the authorized agent who verified the bingo sales is recorded.

(iii) No person shall have unrestricted access to modify bingo sales records.

(iv) An authorized agent independent of the seller must perform the following standards for each seller at the end of each session:

(A) Reconcile the documented total dollar amount of cards sold to the documented quantity of cards sold;

(B) Note any variances; and

(C) Appropriately investigate any noted variances with the results of the follow-up documented.

(3) Voiding bingo cards. (i) Procedures must be established and implemented to prevent the voiding of card sales after the start of the calling of the game for which the bingo card was sold. Cards may not be voided after the start of a game for which the card was sold.

(ii) When a bingo card must be voided the following controls must apply as relevant:

(A) A non-electronic bingo card must be marked void; and

(B) The authorization of the void, by an authorized agent independent of the original sale transaction (supervisor recommended), must be recorded either by signature on the bingo card or by electronically associating the void authorization to the sale transaction of the voided bingo card.

(4) Reissue of previously sold bingo cards. When one or more previously sold bingo cards need to be reissued, the following controls must apply: the original sale of the bingo cards must be

verified; and the reissue of the bingo cards must be documented, including the identity of the agent authorizing reissuance.

(b) Draw—(1) Verification and display. (i) Procedures must be established and implemented to ensure the identity of each object drawn is accurately recorded and transmitted to the participants. The procedures must identify the method used to ensure the identity of each object drawn.

(ii) For all games offering a prize payout of $1,200 or more, as the objects are drawn, the identity of the objects must be immediately recorded and maintained for a minimum of 24 hours.

(iii) Controls must be present to assure that all objects eligible for the draw are available to be drawn prior to the next draw.

(c) Manual Payouts and Short Pays. (1) Procedures must be established and implemented to prevent unauthorized access or fraudulent transactions using manual payout documents, including:

(i) Payout documents must be controlled and completed in a manner that is intended to prevent a custodian of funds from altering the dollar amount on all parts of the payout document subsequent to the manual payout and misappropriating the funds.

(ii) Payout documents must be controlled and completed in a manner that deters any one individual from initiating and producing a fraudulent payout document, obtaining the funds, forging signatures on the payout document, routing all parts of the document, and misappropriating the funds. Recommended procedures of this standard include but are not limited to the following:

(A) Funds are issued either to a second verifier of the manual payout (*i.e.*, someone other than the agents who generated/requested the payout) or to two agents concurrently (*i.e.*, the generator/requestor of the document and the verifier of the manual payout). Both witness the manual payout; or

(B) The routing of one part of the completed document is under the physical control (*e.g.*, dropped in a locked box) of an agent other than the agent that obtained/issued the funds and the agent that obtained/issued the funds must not be able to place the document in the locked box.

(iii) Segregation of responsibilities. The functions of sales and prize payout verification must be segregated, if performed manually. Agents who sell bingo cards on the floor must not verify bingo cards for prize payouts with bingo cards in their possession of the same type as the bingo card being verified for the game. Floor clerks who sell bingo cards on the floor are permitted to announce the identifiers of winning bingo cards.

(iv) Validation. Procedures must be established and implemented to determine the validity of the claim prior to the payment of a prize (*i.e.*, bingo card was sold for the game played, not voided, etc.) by at least two persons.

(v) Verification. Procedures must be established and implemented to ensure that at least two persons verify the winning pattern has been achieved on the winning card prior to the payment of a prize.

(vi) Authorization and signatures. (A) A Class II gaming system may substitute as one authorization/signature verifying, validating or authorizing a winning card of less than $1,200 or other manual payout. Where a Class II gaming system substitutes as an authorization/signature, the manual payout is subject to the limitations provided in this section.

(B) For manual prize payouts of $1,200 or more and less than a predetermined amount not to exceed $50,000, at least two agents must authorize, sign and witness the manual prize payout.

(*1*) Manual prize payouts over a predetermined amount not to exceed $50,000 must require one of the two signatures and verifications to be a supervisory or management employee independent of the operation of bingo.

(*2*) This predetermined amount, not to exceed $50,000, must be authorized by management, approved by the tribal gaming regulatory authority, documented, and maintained.

(2) Documentation, including:

(i) Manual payouts and short-pays exceeding $10 must be documented on a two-part form, of which a restricted system record can be considered one part of the form, and documentation

must include the following information:

(A) Date and time;

(B) Player interface identifier or game identifier;

(C) Dollar amount paid (both alpha and numeric) or description of personal property awarded, including fair market value. Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) Type of manual payout (*e.g.*, prize payout, external bonus payout, short pay, etc.);

(E) Game outcome (*e.g.*, patterns, symbols, bingo card identifier/description, etc.) for manual prize payouts, external bonus description, reason for short pay, etc.;

(F) Preprinted or concurrently printed sequential manual payout identifier; and

(G) Signatures or other authorizations, as required by this part.

(ii) For short-pays of $10 or less, the documentation (single-part form or log is acceptable) must include the following information:

(A) Date and time;

(B) Player interface number;

(C) Dollar amount paid (both alpha and numeric). Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) The signature of at least one agent verifying and witnessing the short pay; and

(E) Reason for short pay.

(iii) In other situations that allow an agent to input a prize payout or change the dollar amount of the prize payout by more than $1 in a Class II gaming system that has an automated prize payout component, two agents, one of which is a supervisory employee, must be physically involved in verifying and witnessing the prize payout.

(iv) For manually paid promotional prize payouts, as a result of the play of a game and where the amount paid is not included in the prize schedule, the documentation (single-part form or log is acceptable) must include the following information:

(A) Date and time;

(B) Player interface number;

(C) Dollar amount paid (both alpha and numeric). Alpha is optional if another unalterable method is used for evidencing the amount paid;

(D) The signature of at least one agent verifying and witnessing the manual promotional prize payout of $599 or less and two agents verifying and witnessing the manual promotional prize payout exceeding $599;

(E) Description or name of the promotion; and

(F) Total amount of manual promotional prize payouts must be recorded by shift, session or other relevant time period.

(v) When a controlled manual payout document is voided, the agent completing the void must clearly mark ''void'' across the face of the document, sign across the face of the document and all parts of the document must be retained for accountability.

(d) Operational controls. (1) Procedures must be established and implemented with the intent to prevent unauthorized access to or fraudulent transactions involving cash or cash equivalents.

(2) Cash or cash equivalents exchanged between two persons must be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or if applicable each session. Unexplained variances must be documented and maintained. Unverified transfers of cash or cash equivalents are prohibited.

(3) Procedures must be established and implemented to control cash or cash equivalents in accordance with this section and based on the amount of the transaction. These procedures include, but are not limited to, counting and recording on an accountability form by shift, session or relevant time period the following:

(i) Inventory, including any increases or decreases;

(ii) Transfers;

(iii) Exchanges, including acknowledging signatures or initials; and

(iv) Resulting variances.

(4) Any change of control of accountability, exchange or transfer must require the cash or cash equivalents be counted and recorded independently by at least two persons and reconciled to the recorded amount.

(e) Gaming equipment. (1) Procedures must be established and implemented with the intention to restrict access to agents for the following:

(i) Controlled gaming equipment/components (*e.g.*, draw objects and back-up draw objects); and

(ii) Random number generator software. (Additional information technology security standards can be found in § 543.16 of this part.)

(2) The game software components of a Class II gaming system will be identified in the test laboratory report. When initially received, the software must be verified to be authentic copies, as certified by the independent testing laboratory.

(3) Procedures must be established relating to the periodic inspection, maintenance, testing, and documentation of a random sampling of gaming equipment/components, including but not limited to:

(i) Software related to game outcome must be authenticated semi-annually by an agent independent of bingo operations by comparing signatures against the test laboratory letter on file with the tribal gaming regulatory authority for that version.

(ii) Class II gaming system interfaces to external systems must be tested annually for accurate communications and appropriate logging of events.

(4) Records must be maintained for each player interface that indicate the date the player interface was placed into service or made available for play, the date the player interface was removed from service and not available for play, and any changes in player interface identifiers.

(f) Voucher systems. (1) The voucher system must be utilized to verify the authenticity of each voucher or coupon redeemed.

(2) If the voucher is valid, the patron is paid the appropriate amount.

(3) Procedures must be established and implemented to document the payment of a claim on a voucher that is not physically available or a voucher that cannot be validated (*e.g.*, mutilated, expired, lost, stolen, etc.).

(i) If paid, appropriate documentation is retained for reconciliation purposes.

(ii) Payment of a voucher for $50 or more, a supervisory employee must review the applicable voucher system, player interface or other transaction history records to verify the validity of the voucher and initial the voucher or documentation prior to payment.

(4) Vouchers redeemed must remain in the cashier's accountability for reconciliation purposes. The voucher redemption system reports must be used to ensure all paid vouchers have been validated.

(5) Vouchers paid during a period while the voucher system is temporarily out of operation must be marked ''paid'', initialed and dated by the cashier. If the voucher is greater than a predetermined amount approved (not to exceed $500), a supervisory employee must approve the payment and evidence that approval by initialing the voucher prior to payment.

(6) Paid vouchers are maintained in the cashier's accountability for reconciliation purposes.

(7) Upon restored operation of the voucher system, vouchers redeemed while the voucher system was temporarily out of operation must be validated as expeditiously as possible.

(8) Unredeemed vouchers can only be voided in the voucher system by supervisory employees. The supervisory employee completing the void must clearly mark ''void'' across the face of the voucher and sign across the face of the voucher, if available. The accounting department will maintain the voided voucher, if available.

(g) Patron accounts and cashless systems. (1) All smart cards (*i.e.*, cards that possess the means to electronically store or retrieve data) that maintain the only source of account data are prohibited.

(2) For patron deposit accounts the following standards must apply:

(i) For each patron deposit account, an agent must:

(A) Require the patron to personally appear at the gaming operation;

(B) Record the type of identification credential examined, the credential number, the expiration date of credential, and the date credential was examined. (*Note:* A patron's driver's license is the preferred method for verifying the patron's identity. A passport, non-

resident alien identification card, other government issued identification credential or another picture identification credential normally acceptable as a means of identification when cashing checks, may also be used.);

(C) Record the patron's name and may include another identifier (*e.g.*, nickname, title, etc.) of the patron, if requested by patron;

(D) Record a unique identity for each patron deposit account;

(E) Record the date the account was opened; and

(F) Provide the account holder with a secure method of access to the account.

(ii) Patron deposit accounts must be established for patrons at designated areas of accountability and the creation of the account must meet all the controls of paragraph (g)(2)(i) of this section when the patron makes an initial deposit of cash or cash equivalents.

(iii) If patron deposit account adjustments may be made by the operation, the operation must be authorized by the account holder to make necessary adjustments. This requirement can be met through the collection of a single authorization that covers the life of the patron deposit account.

(iv) Patron deposits & withdrawals. (A) Prior to the patron making a withdrawal from a patron deposit account, the cashier must verify the identity of the patron and availability of funds. Reliance on a secured PIN entered by the patron is an acceptable method of verifying patron identity.

(B) A multi-part deposit/withdrawal record must be created when the transaction is processed by a cashier, including;

(*1*) Same document number on all copies;

(*2*) Type of transaction, deposit or withdrawal;

(*3*) Name or other identifier of the patron;

(*4*) At least the last four digits of the account identifier;

(*5*) Patron signature for withdrawals, unless a secured PIN is utilized by the patron;

(*6*) Date of transaction;

(*7*) Dollar amount of transaction;

(*8*) Nature of deposit or withdrawal (*e.g.*, cash, check, chips); and

(*9*) Signature of the cashier processing the transaction.

(C) A copy of the transaction record must be secured for reconciliation of the cashier's bank for each shift. All transactions involving patron deposit accounts must be accurately tracked.

(D) The copy of the transaction record must be forwarded to the accounting department at the end of the gaming day.

(E) When a cashier is not involved in the deposit/withdrawal of funds, procedures must be established that safeguard the integrity of the process used.

(v) Patron Deposit Account Adjustments. (A) Adjustments to the patron deposit accounts must be performed by an agent.

(B) A record must be created when the transaction is processed, including;

(*1*) Unique transaction identifier;

(*2*) Type of transaction, adjustment;

(*3*) Name or other identifier of the patron;

(*4*) At least the last four digits of the account identifier;

(*5*) Date of transaction;

(*6*) Dollar amount of transaction;

(*7*) Reason for the adjustment; and

(*8*) Signature or unique identifier for the agent who made the adjustment.

(C) The transaction record must be forwarded to the accounting department at the end of the gaming day.

(vi) Where available, systems reports that indicate the dollar amount of transactions for patron deposit accounts (*e.g.*, deposits, withdrawals, account adjustments, etc.) that should be reflected in each cashier's accountability must be utilized at the conclusion of each shift in the reconciling of funds.

(vii) Cashless transactions and electronic funds transfers to and from patron deposit accounts must be recorded and maintained at the end of the gaming operations specified 24-hour accounting period.

(viii) Procedures must be established to maintain a detailed record for each patron deposit account that includes the dollar amount of all funds deposited and withdrawn, account adjustments made, and the transfers to or from player interfaces.

(ix) Detailed patron deposit account transaction records must be available

to the patron upon reasonable request and to the tribal gaming regulatory authority upon request.

(x) Only dedicated gaming operation bank accounts must be used to record electronic funds transfers to or from the patron deposit accounts. Gaming operation bank accounts dedicated to electronic funds transfers to or from the patron deposit accounts must not be used for any other types of transactions.

(3) For promotional and other accounts the following standards must apply:

(i) Changes to promotional and other accounts must be performed by an agent.

(ii) The following standards apply if a player tracking system is utilized:

(A) In the absence of the patron, modifications to balances on a promotional or other account must be made under the authorization of supervisory employees and must be sufficiently documented (including substantiation of reasons for modification). Modifications are randomly verified by independent agents on a quarterly basis. This standard does not apply to the deletion of balances related to inactive or closed accounts through an automated process.

(B) Access to inactive or closed accounts is restricted to supervisory employees.

(C) Patron identification is required when redeeming values.

Reliance on a secured PIN by the patron is an acceptable method of verifying patron identification.

(h) Promotions. (1) The conditions for participating in promotional programs, including drawings and giveaway programs must be approved and available for patron review at the gaming operation.

(2) Changes to the player tracking systems, promotional accounts, promotion and external bonusing system parameters which control features such as the awarding of bonuses, the issuance of cashable credits, noncashable credits, coupons and vouchers, must be performed under the authority of supervisory employees, independent of the department initiating the change. Alternatively, the changes may be performed by supervisory employees of the department initiating the change if sufficient documentation is generated and the propriety of the changes are randomly verified by supervisory employees independent of the department initiating the change on a monthly basis.

(3) All other changes to the player tracking system must be appropriately documented.

(4) All relevant controls from Sec. 543.16 of this part will apply.

(i) Accounting. (1) Accounting/audit standards. (i) Accounting/auditing procedures must be performed by agents who are independent of the persons who performed the transactions being reviewed.

(ii) All accounting/audit procedures and actions must be documented (*e.g.*, log, checklist, investigations and notation on reports), maintained for inspection and provided to the tribal gaming regulatory authority upon request.

(iii) Accounting/audit procedures must be performed reviewing transactions for relevant accounting periods, including a 24-hour accounting period and reconciled in total for those time periods.

(iv) Accounting/audit procedures must be performed within seven days of the transaction's occurrence date being reviewed.

(v) Accounting/audit procedures must be in place to review variances related to bingo accounting data, which must include at a minimum any variance noted by the Class II gaming system for cashless transactions in and out, electronic funds transfer in and out, external bonus payouts, vouchers out and coupon promotion out.

(vi) At least monthly, an accounting/audit agent must confirm that the appropriate investigation has been completed for the review of variances.

(2) Audit tasks to be performed for each day's business.

(i) Records of bingo card sales must be reviewed for proper authorization, completion and accurate calculations.

(ii) Manual payout summary report, if applicable, must be reviewed for proper authorizations, completion, accurate calculations, and authorization confirming manual payout summary report totals.

(iii) A random sampling of records of manual payouts must be reviewed for proper authorizations and completion for manual payouts less than $1,200.

(iv) Records of all manual prize payouts of $1,200 or more must be reviewed for proper authorizations and completion.

(v) Where manual payout information is available per player interface, records of manual payouts must be reviewed against the recorded manual payout amounts per player interface.

(vi) Manual payout forms must be reconciled to each cashier's accountability documents and in total for each relevant period (*e.g.*, session, shift, day, etc.).

(vii) Records of voided manual payouts must be reviewed for proper authorization and completion.

(viii) Records of voided bingo cards must be reviewed for proper authorization and completion.

(ix) Use of controlled forms must be reviewed to ensure each form is accounted for.

(x) Where bingo sales are available per player interface, bingo sales must be reviewed for reasonableness.

(xi) Amount of financial instruments accepted per financial instrument type and per financial instrument acceptor must be reviewed for reasonableness, to include but not limited to zero amounts.

(xii) Where total prize payouts are available per player interface, total prize payouts must be reviewed for reasonableness.

(xiii) Amount of financial instruments dispensed per financial instrument type and per financial instrument dispenser must be reviewed for reasonableness, to include but not limited to zero amounts.

(xiv) For a random sampling, foot the vouchers redeemed and trace the totals to the totals recorded in the voucher system and to the amount recorded in the applicable cashier's accountability document.

(xv) Daily exception information provided by systems used in the operation of bingo must be reviewed for propriety of transactions and unusual occurrences.

(xvi) Ensure promotional coupons which are not financial instruments are properly cancelled to prevent improper recirculation.

(xvii) Reconcile all parts of the form used to document transfers that increase/decrease the inventory of an accountability (includes booths and any other accountability areas).

(xviii) Reconcile voucher liability (*e.g.*, issued-voided-redeemed-expired = unpaid) to the voucher system records.

(xix) The total of all patron deposit accounts must be reconciled, as follows:

(A) A report must be generated that details each day's beginning and ending balance of patron deposit accounts, adjustments to patron deposit accounts, and all patron deposit account transactions.

(B) Reconcile the beginning and ending balances to the summary of manual deposit/withdrawal and account adjustment documentation to the patron deposit account report.

(xx) Reconcile each day's patron deposit account liability (*e.g.*, deposits ± adjustments − withdrawals = total account balance) to the system records.

(xxi) Reconcile electronic funds transfers to the cashless system records, the records of the outside entity which processed the transactions and the operations dedicated cashless account bank records.

(xxii) Accounting data used in performance analysis may only be altered to correct amounts that were determined to be in error. When correcting accounting data, the correct amount must be indicated in any Class II gaming system exception reports generated.

(xxiii) Accounting/auditing agents must reconcile the audited bingo totals report to the audited bingo accounting data for each day.

(xxiv) Accounting/auditing agents must ensure each day's bingo accounting data used in performance reports has been audited and reconciled.

(xxv) If the Class II gaming system produces exception reports they must be reviewed on a daily basis for propriety of transactions and unusual occurrences.

(3) Audit tasks to be performed at relevant periods:

(i) Financial instrument acceptor data must be recorded immediately

prior to or subsequent to a financial instrument acceptor drop. The financial instrument acceptor amount-in data must be recorded at least weekly. The time between recordings may extend beyond one week in order for a recording to coincide with the end of an accounting period only if such extension is for no longer than six additional days.

(ii) When a player interface is removed from the floor, the financial instrument acceptor contents must be protected to prevent the misappropriation of stored funds.

(iii) When a player interface is permanently removed from the floor, the financial instrument acceptor contents must be counted and recorded.

(iv) For currency interface systems, accounting/auditing agents must make appropriate comparisons of system generated count as recorded in the statistical report at least one drop period per month. Discrepancies must be resolved prior to generation/distribution of reports.

(v) For each drop period, accounting/auditing agents must compare the amount-in per financial instrument accepted by the financial instrument acceptors to the drop amount counted for the period. Discrepancies must be resolved before the generation/distribution of statistical reports.

(vi) Investigation must be performed for any one player interface having an unresolved drop variance in excess of an amount that is both more than $25 and at least three percent (3%) of the actual drop. The investigation performed and results of the investigation must be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vii) The results of a variance investigation, including the date and personnel involved in any investigation, will be documented in the appropriate report and retained. The results will also include any corrective action taken (*e.g.*, accounting data storage component replaced, interface component repaired, software debugged, etc.). The investigation will be completed and the results documented within seven days of the day the variance was noted, unless otherwise justified.

(viii) Procedures must be established and implemented to perform the following on a regular basis, at a minimum of monthly, and using predetermined thresholds:

(A) Where the Class II gaming system is capable of providing information per player interface, identify and investigate player interfaces with total prize payouts exceeding bingo sales;

(B) Where bingo sales is available per player interface, investigate any percentage of increase/decrease exceeding a predetermined threshold, not to exceed 20%, in total bingo sales as compared to a similar period of time that represents consistency in prior performance.

(C) Investigate any exception noted in paragraphs (i)(3)(viii)(A) and (B) of this section and document the findings. The investigation may include procedures to review one or more of the following:

(*1*) Verify days on floor are comparable.

(*2*) Non-prize payouts for authenticity and propriety.

(*3*) Player interface out of service periods.

(*4*) Unusual fluctuations in manual payouts.

(D) If the investigation does not identify an explanation for exceptions then a physical check procedure must be performed, as required by paragraph (i)(3)(viii)(E) of this section.

(E) Document any investigation of unresolved exceptions using a predefined player interface physical check procedure and checklist, to include a minimum of the following as applicable:

(*1*) Verify game software;

(*2*) Verify player interface configurations;

(*3*) Test amount in accounting data for accuracy upon insertion of financial instruments into the financial instrument acceptor;

(*4*) Test amount out accounting data for accuracy upon dispensing of financial instruments from the financial instrument dispenser;

(*5*) Record findings and repairs or modifications made to resolve malfunctions, including date and time, player interface identifier and signature of

the agent performing the player interface physical check, and additional signatures as required; and

(*6*) Maintain player interface physical check records, either in physical or electronic form, for the period prescribed by the procedure.

(ix) For Class II gaming systems, procedures must be performed at least monthly to verify that the system accounting data is accurate.

(x) For Tier C, at least weekly:

(A) Financial instruments accepted at a kiosk must be removed and counted by at least two agents; and

(B) Kiosk transactions must be reconciled to the beginning and ending balances for each kiosk.

(xi) At the conclusion of a promotion, accounting/audit agents must perform procedures (*e.g.*, interviews, review of payout documentation, etc.) to ensure that promotional prize payouts, drawings, and giveaway programs are conducted in accordance with the rules provided to the patrons.

(4) Inter-tribal prize pools. Procedures must be established and implemented to govern the participation in inter-tribal prize pools, which at a minimum must include the review, verification and maintenance of the following records, which must be made available, within a reasonable time of the request, to the tribal gaming regulatory authority upon request:

(i) Summary of contributions in total made to an inter-tribal prize pool;

(ii) Summary of disbursements in total from an inter-tribal prize pool; and

(iii) Summary of inter-tribal prize pool funds availability.

(5) Performance Analysis. (i) Bingo performance data must be recorded at the end of the gaming operations specified 24-hour accounting period. Such data must include:

(A) Amount-in and amount-out for each Class II gaming system.

(B) The total value of all financial instruments accepted by the Class II gaming system by each financial instrument acceptor and by each financial instrument type.

(C) The total value of all financial instruments dispensed by the Class II gaming system and by each financial instrument type.

(D) The total value of all manual payouts by each Class II gaming system.

(E) The total value of bingo purchases for each Class II gaming system.

(F) The total value of prizes paid for each Class II gaming system.

(ii) Procedures must be established and implemented that ensure the reliability of the performance data.

(iii) Upon receipt of the summary of the data, the accounting department must review it for reasonableness using pre-established parameters defined by the gaming operation.

(iv) An agent must record and maintain all required data before and after any maintenance or modifications that involves the clearing of the data (*e.g.*, system software upgrades, data storage media replacement, etc.). The information recorded must be used when reviewing performance reports to ensure that the maintenance or modifications did not improperly affect the data in the reports.

(6) Statistical reporting. (i) The bingo sales, prize payouts, bingo win, and actual bingo win percentages must be recorded for:

(A) Each shift or session;

(B) Each day;

(C) Month-to-date; and

(D) Year-to-date or fiscal year-to-date.

(ii) A monthly comparison for reasonableness must be made of the amount of bingo paper sold from the bingo paper control log to the amount of bingo paper sales revenue recognized.

(iii) Management employees independent of the bingo department must review bingo statistical information on at least a monthly basis.

(iv) Agents independent of the bingo department must investigate any large or unusual statistical fluctuations, as defined by the gaming operation.

(v) Such investigations must be documented, maintained for inspection, and provided to the tribal gaming regulatory authority upon request.

(vi) The actual bingo win percentages used in the statistical reports should not include operating expenses (*e.g.*, a percentage payment to administrators of inter-tribal prize pools), promotional

prize payouts or bonus payouts not included in the prize schedule.

(7) Progressive prize pools. (i) A display that shows the amount of the progressive prize must be conspicuously displayed at or near the player interface(s) to which the prize applies.

(ii) At least once each day, each gaming operation must record the total amount of each progressive prize pool offered at the gaming operation on the progressive log.

(iii) When a manual payment for a progressive prize is made from a progressive prize pool, the amount must be recorded on the progressive log.

(iv) Each gaming operation must record, on the progressive log, the base reset amount of each progressive prize the gaming operation offers.

(v) Procedures must be established and implemented specific to the transfer of progressive amounts in excess of the base reset amount to other awards or prizes. Such procedures may also include other methods of distribution that accrue to the benefit of the gaming public.

§§ 543.8–543.15 [Reserved]

§ 543.16 What are the minimum internal controls for information technology?

(a) Physical security measures restricting access to agents, including vendors, must exist over the servers, including computer terminals, storage media, software and data files to prevent unauthorized access and loss of integrity of data and processing.

(b) Unauthorized individuals must be precluded from having access to the secured computer area(s).

(c) User controls. (1) Computer systems, including application software, must be secured through the use of passwords or other approved means.

(2) Procedures must be established and implemented to ensure that management or independent agents assign and control access to computer system functions.

(3) Passwords must be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user must have his or her own individual user identification and password.

(ii) When an individual has multiple user profiles, only one user profile per application may be used at a time.

(iii) Passwords must be changed at least quarterly with changes documented. Documentation is not required if the system prompts users to change passwords and then denies access if the change is not completed.

(iv) The system must be updated to change the status of terminated users from active to inactive status within 72 hours of termination.

(v) At least quarterly, independent agents must review user access records for appropriate assignment of access and to ensure that terminated users do not have access to system functions.

(vi) Documentation of the quarterly user access review must be maintained.

(vii) System exception information (*e.g.*, changes to system parameters, corrections, overrides, voids, etc.) must be maintained.

(4) Procedures must be established and implemented to ensure access listings are maintained which include at a minimum:

(i) User name or identification number (or equivalent); and

(ii) Listing of functions the user can perform or equivalent means of identifying same.

(d) Adequate backup and recovery procedures must be in place that include:

(1) Daily backup of data files—(i) Backup of all programs. Backup of programs is not required if the program can be reinstalled.

(ii) Secured storage of all backup data files and programs, or other adequate protection to prevent the permanent loss of any data.

(iii) Backup data files and programs may be stored in a secured manner in another building that is physically separated from the building where the system's hardware and software are located. They may also be stored in the same building as the hardware/software as long as they are secured in a fireproof safe or some other manner that will ensure the safety of the files and programs in the event of a fire or other disaster.

(2) Recovery procedures must be tested on a sample basis at least annually with documentation of results.

(e) Access records. (1) Procedures must be established to ensure computer access records, if capable of being generated by the computer system, are reviewed for propriety for the following at a minimum:

(i) Class II gaming systems;

(ii) Accounting/auditing systems;

(iii) Cashless systems;

(iv) Voucher systems;

(v) Player tracking systems; and

(vi) External bonusing systems.

(2) If the computer system cannot deny access after a predetermined number of consecutive unsuccessful attempts to log on, the system must record unsuccessful log on attempts.

(f) Remote access controls. (1) For computer systems that can be accessed remotely, the written system of internal controls must specifically address remote access procedures including, at a minimum:

(i) Record the application remotely accessed, authorized user's name and business address and version number, if applicable;

(ii) Require approved secured connection;

(iii) The procedures used in establishing and using passwords to allow authorized users to access the computer system through remote access;

(iv) The agents involved and procedures performed to enable the physical connection to the computer system when the authorized user requires access to the system through remote access; and

(v) The agents involved and procedures performed to ensure the remote access connection is disconnected when the remote access is no longer required.

(2) In the event of remote access, the information technology employees must prepare a complete record of the access to include:

(i) Name or identifier of the employee authorizing access;

(ii) Name or identifier of the authorized user accessing system;

(iii) Date, time, and duration of access; and

(iv) Description of work performed in adequate detail to include the old and new version numbers, if applicable of any software that was modified, and details regarding any other changes made to the system.

PARTS 544–546 [RESERVED]

PART 547—MINIMUM TECHNICAL STANDARDS FOR GAMING EQUIPMENT USED WITH THE PLAY OF CLASS II GAMES

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

SOURCE: 73 FR 60525, Oct. 10, 2008, unless otherwise noted.

§ 547.1 What is the purpose of this part?

The Indian Gaming Regulatory Act, 25 U.S.C. 2703(7)(A)(i), permits the use of electronic, computer, or other technologic aids in connection with the

play of Class II games. This part establishes the minimum technical standards governing the use of such aids.

§ 547.2 How do these regulations affect state jurisdiction?

Nothing in this part shall be construed to grant to a state jurisdiction over Class II gaming or to extend a state's jurisdiction over Class III gaming.

§ 547.3 What are the definitions for this part?

For the purposes of this part, the following definitions apply:

Account access component. A component within a Class II gaming system that reads or recognizes account access media and gives a patron the ability to interact with his or her account.

Account access medium. A magnetic stripe card or any other medium inserted into, or otherwise made to interact with, an account access component in order to give a patron the ability to interact with an account.

Audit mode. The mode where it is possible to view Class II gaming system accounting functions, statistics, etc. and perform non-player-related functions.

Agent. An employee or other person authorized by the gaming operation, as approved by the tribal gaming regulatory authority, designated for certain decisions, tasks and actions in the gaming operation.

Cancel credit. An action initiated by the Class II gaming system where some or all of a player's credits are removed by an attendant and paid to the player.

Cashless system. A system that performs cashless transactions and maintains records of those cashless transactions.

Cashless transaction. A movement of funds electronically from one component to another, often to or from a patron deposit account.

CD–ROM. Compact Disc—Read Only Memory.

Chairman. The Chairman of the National Indian Gaming Commission.

Class II game. The same as ''class II gaming'' in 25 U.S.C. 2703(7)(A).

Class II gaming system. All components, whether or not technologic aids in electronic, computer, mechanical, or other technologic form, that function together to aid the play of one or more Class II games, including accounting functions mandated by these regulations.

Commission. The National Indian Gaming Commission established by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*

Coupon. A financial instrument of fixed wagering value, usually paper, that can only be used to acquire noncashable credits through interaction with a voucher system. This does not include instruments such as printed advertising material that cannot be validated directly by a voucher system.

Critical memory. Memory locations storing data essential to the functionality of the Class II gaming system.

DLL. A Dynamic-Link Library file.

Download package. Approved data sent to a component of a Class II gaming system for such purposes as changing the component software.

DVD. Digital Video Disk or Digital Versatile Disk.

Electromagnetic interference. The physical characteristic of an electronic component to emit electronic noise either into free air, onto the power lines, or onto communication cables.

Electrostatic discharge. A single-event, rapid transfer of electrostatic charge between two objects, usually resulting when two objects at different potentials come into direct contact with each other.

EPROM. Erasable Programmable Read Only Memory—a storage area that may be filled with data and information, that once written is not modifiable, and that is retained even if there is no power applied to the machine.

Fault. An event that when detected by a Class II gaming system causes a discontinuance of game play or other component functions.

Financial instrument. Any tangible item of value tendered in Class II game play, including, but not limited to, bills, coins, vouchers and coupons.

Financial instrument acceptor. Any component that accepts financial instruments.

Financial instrument dispenser. Any component that dispenses financial instruments.

Financial instrument storage component. Any component that stores financial instruments.

Flash memory. Non-volatile memory that retains its data when the power is turned off and that can be electronically erased and reprogrammed without being removed from the circuit board.

Game software. The operational program or programs that govern the play, display of results, and/or awarding of prizes or credits for Class II games.

Gaming equipment. All electronic, electro-mechanical, mechanical, or other physical components utilized in the play of Class II games.

Hardware. Gaming equipment.

Interruption. Any form of mis-operation, component failure, or interference to the Class II gaming equipment.

Modification. A revision to any hardware or software used in a Class II gaming system.

Non-cashable credit. Credits given by an operator to a patron; placed on an Class II gaming system through a coupon, cashless transaction or other approved means; and capable of activating play but not being converted to cash.

Patron deposit account. An account maintained on behalf of a patron, for the purpose of depositing and withdrawing cashable funds for the primary purpose of interacting with a gaming activity.

Player interface. Any component or components of a Class II gaming system, including an electronic or technologic aid (not limited to terminals, player stations, handhelds, fixed units, etc.), that directly enables player interaction in a Class II game.

Prize schedule. The set of prizes available to players for achieving pre-designated patterns in the Class II game.

Program storage media. An electronic data storage component, such as a CD–ROM, EPROM, hard disk, or flash memory on which software is stored and from which software is read.

Progressive prize. A prize that increases by a selectable or predefined amount based on play of a Class II game.

Random number generator (RNG). A software module, hardware component or combination of these designed to produce outputs that are effectively random.

Reflexive software. Any software that has the ability to manipulate and/or replace a randomly generated outcome for the purpose of changing the results of a Class II game.

Removable/rewritable storage media. Program or data storage components that can be removed from gaming equipment and be written to, or rewritten by, the gaming equipment or by other equipment designed for that purpose.

Server. A computer that controls one or more applications or environments within a Class II gaming system.

Test/diagnostics mode. A mode on a component that allows various tests to be performed on the Class II gaming system hardware and software.

Testing laboratory. An organization recognized by a tribal gaming regulatory authority pursuant to § 547.4(f).

Tribal gaming regulatory authority. The entity authorized by tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

Voucher. A financial instrument of fixed wagering value, usually paper, that can only be used to acquire an equivalent value of cashable credits or cash through interaction with a voucher system.

Voucher system. A component of the Class II gaming system or an external system that securely maintains records of vouchers and coupons; validates payment of vouchers; records successful or failed payments of vouchers and coupons; and controls the purging of expired vouchers and coupons.

§ 547.4 How does a tribal government, tribal gaming regulatory authority, or tribal gaming operation comply with this part?

(a) *Limited immediate compliance*. A tribal gaming regulatory authority shall:

(1) Require that all Class II gaming system software that affects the play of the Class II game be submitted, together with the signature verification

required by §547.8(f), to a testing laboratory recognized pursuant to paragraph (f) of this section within 120 days after November 10, 2008;

(2) Require that the testing laboratory test the submission to the standards established by §547.8(b), §547.8(f), §547.14, the minimum probability standards of §547.5(c), and to any additional technical standards adopted by the tribal gaming regulatory authority;

(3) Require that the testing laboratory provide the tribal gaming regulatory authority with a formal written report setting forth and certifying to the findings and conclusions of the test;

(4) Make a finding, in the form of a certificate provided to the supplier or manufacturer of the Class II gaming system, that the Class II gaming system qualifies for grandfather status under the provisions of this section, but only upon receipt of a testing laboratory's report that the Class II gaming system is compliant with §547.8(b), §547.8(f), the minimum probability standards of §547.5(c), §547.14, and any other technical standards adopted by the tribal gaming regulatory authority. If the tribal gaming regulatory authority does not issue the certificate, or if the testing laboratory finds that the Class II gaming system is not compliant with §547.8(b), §547.8(f), the minimum probability standards of §547.5(c), §547.14, or any other technical standards adopted by the tribal gaming regulatory authority, then the gaming system shall immediately be removed from play and not be utilized.

(5) Retain a copy of any testing laboratory's report so long as the Class II gaming system that is the subject of the report remains available to the public for play;

(6) Retain a copy of any certificate of grandfather status so long as the Class II gaming system that is the subject of the certificate remains available to the public for play; and

(7) Require the supplier of any player interface to designate with a permanently affixed label each player interface with an identifying number and the date of manufacture or a statement that the date of manufacture was on or before the effective date of this part. The tribal gaming regulatory authority shall also require the supplier to provide a written declaration or affidavit affirming that the date of manufacture was on or before November 10, 2008.

(b) *Grandfather provisions.* All Class II gaming systems manufactured or placed in a tribal facility on or before the effective date of this part and certified pursuant to paragraph (a) of this section are grandfathered Class II gaming systems for which the following provisions apply:

(1) Grandfathered Class II gaming systems may continue in operation for a period of five years from November 10, 2008.

(2) Grandfathered Class II gaming system shall be available for use at any tribal gaming facility subject to approval by the tribal gaming regulatory authority, which shall transmit its notice of that approval, identifying the grandfathered Class II gaming system and its components, to the Commission.

(3) As permitted by the tribal gaming regulatory authority, individual hardware or software components of a grandfathered Class II gaming system may be repaired or replaced to ensure proper functioning, security, or integrity of the grandfathered Class II gaming system.

(4) All modifications that affect the play of a grandfathered Class II gaming system must be approved pursuant to paragraph (c) of this section, except for the following:

(i) Any software modifications that the tribal gaming regulatory authority finds will maintain or advance the system's overall compliance with this part or any applicable provisions of parts 542 and 543 of this chapter, after receiving a new testing laboratory report that the modifications are compliant with the standards established by §547.8(b), the minimum probability requirements of §547.5(c), §547.14, and any other standards adopted by the tribal gaming regulatory authority;

(ii) Any hardware modifications that the tribal gaming regulatory authority finds will maintain or advance the system's overall compliance with this part or any applicable provisions of parts 542 and 543 of this chapter; and

(iii) Any other modification to the software of a grandfathered Class II gaming system that the tribal gaming regulatory authority finds will not detract from, compromise or prejudice:

(A) The proper functioning, security, or integrity of the Class II gaming system, and

(B) The gaming system's overall compliance with the requirements of this part or any applicable provisions of parts 542 and 543 of this chapter.

(iv) No such modification may be implemented without the approval of the tribal gaming regulatory authority. The tribal gaming regulatory authority shall maintain a record of the modification so long as the Class II gaming system that is the subject of the modification remains available to the public for play and shall make the record available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(c) *Submission, testing, and approval—generally.* Except as provided in paragraphs (b) and (d) of this section, no tribal gaming regulatory authority shall permit in a tribal gaming operation the use of any Class II gaming system, or any associated cashless system or voucher system or any modification thereto, unless:

(1) The Class II gaming system, cashless system, voucher payment system, or modification has been submitted to a testing laboratory;

(2) The testing laboratory tests the submission to the standards established by:

(i) This part;

(ii) Any applicable provisions of parts 542 and 543 of this chapter that are testable by the testing laboratory; and

(iii) The tribal gaming regulatory authority;

(3) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying to its findings and conclusions; and

(4)(i) Following receipt of the testing laboratory's report, the tribal gaming regulatory authority makes a finding that the Class II gaming system, cashless system, or voucher system conforms to the standards established by:

(A) This part;

(B) Any applicable provisions of parts 542 and 543 of this chapter that are testable by the testing laboratory; and

(C) The tribal gaming regulatory authority.

(ii) The tribal gaming regulatory authority shall retain a copy of the testing laboratory's report so long as the Class II gaming system, cashless system, voucher system, or modification thereto that is the subject of the report remains available to the public for play in its gaming operation.

(d) *Emergency hardware and software modifications.* (1) A tribal gaming regulatory authority, in its discretion, may permit modified hardware or software to be made available for play without prior laboratory testing or review if the modified hardware or software is:

(i) Necessary to correct a problem affecting the fairness, security, or integrity of a game or accounting system or any cashless system, or voucher system; or

(ii) Unrelated to game play, an accounting system, a cashless system, or a voucher system.

(2) If a tribal gaming regulatory authority authorizes new or modified software or hardware to be made available for play or use without prior testing laboratory review, the tribal gaming regulatory authority shall thereafter require the hardware or software manufacturer to:

(i) Immediately advise other users of the same hardware or software of the importance and availability of the update;

(ii) Immediately submit the new or modified hardware or software to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of parts 542 and 543 of this chapter that are testable by the testing laboratory; and

(iii) Immediately provide the tribal gaming regulatory authority with a software signature verification tool meeting the requirements of § 547.8(f) for any new or modified software.

(3) If a tribal gaming regulatory authority authorizes a software or hardware modification under this paragraph, it shall maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play and shall make the record available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(e) *Compliance by charitable gaming operations*. This part shall not apply to charitable gaming operations, provided that:

(1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;

(2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;

(3) The tribal gaming regulatory authority permits the charitable organization to be exempt from this part;

(4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed $1,000,000.

(f) *Testing laboratories*. (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:

(i) It demonstrates its integrity, independence and financial stability to the tribal gaming regulatory authority.

(ii) It demonstrates its technical skill and capability to the tribal gaming regulatory authority.

(iii) It is not owned or operated by the same tribe or tribal gaming regulatory authority for whom it is providing the testing, evaluating, and reporting functions required by this section.

(iv) The tribal gaming regulatory authority:

(A) Makes a suitability determination of the testing laboratory based upon standards no less stringent than those set out in §§ 533.6(b)(1)(ii) through (v) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or

(B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory authority in the United States.

(v) After reviewing the suitability determination and the information provided by the testing laboratory, the tribal gaming regulatory authority determines that the testing laboratory is qualified to test and evaluate Class II gaming systems.

(2) The tribal gaming regulatory authority shall:

(i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iv) and (f)(1)(v) of this section for a minimum of three years and shall make the records available to the Commission upon request. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

(ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.

(iii) Require the testing laboratory to provide notice of any material changes to the information provided to the tribal gaming regulatory authority.

§ 547.5 What are the rules of interpretation and of general application for this part?

(a) *Minimum standards*. A tribal gaming regulatory authority may establish and implement additional technical standards that are as stringent as, or more stringent than, those set out in this part.

(b) *Only applicable standards apply*. Gaming equipment and software used with Class II gaming systems shall meet all applicable requirements of this part. For example, if a Class II gaming system lacks the ability to

print or accept vouchers, then any standards that govern vouchers do not apply.

(c) *Fairness*. No Class II gaming system shall cheat or mislead users. All prizes advertised shall be available to win. No progressive prize shall have a probability of winning less than 1 in 100,000,000. No other prize shall have a probability of winning less than 1 in 50,000,000.

(d) *Approved equipment and software only*. All gaming equipment and software used with Class II gaming systems shall be identical in all respects to a prototype reviewed and tested by a testing laboratory and approved for use by the tribal gaming regulatory authority pursuant to § 547.4(a) through (c). Unapproved software shall not be loaded onto or stored on any program storage medium used in a Class II gaming system, except as provided in § 547.4(d).

(e) *Proper functioning*. All gaming equipment and software used with Class II gaming systems shall perform according to the manufacturer's design and operating specifications.

(f) *No Limitation of Technology*. This part should not be interpreted to limit the use of technology or to preclude the use of technology not specifically referenced.

(g) *Severability*. If any provision of this part is declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this part.

§ 547.6 What are the minimum technical standards for enrolling and enabling Class II gaming system components?

(a) *General requirements*. Class II gaming systems shall provide a method to:

(1) Enroll and unenroll system components;

(2) Enable and disable specific system components.

(b) *Specific requirements*. Class II gaming systems shall:

(1) Ensure that only enrolled and enabled system components participate in gaming; and

(2) Ensure that the default condition for components shall be unenrolled and disabled.

§ 547.7 What are the minimum technical hardware standards applicable to Class II gaming systems?

(a) *General requirements*. (1) The Class II gaming system shall operate in compliance with applicable regulations of the Federal Communications Commission.

(2) Prior to approval by the tribal gaming regulatory authority pursuant to § 547.4(c), the Class II gaming system shall have obtained from Underwriters' Laboratories, or its equivalent, relevant certification(s) required for equipment of its type, including but not limited to certifications for liquid spills, electromagnetic interference, etc.

(b) *Printed circuit boards*. (1) Printed circuit boards that have the potential to affect the outcome or integrity of the game, and are specially manufactured or proprietary and not off-the-shelf, shall display a unique identifier such as a part number and/or revision number, which shall be updated to reflect new revisions or modifications of the board.

(2) Switches or jumpers on all circuit boards that have the potential to affect the outcome or integrity of any game, progressive award, financial instrument, cashless transaction, voucher transaction, or accounting records shall be capable of being sealed.

(c) *Electrostatic discharge*. Class II gaming system components accessible to the public shall be constructed so that they exhibit immunity to human body electrostatic discharges on areas exposed to contact. Static discharges of ±15 kV for air discharges and ±7.5 kV for contact discharges may not cause damage, or inhibit operation or integrity of the Class II gaming system.

(d) *Physical enclosures*. Physical enclosures shall be of a robust construction designed to resist determined illegal entry. All protuberances and attachments such as buttons, identification plates, and labels shall be sufficiently robust to avoid unauthorized removal.

(e) *Player interface*. The player interface shall include a method or means to:

(1) Display information to a player; and

(2) Allow the player to interact with the Class II gaming system.

(f) *Account access components.* A Class II gaming system component that reads account access media shall be located within a secure, locked or tamper-evident area or in a cabinet or housing that is of a robust construction designed to resist determined illegal entry and to protect internal components. In addition, the account access component:

(1) Shall be constructed so that physical tampering leaves evidence of such tampering; and

(2) Shall provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition.

(g) *Financial instrument storage components.* Any Class II gaming system components that store financial instruments and that are not operated under the direct control of a gaming operation employee or agent shall be located within a secure and locked area or in a locked cabinet or housing that is of a robust construction designed to resist determined illegal entry and to protect internal components.

(h) *Financial instrument acceptors.* (1) Any Class II gaming system components that handle financial instruments and that are not operated under the direct control of an agent shall:

(i) Be located within a secure, locked and tamper-evident area or in a locked cabinet or housing that is of a robust construction designed to resist determined illegal entry and to protect internal components;

(ii) Be able to detect the entry of valid or invalid financial instruments and to provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition; and

(iii) Be constructed to permit communication with the Class II gaming system of the accounting information required by §547.9(a) and by applicable provisions of any Commission and tribal gaming regulatory regulations governing minimum internal control standards.

(2) Prior to completion of a valid financial instrument transaction by the Class II gaming system, no monetary amount related to that instrument shall be available for play. For example, credits shall not be available for play until currency or coupon inserted into an acceptor is secured in the storage component.

(3) The monetary amount related to all valid financial instrument transactions by the Class II gaming system shall be recorded as required by §547.9(a) and the applicable provisions of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(i) *Financial instrument dispensers.* (1) Any Class II gaming system components that dispense financial instruments and that are not operated under the direct control of a gaming operation employee or agent shall:

(i) Be located within a secure, locked and tamper-evident area or in a locked cabinet or housing that is of a robust construction designed to resist determined illegal entry and to protect internal components;

(ii) Provide a method to enable the Class II gaming system to interpret and act upon valid or invalid input or error condition; and

(iii) Be constructed to permit communication with the Class II gaming system of the accounting information required by §547.9(a) and by applicable provisions of any Commission and tribal gaming regulatory regulations governing minimum internal control standards.

(2) The monetary amount related to all valid financial instrument transactions by the Class II gaming system shall be recorded as required by §547.9(a), the applicable provisions of parts 542 and 543 of this chapter, and any tribal gaming regulatory authority regulations governing minimum internal control standards.

(j) *Game Outcome Determination Components.* Any Class II gaming system logic components that affect the game outcome and that are not operated under the direct control of a gaming operation employee or agent shall be located within a secure, locked and tamper-evident area or in a locked cabinet or housing that is of a robust construction designed to resist determined illegal entry and to protect internal components. DIP switches or jumpers

that can affect the integrity of the Class II gaming system must be capable of being sealed by the tribal gaming regulatory authority.

(k) *Door access detection*. All components of the Class II gaming system that are locked in order to meet the requirements of this part shall include a sensor or other methods to monitor an open door. A door open sensor, and its components or cables, shall be secure against attempts to disable them or interfere with their normal mode of operation;

(l) *Separation of functions/no limitations on technology*. Nothing herein shall prohibit the account access component, financial instrument storage component, financial instrument acceptor, and financial instrument dispenser from being included within the same component, or separated into individual components.

§ 547.8 What are the minimum technical software standards applicable to Class II gaming systems?

This section provides general software standards for Class II gaming systems for the play of Class II games.

(a) *Player interface displays*. (1) If not otherwise provided to the player, the player interface shall display the following:

(i) The purchase or wager amount;

(ii) Game results; and

(iii) Any player credit balance.

(2) Between plays of any game and until the start of the next play, or until the player selects a new game option such as purchase or wager amount or card selection, whichever is earlier, if not otherwise provided to the player, the player interface shall display:

(i) The total purchase or wager amount and all prizes and total credits won for the last game played;

(ii) The final results for the last game played, including entertaining displays of results, if any; and

(iii) Any default purchase or wager amount for the next play.

(b) *Game initiation and play*. (1) Each game played on the Class II gaming system shall follow and not deviate from a constant set of rules for each game provided to players pursuant to § 547.16. Any change in rules constitutes a different game. There shall be no automatic or undisclosed changes of rules.

(2) For bingo games and games similar to bingo, the Class II gaming system shall not alter or allow to be altered the card permutations or game rules used for play of a Class II game unless specifically chosen by the player prior to commitment to participate in the game. No duplicate cards shall be sold for any common draw.

(3) No game play shall commence and, no financial instrument or credit shall be accepted on the affected player interface, in the presence of any fault condition that affects the outcome of the game, open door, or while in test, audit, or lock-up mode.

(4) The player must choose to participate in the play of a game.

(c) *Audit Mode*. (1) If an audit mode is provided, the Class II gaming system shall provide, for those components actively involved in the audit:

(i) All accounting functions required by § 547.9, by applicable provisions of any Commission regulations governing minimum internal control standards, and by any internal controls adopted by the tribe or tribal gaming regulatory authority;

(ii) Display player interface identification; and

(iii) Display software version or game identification;

(2) Audit mode shall be accessible by a secure method such as an employee PIN and key or other auditable access control.

(3) Accounting function data shall be accessible by an authorized person at any time, except during a payout, during a handpay, or during play.

(4) The Class II gaming system shall disable financial instrument acceptance on the affected player interface while in audit mode, except during financial instrument acceptance testing.

(d) *Last game recall*. The last game recall function shall:

(1) Be retrievable at all times, other than when the recall component is involved in the play of a game, upon the operation of an external key-switch, entry of an audit card, or a similar method;

(2) Display the results of recalled games as originally displayed or in text representation, including entertaining

display results implemented in video, rather than electro-mechanical, form, if any, so as to enable the tribal gaming regulatory authority or operator to clearly identify the game sequences and results that occurred;

(3) Allow the Class II gaming system component providing game recall, upon return to normal game play mode, to restore any affected display to the positions, forms and values displayed before access to the game recall information; and

(4) Provide the following information for the current and previous four games played and shall display:

(i) Game start time, end time, and date;

(ii) The total number of credits at the start of play, less the purchase or wager amount;

(iii) The purchase or wager amount;

(iv) The total number of credits at the end of play; and

(v) The total number of credits won as a result of the game recalled, and the value in dollars and cents for progressive prizes, if different.

(vi) For bingo games and games similar to bingo only, also display:

(A) The card(s) used by the player;

(B) The identifier of the bingo game played;

(C) The numbers or other designations drawn, in the order that they were drawn;

(D) The numbers or other designations and prize patterns covered on each card;

(E) All prizes won by the player, including winning patterns and entertaining displays implemented in video, rather than electro-mechanical form, if any; and

(F) The unique identifier of the card on which prizes were won;

(vii) For pull-tab games only, also display:

(A) The result(s) of each pull-tab, displayed in the same pattern as on the tangible pull-tab;

(B) All prizes won by the player;

(C) The unique identifier of each pull tab; and

(D) Any other information necessary to fully reconstruct the current and four previous plays.

(e) *Voucher and credit transfer recall.* Notwithstanding the requirements of any other section in this part, a Class II gaming system shall have the capacity to:

(1) Display the information specified in § 547.11(b)(5)(ii) through (vi) for the last five vouchers or coupons printed and the last five vouchers or coupons accepted; and

(2) Display a complete transaction history for the last five cashless transactions made and the last five cashless transactions accepted.

(f) *Software signature verification.* The manufacturer or developer of the Class II gaming system must provide to the testing laboratory and to the tribal gaming regulatory authority an industry-standard methodology, acceptable to the tribal gaming regulatory authority, for verifying the Class II gaming system game software. By way of illustration, for game software stored on rewritable media, such methodologies include signature algorithms and hashing formulas such as SHA–1.

(g) *Test, diagnostic, and demonstration modes.* If test, diagnostic, and/or demonstration modes are provided, the Class II gaming system shall, for those components actively involved in the test, diagnostic, or demonstration mode:

(1) Clearly indicate when that component is in the test, diagnostic, or demonstration mode;

(2) Not alter financial data on that component other than temporary data;

(3) Only be available after entering a specific mode;

(4) Disable credit acceptance and payment unless credit acceptance or payment is being tested; and

(5) Terminate all mode-specific functions upon exiting a mode.

(h) *Multi-game.* If multiple games are offered for player selection at the player interface, the player interface shall:

(1) Provide a display of available games;

(2) Provide the means of selecting among them;

(3) Display the full amount of the player's credit balance;

(4) Identify the game selected or being played; and

(5) Not force the play of a game after its selection.

(i) *Program interruption and resumption*. The Class II gaming system software shall be designed so that upon resumption following any interruption, the system:

(1) Is able to return to a known state;

(2) Shall check for any fault condition upon resumption;

(3) Shall verify the integrity of data stored in critical memory;

(4) Shall return the purchase or wager amount to the player in accordance with the rules of the game; and

(5) Shall detect any change or corruption in the Class II gaming system software.

(j) *Class II gaming system components acting as progressive controllers*. This paragraph applies to progressive controllers and components acting as progressive controllers in Class II gaming systems.

(1) Modification of progressive parameters shall be conducted in a secure manner approved by the tribal gaming regulatory authority. Such parameters may include:

(i) Increment value;

(ii) Secondary pool increment(s);

(iii) Reset amount(s);

(iv) Maximum value(s); and

(v) Identity of participating player interfaces.

(2) The Class II gaming system component or other progressive controller shall provide a means of creating a progressive balancing report for each progressive link it controls. At a minimum, that report shall provide balancing of the changes of the progressive amount, including progressive prizes won, for all participating player interfaces versus current progressive amount(s), plus progressive prizes. In addition, the report shall account for, and not be made inaccurate by, unusual events such as:

(i) Class II gaming system critical memory clears;

(ii) Modification, alteration, or deletion of progressive prizes;

(iii) Offline equipment; or

(iv) Multiple site progressive prizes.

(k) *Critical memory*.(1) Critical memory may be located anywhere within the Class II gaming system. Critical memory is any memory that maintains any of the following data:

(i) Accounting data;

(ii) Current credits;

(iii) Configuration data;

(iv) Last game recall information required by § 547.8(d);

(v) Game recall information for the current game, if incomplete;

(vi) Software state (the last normal state software was in before interruption);

(vii) RNG seed(s), if necessary for maintaining integrity;

(viii) Encryption keys, if necessary for maintaining integrity;

(ix) Progressive prize parameters and current values;

(x) The five most recent financial instruments accepted by type, excluding coins and tokens;

(xi) The five most recent financial instruments dispensed by type, excluding coins and tokens; and

(xii) The five most recent cashless transactions paid and the five most recent cashless transactions accepted.

(2) Critical memory shall be maintained using a methodology that enables errors to be identified and acted upon. All accounting and recall functions shall be verified as necessary to ensure their ongoing integrity.

(3) The validity of affected data stored in critical memory shall be checked after each of the following events:

(i) Every restart;

(ii) Each attendant paid win;

(iii) Each attendant paid progressive win;

(iv) Each sensored door closure; and

(v) Every reconfiguration, download, or change of prize schedule or denomination requiring operator intervention or action.

(l) Secured access. Class II gaming systems that use a logon or other means of secured access shall include a user account lockout after a predetermined number of consecutive failed attempts to access system.

§ 547.9 What are the minimum technical standards for Class II gaming system accounting functions?

This section provides standards for accounting functions used in Class II gaming systems.

(a) *Required accounting data*.The following minimum accounting data,

however named, shall be maintained by the Class II gaming system.

Title	Description
(1) Amount In	The total value of all financial instruments and cashless transactions accepted by the Class II gaming system. Each type of financial instrument accepted by the Class II gaming system shall be tracked independently per financial instrument acceptor, and as required by applicable requirements of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.
(2) Amount Out	The total value of all financial instruments and cashless transactions paid by the Class II gaming system, plus the total value of attendant pay. Each type of financial instrument paid by the Class II Gaming System shall be tracked independently per financial instrument dispenser, and as required by applicable requirements of any Commission and tribal gaming regulatory authority regulations governing minimum internal control standards.

(b) *Accounting data storage*. If the Class II gaming system electronically maintains accounting data:

(1) Accounting data shall be stored with at least eight decimal digits.

(2) Credit balances shall have sufficient digits to accommodate the design of the game.

(3) Accounting data displayed to the player may be incremented or decremented using visual effects, but the internal storage of this data shall be immediately updated in full.

(4) Accounting data shall be updated upon the occurrence of the relevant accounting event.

(5) Modifications to accounting data shall be recorded, including the identity of the person(s) making the modifications, and be reportable by the Class II gaming system.

(c) *Rollover*. Accounting data that rolls over to zero shall not corrupt data.

(d) *Credit balance display and function*.(1) Any credit balance maintained at the player interface shall be prominently displayed at all times except:

(i) In audit, configuration, recall and test modes; or

(ii) Temporarily, during entertaining displays of game results.

(2) Progressive prizes may be added to the player's credit balance provided:

(i) The player credit balance is maintained in dollars and cents;

(ii) The progressive accounting data is incremented in number of credits; or

(iii) The prize in dollars and cents is converted to player credits or transferred to the player's credit balance in a manner that does not mislead the player or cause accounting imbalances.

(3) If the player credit balance displays in credits, but the actual balance includes fractional credits, the Class II gaming system shall display the fractional credit when the player credit balance drops below one credit.

§ 547.10 What are the minimum standards for Class II gaming system critical events?

This section provides standards for events such as system critical faults, deactivation, door open or other changes of states, and lockup within the Class II gaming system.

(a) *Fault events*.(1) The following events are to be treated as described below:

Events	Definition and action to be taken
(i) Component fault	Reported when a fault on a component is detected. When possible, this event message should indicate what the nature of the fault is.
(ii) Financial storage component full	Reported when a financial instrument acceptor or dispenser includes storage, and it becomes full. This event message should indicate what financial storage component is full.
(iii) Financial output component empty	Reported when a financial instrument dispenser is empty. The event message should indicate which financial output component is affected, and whether it is empty.
(iv) Financial component fault	Reported when an occurrence on a financial component results in a known fault state.
(v) Critical memory error	Some critical memory error has occurred. When a non-correctable critical memory error has occurred, the data on the Class II gaming system component can no longer be considered reliable. Accordingly, any game play on the affected component shall cease immediately, and an appropriate message shall be displayed, if possible.

Events	Definition and action to be taken
(vi) Progressive communication fault	If applicable; when communications with a progressive controller component is in a known fault state.
(vii) Program storage medium fault	The software has failed its own internal security check or the medium itself has some fault. Any game play on the affected component shall cease immediately, and an appropriate message shall be displayed, if possible.

(2) The occurrence of any event identified in paragraph (a)(1) of this section shall be recorded.

(3) Upon clearing any event identified in paragraph (a)(1) of this section, the Class II gaming system shall:

(i) Record that the fault condition has been cleared;

(ii) Ensure the integrity of all related accounting data; and

(iii) In the case of a malfunction, return a player's purchase or wager according to the rules of the game.

(b) *Door open/close events.* (1) In addition to the requirements of paragraph (a)(1) of this section, the Class II gaming system shall perform the following for any component affected by any sensored door open event:

(i) Indicate that the state of a sensored door changes from closed to open or opened to closed;

(ii) Disable all financial instrument acceptance, unless a test mode is entered;

(iii) Disable game play on the affected player interface;

(iv) Disable player inputs on the affected player interface, unless test mode is entered; and

(v) Disable all financial instrument disbursement, unless a test mode is entered.

(2) The Class II gaming system may return the component to a ready to play state when all sensored doors are closed.

(c) *Non-fault events.* (1) The following non-fault events are to be treated as described below, if applicable:

Event	Definition and action to be taken
(i) Player interface power off during play	This condition is reported by the affected component(s) to indicate power has been lost during game play.
(ii) Player interface power on	This condition is reported by the affected component(s) to indicate it has been turned on.
(iii) Financial instrument storage component container/stacker removed.	This condition is reported when a financial instrument storage container has been removed. The event message should indicate which storage container was removed.

§ 547.11 What are the minimum technical standards for money and credit handling?

This section provides standards for money and credit handling by a Class II gaming system.

(a) *Credit acceptance, generally.* (1) Upon any credit acceptance, the Class II gaming system shall register the correct number of credits on the player's credit balance.

(2) The Class II gaming system shall reject financial instruments deemed invalid.

(b) *Credit redemption, generally.* (1) For cashable credits on a player interface, players shall be allowed to cash out and/or redeem those credits at the player interface except when that player interface is:

(i) Involved in the play of a game;

(ii) In audit mode, recall mode or any test mode;

(iii) Detecting any sensored door open condition;

(iv) Updating the player credit balance or total win accounting data; or

(v) Displaying a fault condition that would prevent cash-out or credit redemption. In this case a fault indication shall be displayed.

(2) For cashable credits not on a player interface, the player shall be allowed to cash out and/or redeem those credits at any time.

(3) A Class II gaming system shall not automatically pay an award subject to mandatory tax reporting or withholding.

(4) Credit redemption by voucher or coupon shall conform to the following:

(i) A Class II gaming system may redeem credits by issuing a voucher or coupon when it communicates with a voucher system that validates the voucher or coupon.

(ii) A Class II gaming system that redeems credits by issuing vouchers and coupons shall either:

(A) Maintain an electronic record of all information required by paragraphs (b)(5)(ii) through (vi) of this section; or

(B) Generate two identical copies of each voucher or coupon issued, one to be provided to the player and the other to be retained within the machine for audit purposes.

(5) Valid vouchers and coupons shall contain the following:

(i) Gaming operation name and location;

(ii) The identification number of the Class II gaming system component or the player interface number, as applicable;

(iii) Date and time of issuance;

(iv) Alpha and numeric dollar amount;

(v) A sequence number;

(vi) A validation number that:

(A) Is produced by a means specifically designed to prevent repetition of validation numbers; and

(B) Has some form of checkcode or other form of information redundancy to prevent prediction of subsequent validation numbers without knowledge of the checkcode algorithm and parameters;

(vii) For machine-readable vouchers and coupons, a bar code or other form of machine readable representation of the validation number, which shall have enough redundancy and error checking to ensure that 99.9% of all misreads are flagged as errors;

(viii) Transaction type or other method of differentiating voucher and coupon types; and

(ix) Expiration period or date.

(6) Transfers from an account may not exceed the balance of that account.

(7) For Class II gaming systems not using dollars and cents accounting and not having odd cents accounting, the Class II gaming system shall reject any transfers from voucher payment systems or cashless systems that are not even multiples of the Class II gaming system denomination.

(8) Voucher redemption systems shall include the ability to report redemptions per redemption location or user.

§ 547.12 What are the minimum technical standards for downloading on a Class II gaming system?

This section provides standards for downloading on a Class II gaming system.

(a) *Downloads.* (1) Downloads are an acceptable means of transporting approved content, including but not limited to software, files, data, and prize schedules.

(2) Downloads of software, games, prize schedules, or other download packages shall be conducted only as authorized by the tribal gaming regulatory authority.

(3) Downloads shall use secure methodologies that will deliver the download data without alteration or modification, in accordance with § 547.15(a).

(4) Downloads conducted during operational periods shall be performed in a manner that will not affect game play.

(5) Downloads shall not affect the integrity of accounting data.

(6) The Class II gaming system or the tribal gaming regulatory authority shall log each download of any download package. Each log record shall contain as a minimum:

(i) The time and date of the initiation of the download;

(ii) The time and date of the completion of the download;

(iii) The Class II gaming system components to which software was downloaded;

(iv) The version(s) of download package and any software downloaded. Logging of the unique software signature will satisfy this requirement;

(v) The outcome of any software verification following the download (success or failure); and

(vi) The name and identification number, or other unique identifier, of any individual(s) conducting or scheduling a download.

(b) *Verifying downloads.* Following download of any game software, the Class II gaming system shall verify the downloaded software using a software signature verification method that meets the requirements of § 547.8(f). Using any method it deems appropriate, the tribal gaming regulatory authority shall confirm the verification.

§ 547.13 What are the minimum technical standards for program storage media?

This section provides minimum standards for removable, (re-)writable, and nonwritable storage media in Class II gaming systems.

(a) *Removable program storage media.* All removable program storage media shall maintain an internal checksum or signature of its contents. Verification of this checksum or signature is to be performed after every restart. If the verification fails, the affected Class II gaming system component(s) shall lock up and enter a fault state.

(b) *Nonrewritable program storage media.* (1) All EPROMs and Programmable Logic Devices (PLDs) that have erasure windows shall be fitted with covers over their erasure windows.

(2) All unused areas of EPROMs shall be written with the inverse of the erased state (*e.g.*, zero bits (00 hex) for most EPROMs), random data, or repeats of the program data.

(3) Flash memory storage components intended to have the same logical function as ROM, *i.e.* not to be dynamically written, shall be write-protected or otherwise protected from unauthorized modification.

(4) The write cycle shall be closed or finished for all CD–ROMs such that it is not possible to write any further data to the CD.

(5) Write protected hard disks are permitted if the hardware means of enabling the write protect is easily viewable and can be sealed in place Write protected hard disks are permitted using software write protection verifiable by a testing laboratory.

(c) *Writable and rewritable program storage media.* (1) Writable and rewritable program storage, such as hard disk drives, Flash memory, writable CD–ROMs, and writable DVDs, may be used provided that the software stored thereon may be verified using the mechanism provided pursuant to § 547.8(f).

(2) Program storage shall be structured so there is a verifiable separation of fixed data (*e.g.* program, fixed parameters, DLLs) and variable data.

(d) *Identification of program storage media.* All program storage media that is not rewritable in circuit, (*e.g.* EPROM, CD–ROM) shall be uniquely identified, displaying:

(1) Manufacturer;

(2) Program identifier;

(3) Program version number(s); and

(4) Location information, if critical (*e.g.* socket position 3 on the printed circuit board).

§ 547.14 What are the minimum technical standards for electronic random number generation?

This section provides minimum standards for electronic RNGs in Class II gaming systems.

(a) *Properties.*All RNGs shall produce output having the following properties:

(1) Statistical randomness;

(2) Unpredictability; and

(3) Non-repeatability.

(b) *Statistical Randomness.*(1) Numbers produced by an RNG shall be statistically random individually and in the permutations and combinations used in the application under the rules of the game. For example, if a bingo game with 75 objects with numbers or other designations has a progressive winning pattern of the five numbers or other designations on the bottom of the card and the winning of this prize is defined to be the five numbers or other designations are matched in the first five objects drawn, the likelihood of each of the 75C5 combinations are to be verified to be statistically equal.

(2) Numbers produced by an RNG shall pass the statistical tests for randomness to a 99% confidence level, which may include:

(i) Chi-square test;

(ii) Equi-distribution (frequency) test;

(iii) Gap test;

(iv) Poker test;

(v) Coupon collector's test;

(vi) Permutation test;

(vii) Run test (patterns of occurrences shall not be recurrent);

(viii) Spectral test;

(ix) Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game); and

(x) Test on subsequences.

(c) *Unpredictability*.(1) It shall not be feasible to predict future outputs of an RNG, even if the algorithm and the past sequence of outputs are known.

(2) Unpredictability shall be ensured by reseeding or by continuously cycling the RNG, and by providing a sufficient number of RNG states for the applications supported.

(3) Re-seeding may be used where the re-seeding input is at least as statistically random as, and independent of, the output of the RNG being re-seeded.

(d) *Non-repeatability*. The RNG shall not be initialized to reproduce the same output stream that it has produced before, nor shall any two instances of an RNG produce the same stream as each other. This property shall be ensured by initial seeding that comes from:

(1) A source of ''true'' randomness, such as a hardware random noise generator; or

(2) A combination of timestamps, parameters unique to a Class II gaming system, previous RNG outputs, or other, similar method.

(e) *General requirements*. (1) Software that calls an RNG to derive game outcome events shall immediately use the output returned in accordance with the game rules.

(2) The use of multiple RNGs is permitted as long as they operate in accordance with this section.

(3) RNG outputs shall not be arbitrarily discarded or selected.

(4) Where a sequence of outputs is required, the whole of the sequence in the order generated shall be used in accordance with the game rules.

(5) The Class II gaming system shall neither adjust the RNG process or game outcomes based on the history of prizes obtained in previous games nor make any reflexive or secondary decision that affects the results shown to the player or game outcome. Nothing in this paragraph shall prohibit the use of entertaining displays.

(f) *Scaling algorithms and scaled numbers*. An RNG that provides output scaled to given ranges shall:

(1) Be independent and uniform over the range;

(2) Provide numbers scaled to the ranges required by game rules, and notwithstanding the requirements of paragraph (e)(3) of this section, may discard numbers that do not map uniformly onto the required range but shall use the first number in sequence that does map correctly to the range;

(3) Be capable of producing every possible outcome of a game according to its rules; and

(4) Use an unbiased algorithm. A scaling algorithm is considered to be unbiased if the measured bias is no greater than 1 in 100 million.

§ 547.15 What are the minimum technical standards for electronic data communications between system components?

This section provides minimum standards for electronic data communications with gaming equipment or components used with Class II gaming systems.

(a) *Sensitive data*.Communication of sensitive data shall be secure from eavesdropping, access, tampering, intrusion or alteration unauthorized by the tribal gaming regulatory authority. Sensitive data shall include, but not be limited to:

(1) RNG seeds and outcomes;

(2) Encryption keys, where the implementation chosen requires transmission of keys;

(3) PINs;

(4) Passwords;

(5) Financial instrument transactions;

(6) Transfers of funds;

(7) Player tracking information;

(8) Download Packages; and

(9) Any information that affects game outcome.

(b) *Wireless communications*. (1) Wireless access points shall not be accessible to the general public.

(2) Open or unsecured wireless communications are prohibited.

(3) Wireless communications shall be secured using a methodology that makes eavesdropping, access, tampering, intrusion or alteration impractical. By way of illustration, such

methodologies include encryption, frequency hopping, and code division multiplex access (as in cell phone technology).

(c) Methodologies shall be used that will ensure the reliable transfer of data and provide a reasonable ability to detect and act upon any corruption of the data.

(d) Class II gaming systems shall record detectable, unauthorized access or intrusion attempts.

(e) Remote communications shall only be allowed if authorized by the tribal gaming regulatory authority. Class II gaming systems shall have the ability to enable or disable remote access, and the default state shall be set to disabled.

(f) Failure of data communications shall not affect the integrity of critical memory.

(g) The Class II gaming system shall log the establishment, loss, and re-establishment of data communications between sensitive Class II gaming system components.

§ 547.16 What are the minimum standards for game artwork, glass, and rules?

This section provides standards for the display of game artwork, the displays on belly or top glass, and the display and disclosure of game rules, whether in physical or electronic form.

(a) *Rules, instructions, and prize schedules, generally.*The following shall at all times be displayed or made readily available to the player upon request:

(1) Game name, rules, and options such as the purchase or wager amount stated clearly and unambiguously;

(2) Denomination;

(3) Instructions for play on, and use of, the player interface, including the functions of all buttons; and

(4) A prize schedule or other explanation, sufficient to allow a player to determine the correctness of all prizes awarded, including;

(i) The range and values obtainable for any variable prize;

(ii) Whether the value of a prize depends on the purchase or wager amount; and

(iii) The means of division of any pari-mutuel prizes; but

(iv) For bingo and games similar to bingo, the prize schedule or other explanation need not state that subsets of winning patterns are not awarded as additional prizes (*e.g.* five in a row does not also pay three in a row or four in a row), unless there are exceptions, which shall be clearly stated.

(b) *Disclaimers.*The Class II gaming system shall continually display:

(1) ''Malfunctions void all prizes and plays'' or equivalent; and

(2) ''Actual Prizes Determined by Bingo [or other applicable Class II game] Play. Other Displays for Entertainment Only.'' or equivalent.

§ 547.17 How does a tribal gaming regulatory authority apply for a variance from these standards?

(a) *Tribal Gaming Regulatory Authority approval.* (1) A tribal gaming regulatory authority may approve a variance from the requirements of this part if it has determined that the variance will achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the tribal gaming regulatory authority approves a variance, it shall submit to the Chairman within 30 days, a detailed report, which shall include the following:

(i) An explanation of how the variance achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and

(ii) The variance as granted and the record on which it is based.

(3) In the event that the tribal gaming regulatory authority or the tribe's government chooses to submit a variance request directly to the Chairman for joint government to government review, the tribal gaming regulatory authority or tribal government may do so without the approval requirement set forth in paragraph (a) (1) of this section.

(b) *Chairman Review.*(1) The Chairman may approve or object to a variance granted by a tribal gaming regulatory authority.

(2) Any objection by the Chairman shall be in written form with an explanation why the variance as approved

by the tribal gaming regulatory authority does not provide a level of security or integrity sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to approve or object in writing within 60 days after the date of receipt of a complete submission, the variance shall be considered approved by the Chairman. The Chairman and the tribal gaming regulatory authority may, by agreement, extend this deadline an additional 60 days.

(4) No variance may be implemented until approved by the tribal gaming regulatory authority pursuant to paragraph (a)(1) of this section or the Chairman has approved pursuant to paragraph (b)(1) of this section.

(c) *Commission Review.*Should the tribal gaming regulatory authority elect to maintain its approval after written objection by the Chairman, the tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(1) Within 60 days of receiving an objection, the tribal gaming regulatory authority shall file a written notice of appeal with the Commission that may include a request for an oral hearing or it may request that the matter be decided upon written submissions.

(2) Within 10 days after filing a notice of appeal the tribal gaming regulatory authority shall file a supplemental statement specifying the reasons why the tribal gaming regulatory authority believes the Chairman's objection should be reviewed, and shall include supporting documentation, if any.

(3) Failure to file an appeal or submit the supplemental statement within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(4) If an oral hearing is requested it shall take place within 30 days of the notice of appeal and a record shall be made.

(5) If the tribal gaming regulatory authority requests that the appeal be decided on the basis of written submission, the Commission shall issue a written decision within 30 days of receiving the supplemental statement.

(6) The Commission shall uphold the objection of the Chairman, only if, upon de novo review of the record upon which the Chairman's decision is based, the Commission determines that the variance approved by the tribal gaming regulatory authority does not achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.

(7) The Commission shall issue a decision within 30 days of the oral hearing unless the tribal gaming regulatory authority elects to provide the Commission additional time, not to exceed an additional 30 days, to issue a decision. In the absence of a decision by the Commission within the time provided, the decision of the tribal gaming regulatory authority shall be deemed affirmed.

(8) The Commission's decision shall constitute final agency action.

PARTS 548–549 [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—FACILITY LICENSE NOTIFICATIONS, RENEWALS, AND SUBMISSIONS

Sec.

559.1 What is the scope and purpose of this part?
559.2 When must a tribe notify the Chairman that it is considering issuing a new facility license?
559.3 How often must a facility license be renewed?
559.4 When must a tribe submit a copy of a newly issued or renewed facility license to the Chairman?
559.5 What must a tribe submit to the Chairman with the copy of each facility license that has been issued or renewed?
559.6 Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens?
559.7 May the Chairman request Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?
559.8 May a tribe submit documents required by this part electronically?

AUTHORITY: 25 U.S.C. 2701, 2702(3), 2703(4), 2705, 2706, 2710 and 2719.

SOURCE: 73 FR 6029, Feb. 1, 2008, unless otherwise noted.

§559.1 What is the scope and purpose of this part?

(a) The purpose of this part is to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming and that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety pursuant to the Indian Gaming Regulatory Act.

(b) Each gaming place, facility, or location conducting class II or III gaming pursuant to the Indian Gaming Regulatory Act or on which a tribe intends to conduct class II or III gaming pursuant to the Indian Gaming Regulatory Act is subject to the requirements of this part.

§ 559.2 When must a tribe notify the Chairman that it is considering issuing a new facility license?

(a) A tribe shall submit to the Chairman a notice that a facility license is under consideration for issuance at least 120 days before opening any new place, facility, or location on Indian lands where class II or III gaming will occur. The notice shall contain the following:

(1) The name and address of the property;

(2) A legal description of the property;

(3) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices, if any;

(4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and

(5) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of the property's ownership.

(b) A tribe does not need to submit to the Chairman a notice that a facility license is under consideration for issuance for occasional charitable events lasting not more than a week.

§ 559.3 How often must a facility license be renewed?

At least once every three years after the initial issuance of a facility license, a tribe shall renew or reissue a separate facility license to each existing place, facility or location on Indian lands where a tribe elects to allow gaming.

§ 559.4 When must a tribe submit a copy of a newly issued or renewed facility license to the Chairman?

A tribe must submit to the Chairman a copy of each newly issued or renewed facility license within 30 days of issuance.

§ 559.5 What must a tribe submit to the Chairman with the copy of each facility license that has been issued or renewed?

(a) A tribe shall submit to the Chairman with each facility license an attestation certifying that by issuing the facility license:

(1) The tribe has identified and enforces the environment and public health and safety laws, resolutions, codes, policies, standards or procedures applicable to its gaming operation;

(2) The tribe is in compliance with those laws, resolutions, codes, policies, standards, or procedures, or, if not in compliance with any or all of the same, the tribe will identify those with which it is not in compliance, and will adopt and submit its written plan for the specific action it will take, within a period not to exceed six months, required for compliance. At the successful completion of such written plan, or at the expiration of the period allowed for its completion, the tribe shall report the status thereof to the Commission. In the event that the tribe estimates that action for compliance will exceed six months, the Chairman must concur in such an extension of the time period, otherwise the tribe will be deemed noncompliant. The Chairman will take into consideration the consequences on the environment and the public health and safety, as well as mitigating measures the tribe may provide in the interim, in his or her consideration of requests for such an extension of the time period.

(3) The tribe is ensuring that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

(b) A document listing all laws, resolutions, codes, policies, standards or procedures identified by the tribe as applicable to its gaming facilities, other than Federal laws, in the following areas:

(1) Emergency preparedness, including but not limited to fire suppression, law enforcement, and security;

(2) Food and potable water;

(3) Construction and maintenance;

(4) Hazardous materials;

(5) Sanitation (both solid waste and wastewater); and

(6) Other environmental or public health and safety laws, resolutions, codes, policies, standards or procedures

adopted by the tribe in light of climate, geography, and other local conditions and applicable to its gaming places, facilities, or locations.

(c) After the first submission of a document under paragraph (b) of this section, upon reissuing a license to an existing gaming place, facility, or location, and in lieu of complying with paragraph (b) of this section, a tribe may certify to the Chairman that it has not substantially modified its laws protecting the environment and public health and safety.

§ 559.6 Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens?

A tribe must notify the Chairman within 30 days if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens.

§ 559.7 May the Chairman request Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?

A tribe shall provide Indian lands or environmental and public health and safety documentation that the Chairman may in his or her discretion request.

§ 559.8 May a tribe submit documents required by this part electronically?

Yes. Tribes wishing to submit documents electronically should contact the Commission for guidance on acceptable document formats and means of transmission.

SUBCHAPTER F [RESERVED]

PARTS 560–569 [RESERVED]

SUBCHAPTER G—COMPLIANCE AND ENFORCEMENT PROVISIONS

PART 570 [RESERVED]

PART 571—MONITORING AND INVESTIGATIONS

Subpart A—General

Sec.
571.1 Scope.
571.2 Definitions.
571.3 Confidentiality.

Subpart B—Inspection of Books and Records

571.5 Entry of premises.
571.6 Access to papers, books, and records.
571.7 Maintenance and preservation of papers and records.

Subpart C—Subpoenas and Depositions

571.8 Subpoena of witnesses.
571.9 Subpoena of documents and other items.
571.10 Geographical location.
571.11 Depositions.

Subpart D—Audits

571.12 Audit standards.
571.13 Copies of audit reports.
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, deductions 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 522 or part 559 of this chapter.

(5) A gaming operation operates for business without either background investigations 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.

[58 FR 5844, Jan. 22, 1993, as amended at 73 FR 6030, Feb. 1, 2008]

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

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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]

SUBCHAPTER H [RESERVED]

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AUTHORITY: Pub. L. 99–590; Pub. L. 93–531, 88 Stat. 1712 as amended by Pub. L. 96–305, 94 Stat. 929, Pub. L. 100–666, 102 Stat. 3929 (25 U.S.C. 640d).

SOURCE: 47 FR 2092, Jan. 14, 1982, unless otherwise noted.

Subpart A—General Policies and Instructions

§ 700.1 Purpose.

The purpose of this part is to implement provisions of the Act of December 22, 1974 (Pub. L. 93–531, 88 Stat. 1712 as amended by Pub. L. 96–305, 94 Stat. 929), hereinafter referred to as the Act, in accordance with the following objectives—

(a) To insure that persons displaced as a result of the Act are treated fairly, consistently, and equitably so that these persons will not suffer the disproportionate adverse, social, economic, cultural and other impacts of relocation.

(b) To set forth the regulations and procedures by which the Commission

shall operate; and implement the provisions of the Act.

(c) To establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 et. seq., Pub. L. 91–646), hereinafter referred to as the Uniform Act.

(d) To insure that owners of habitations and other improvements to be acquired pursuant to the Act are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation, relieve congestion in the courts and to promote public confidence in the Commission's relocation program.

(e) To facilitate development of a relocation plan according to the Act and carry out the directed relocation as promptly and fairly as possible, with a minimum of hardship and discomfort to the relocation, in accordance with the Act.

§ 700.3 Assurances with respect to acquisition and displacement.

The Commission will not approve any programs or projects which may result in the acquisition of habitations and/or improvements, or in the displacement of any person, until such time as written assurances are submitted to the Commission that such projects or programs are in accordance with the Act. It will—

(a) Assure that, within a reasonable period of time prior to displacement, adequate, decent, safe and sanitary replacement dwellings (defined at § 700.55) will be available to all certified eligible heads of households.

(b) Carry out relocation services in a manner that will promote maximum quality in housing.

(c) Inform affected persons of their rights under the policies and procedures set forth under the regulations in this part.

§ 700.5 Supersedure of regulations.

These regulations supersede the regulations formerly appearing in this part. However, any acquisition of property or displacement of a person occurring prior to the effective date of these regulations shall continue to be governed by the regulations at 25 CFR part 700 in effect at the time of the acquisition or displacement.

§ 700.11 Manner of notice.

Each notice which the Commission is required to provide under these regulations shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice shall be written in plain understandable language. Recipients who notify the Commission that they are unable to read and understand the notice will be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 700.13 Waiver of regulations.

(a) Any time limit specified for the filing of a claim or an appeal under the regulations in this part may, on a case by case basis, be extended by the Commission.

(b) The Commission may waive any requirement of these regulations in this part if such requirement is not required by law and if the Commission finds such waiver or exception to be in the best interest of individual Indian applicants, the Commission, and the United States. Any request for a Commission waiver shall be submitted in writing to the Commission and shall be justified on a case by case basis.

§ 700.15 Waiver of rights by owner.

Nothing in these regulations shall prevent a fully informed applicant from voluntarily waiving any of his/her rights under the regulations in this part. A waiver of rights shall in no way constitute an exemption from the requirement to relocate pursuant to the Act.

DEFINITIONS

§ 700.31 Applicability of definitions.

Except where otherwise noted, the definitions appearing in this subpart A apply to the regulations in this part.

§ 700.33 Act (The Act).

(a) *The Act*. The Act is Pub. L. 93–531, (88 Stat. 1712, 25 U.S.C. 640d.) as amended by Pub. L. 96–305 (94 Stat. 929).

§ 700.35 Applicant.

A person who applies for relocation assistance benefits and agrees to relocate as required by the Act.

§ 700.37 Application for relocation assistance benefits and agreement to move.

The application for relocation assistance benefits and agreement to move is Commission Form #69–R0001, completion of which is used for establishing the date upon which a person shall be deemed to have a contract with the Commission to relocate pursuant to section 14(b) of the Act.

§ 700.39 Appraisal.

The appraisal is an estimate of the fair market value which is placed on the habitation and other improvements owned by a relocatee.

§ 700.41 Appraiser.

An appraiser is a person appointed or hired by the Commission to make an appraisal of the habitation and other improvements on the land owned by the relocatees. All compensation for the appraiser shall be paid by the Commission.

§ 700.43 Assistance payment.

An assistance payment is the additional payment made to the certified eligible head of household pursuant to section 14(b) of the Act. This term is synonymous with ''incentive bonus''.

§ 700.45 Business.

The term business means any lawful activity, except a nonprofit organization or a farm operation, that is—

(a) Conducted primarily for the purchase, sale, lease and or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Conducted primarily for the sale of services to the public; or

(c) Solely for the purpose of subpart D of this part, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the Act.

§ 700.47 Commission.

The Navajo and Hopi Indian Relocation Commission is that entity established pursuant to 25 U.S.C. 640d–11 (section 12(a) of the Act).

§ 700.49 Certified eligible head of household.

A certified eligible head of household is a person who has received notice from the Commission that he/she has been certified as eligible to receive certain relocation assistance benefits.

§ 700.51 Custodial parent.

A custodial parent is a person who has the immediate personal care, charge, and control of a minor child who resides in his/her household, or a person who fills the parental role but who is not necessarily blood-related.

§ 700.53 Dwelling, replacement.

The term replacement dwelling means a dwelling selected by the head of a household as a replacement dwelling that meets the criteria of this section. A replacement dwelling is a dwelling that:

(a) Is decent, safe, and sanitary as described in § 700.55.

(b) May include existing dwellings for resale, new construction, modular homes, mobile homes, mutual self-help housing or other federally assisted housing programs.

(c) Is in an area not subjected to unreasonable adverse environmental conditions from either natural or manmade sources and in an area not generally less desirable than that of the acquired dwelling with respect to public utilities, public and commercial facilities, and schools.

(d) Is available at a purchase price within the ability-to-pay of the displaced person. A replacement dwelling shall be considered within the ability-to-pay of the displaced person if, after he receives a replacement housing payment and any available housing assistance payments, his new monthly housing cost (defined at § 700.81) for the replacement dwelling does not exceed twenty-five percent (25%) of the

monthly gross income of all adult members of the household, including supplemental income payments received from public agencies. If the person's monthly income pattern is irregular, the Commission shall base its determination of average gross monthly income on the period of time, actual and/or projected, that most fairly and equitable represents the person's ability-to-pay.

(e) Is actually available to the displaced person on the private market, other federally sponsored housing projects, tribal-sponsored housing projects and/or Commission-sponsored housing projects.

§ 700.55 Decent, safe, and sanitary dwelling.

(a) *General.* The term decent, safe, and sanitary dwelling means a dwelling which—

(1) Meets applicable federal, state and local housing and occupancy codes; including but not limited to the Uniform Building Code, National Electrical Code, ICBO Plumbing Code, the Uniform Mechanical Code, HUD Minimum Property Standards, and HUD Mobile Home Construction and Safety Standards (24 CFR part 4080).

(2) Is structurally sound, clean, weathertight and in good repair and has adequate living space and number of rooms.

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services where economically feasible.

(4) Meets the requirements of the HUD lead-based paint regulations (24 CFR part 42) issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.);

(5) In the case of a physically handicapped person, is free of any architectural barriers. To the extent that standards prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1–1961 (R 1971), are pertinent, this provision will be considered met if it meets those standards;

(6) Has heating as required by climatic conditions;

(7) Has habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants;

(8) Has a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, properly connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system; and

(9) In the case of new construction or modular housing, complies with the energy performance standards for new buildings set forth by the U.S. Department of Energy.

(10) The Commission may waive paragraph (a)(3) or (8) of this section on a case-by-case basis if it is determined that it is in the best interest of the individual relocatee to do so.

§ 700.57 Dependent.

A dependent is a person who either derives more than one-half of his/her support from another or is under the custody, control and care of another. In instances where there are conflicting claims for the dependent status of a person in more than one household, the household of the person having custody, control and care shall be determined to be the household wherein the person is a dependent.

§ 700.59 Displaced person.

Displaced person means a member of the Hopi Tribe residing within the area partitioned to the Navajo Tribe or a member of the Navajo Tribe residing within the area partitioned to the Hopi Tribe who must be relocated pursuant to the Act. This term is synonymous with the term ''relocatee''.

§ 700.61 Fair market value.

Fair market value shall mean the value placed on the habitation and improvements owned by each head of household as determined pursuant to §§ 700.117 through 700.121.

§ 700.65 Farm operation.

Farm operation means any activity conducted for the production of one or more agricultural products or commodities including livestock, crops and timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially

to the operator's support as determined in § 700.171(b)(3).

§ 700.67 Habitation.

The term habitation means the dwelling(s) of each household required to relocate under the term of the Act.

§ 700.69 Head of household.

(a) *Household*. A household is:

(1) A group of two or more persons living together at a specific location who form a unit of permanent and domestic character.

(2) A single person who at the time his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

(b) *Head of household*. The head of household is that individual who speaks on behalf of the members of the household and who is designated by the household members to act as such.

(c) In order to qualify as a head of household, the individual must have been a head of household as of the time he/she moved from the land partitioned to a tribe of which they were not a member.

[49 FR 22278, May 29, 1984]

§ 700.71 Improvements.

Improvements are structures and attached fixtures to the land owned by a member of a household required to relocate under the terms of the Act, in addition to the habitation which improvements cannot readily be moved without substantial damage, or whose movement would require unreasonable cost.

§ 700.77 Livestock.

The term livestock shall mean all domesticated animals of every type owned by the displaced person.

§ 700.79 Marriage.

Marriage is a legally recorded marriage or a traditional commitment between a man or woman recognized by the law of the Hopi Tribe or the Navajo Tribe.

§ 700.81 Monthly housing cost.

(a) *General*. The term monthly housing cost for a replacement dwelling purchased by a certified eligible head of household is the average monthly cost for all mortgage payments, real property taxes, reasonable utility charges, and insurance.

(b) *Computation of monthly housing cost for replacement dwelling*. A person's monthly housing cost for a replacement dwelling shall be a projected amount that includes one-twelfth of the estimated reasonable annual cost for utility charges.

§ 700.83 Nonprofit organization.

The term nonprofit organization means a corporation, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

§ 700.85 Owner.

The term owner means the person who holds any interest in habitations and improvements to be acquired by the Commission pursuant to section 15(a) of the Act, which the Commission determines warrants consideration of ownership.

§ 700.87 Person.

The term person means any individual, partnership, corporation, or association.

§ 700.89 Relocation contract.

The Relocation Contract is that contract signed by the head of household in which he/she agrees to purchase an existing house or to construct a new house, the owner of such existing house or the builder of the proposed new house agrees to sell or perform the construction, and the Commission agrees to make payments according to such agreement.

[47 FR 17988, Apr. 27, 1982]

§ 700.91 Relocation report.

The relocation report shall be the report prepared by the Commission and submitted to Congress pursuant to section 13(a) of the Act.

§ 700.93 Relocation plan.

The relocation plan shall be the plan prepared by the Commission and submitted to Congress pursuant to section 13(c) of the Act.

§ 700.95 Replacement housing funds.

Replacement housing funds means those funds authorized to be appropriated pursuant to section 25(a)(1) of the Act.

§ 700.97 Residence.

(a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of December 22, 1974, of the lands partitioned to the Tribe of which they are not members.

[49 FR 22278, May 29, 1984]

§ 700.99 Salvage value.

Salvage value means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

§ 700.101 Single person.

A single person is a widow, widower, unmarried or divorced person.

§ 700.103 Uniform Act.

The term Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91–646).

§ 700.105 Utility charges.

Utility charges means the cost for heat, lighting, hot water, electricity, natural gas, butane, propane, wood, coal or other fuels water, sewer and trash removal.

Subpart B—Acquisition and Disposal of Habitations and/or Improvements

§ 700.111 Applicability of acquisition requirements.

General. The requirements of this subpart B apply to all Commission acquisition of habitations and/or improvements that occur on or after the effective date of these regulations.

§ 700.113 Basic acquisition policies.

(a) *Appraisal and invitation to owner.* Before the initiation of negotiations, the Commission shall have the habitations and/or improvements appraised to its satisfaction and will attempt to assure that the owner or his designated representative is contacted in advance of the appraisal(s) and given an opportunity to accompany each appraiser during the appraiser's inspection of the property.

(b) *Determination and offer of fair market value.* Before the initiation of negotiations, the Commission shall establish an amount which it believes is fair market value for improvements. This amount shall be based on a current appraisal at the time negotations commence for the Relocation Contract between the NHIRC and the relocatee. The appraisal will be adjusted according to the Boeckh Building Cost Modifier for time or any physical changes in the improvements. If any changes are necessary the appraisal will be corrected to reflect a current dollar value. The amount of the current appraisal will be offered as just compensation for the improvements acquired, except as provided in paragraph (d) of this section. A copy of the initial appraisal will be sent to the owner as soon as possible after the appraisal program is completed.

(c) *Basic negotiation procedures.* The Commission will attempt to meet with the owner or his/her representative to discuss its offer to purchase his/her property including the basis for the determination of fair market value and explain acquisition policies and procedures, including payment of incidental expenses. The owner shall be given reasonable opportunity to present material which he/she believes is relevant to determining the value of the property

and to suggest modification in the proposed terms and conditions of the purchase. The Commission shall consider the owner's presentation.

(d) If the condition of the property indicates the need for a new appraisal or if a significant delay has occurred since the time of the latest appraisal of the property, the Commission shall have the appraisal updated or obtain a new appraisal. If a new appraisal is for a lesser value than the previous appraisal and said lesser value is due to damage done to the property during the time between the two appraisals, and such damage was not caused by the owner of the improvement, the owner shall be entitled to the higher appraisal value.

(e) [Reserved]

(f) *Objection to determination of fair market value.* If the owner objects to the Commission's determination of fair market value, the owner may request a hearing pursuant to the Commission's Hearing and Administrative Review procedures;

(g) *Payment before taking possession.* Before requiring an owner to surrender possession of his habitations and/or improvements, the Commission shall—

(1) Apply the agreed purchase price towards the acquisition price of the replacement dwelling or;

(2) Deposit with the court in an appropriate proceeding, such as divorce or probate, for the benefit of the owner, an amount not less than the Commission's determination of fair market value for the property or the court award of compensation for the property up to the maximum benefit allowed under the then existing replacement housing benefit.

§ 700.115 Preliminary acquisition notice.

As soon as feasible in the acquisition process, the Commission shall issue a preliminary acquisition notice to the owner. The notice shall—

(a) Inform the owner of the Commission's interest in acquiring his/her habitations and/or improvements.

(b) Explain that such preliminary acquisition notice is not a notice to vacate and that it does not establish eligibility for relocation payments or other relocation assistance under these regulations.

§ 700.117 Criteria for appraisals.

(a) *Appraisal standards.* The Commission's appraisals shall be based upon nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value that the Commission may establish.

(b) *Documentation.* Appraisal reports must contain sufficient documentation, including supporting valuation data and the appraiser's analyses of that data, to demonstrate the reasonableness of the appraiser's opinion(s) of value.

(c) *Conflict of interest.* No appraiser shall have any interest, direct or indirect, in the habitations and/or improvements which he appraisers for the Commission that would in any way conflict with his performance of the appraisal.

§ 700.119 Establishment of fair market value.

(a) *General.* The Commission shall establish the amount of fair market value to be offered to the owner for the habitations and/or improvements. Such amount shall not be less than—

(1) The appraiser's recommendations as to the fair market value of the habitations and/or improvements; or

(2) The fair market value estimate set forth in the agency's approved appraisal, if the property is valued at $2,000 or less.

(b) *Owner retention of improvements.* If the owner of a habitation and/or improvement is permitted to retain it for removal off-site, the amount determined to be just compensation for the interest in habitations and/or improvements to be acquired from him shall not be less than the amount determined by subtracting the salvage value of the improvements he retains for off-site removal from the amount determined to be fair market value for his entire interest in the habitation and improvement. Retention of improvements by the owner shall not change, alter or abrogate the requirement of the Act that the owner must move from land partitioned to the tribe of which he/she is not a member.

§ 700.121 Statement of the basis for the determination of fair market value.

At the time of the initiation of negotiations to acquire the habitations and/or improvements, the Commission shall furnish the owner, along with the initial written purchase offer, a written statement of the basis for the determination of fair market value. To the extent permitted by the Commission, the statement shall include the following—

(a) A description and location identification of the habitations and/or improvements to be acquired.

(b) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the habitations and/or improvements for which the offer of fair market value is made.

(c) A recital of the amount of the offer and a declaration that such amount—

(1) Is the full amount believed by the Commission to be just compensation for the property and is not less than the fair market value of the property as determined on the basis of the appraisal(s);

(2) Does not reflect any relocation payments or other relocation assistance which the owner is entitled to receive.

(d) If only a portion of a habitation and/or improvement is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition will be made. In the event that the Commission determines that partial acquisitions are necessary, all portions so acquired will be acquired simultaneously.

§ 700.123 Expenses incidental to transfer of ownership to the Commission.

Eligible costs. The Commission shall reimburse the owner for reasonable expenses he/she necessarily incurred incidental to the transfer of habitations and/or improvements to the Commission. The Commission is not required to pay costs solely required to perfect the owner's interest in the habitations and/or improvements.

§ 700.125 Disposal of property.

Property acquired by the Commission pursuant to the Act shall be disposed of in one of the following manners:

(a) If the Commission determines that the property acquired constitutes a substantial risk to public health and safety, the Commission may remove or destroy the property.

(b) The Commission may transfer the property acquired by gratuitous conveyance to the tribe exercising jurisdiction over the area. Notice of such transfer shall be in writing and shall be completed within sixty (60) days from the finalization of all property acquisition procedures, unless the tribe notifies the Commission in writing within that time that the property transfer is refused. In the event of a refusal by the tribe, the Commission shall remove the property.

§ 700.127 Payments for acquisition of improvements.

Payments for acquisition of improvements shall be made in the following situations:

(a) To individuals who have been denied benefits under these rules and who can prove ownership of habitations and improvements on land partitioned to the tribe of which they are not members. If the owner is deceased the payment shall be made to his or her estate. Payments under this subsection are further limited by 25 U.S.C. 640d–14(c), Pub. L. 93–531, sec. 15(c).

(b) To individuals who have been certified as eligible for relocation benefits but who at the time of certification, own a decent, safe and sanitary dwelling as determined by the Commission pursuant to § 700.187 and who own habitation and improvements on land partitioned to the tribe of which they are not members.

Ownership shall be determined on the basis of Commission appraisal records at the time of the initial eligibility determination.

(25 U.S.C. 640d, Pub. L. 93–531, 25 U.S.C. 640d–14, Pub. L. 96–305)

[49 FR 35379, Sept. 7, 1984]

Subpart C—General Relocation Requirements

§ 700.131 Purpose and applicability.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part. The relocation requirements of the regulations in this part apply to the relocation of any displaced person.

§ 700.133 Notice of displacement.

After the Commission's Relocation Report and Plan is in effect pursuant to the Act, the Commission shall issue a preliminary relocation notice to each person identified by the Commission as potentially subject to relocation. This notice shall—

(a) Be published in a newspaper of general circulation in the area of the former Joint Use Area at least two times, and shall be sent to each Chapter House on the former Joint Use Area for posting.

(b) Inform the person that he/she will be required to relocate permanently in the future unless the person has applied for and is determined to be eligible for a Life Estate.

(c) Generally describe the relocation assistance program for which the person may become eligible, including the maximum allowable dollar amounts and basic conditions of eligibility for the payments.

§ 700.135 Relocation assistance advisory services.

(a) *General*. The Commission may carry out a relocation assistance advisory program which offers the services described in paragraph (b) of this section. If the Commission determines that a person occupying habitations and/or improvements adjacent to the habitations and/or improvements acquired pursuant to the Act is caused substantial social, economic cultural or other injury because of such acquisition, it may offer such services to such person.

(b) *Services to be provided*. The advisory program will include such measures, facilities, and services as may be necessary or appropriate in order to—

(1) Personally interview where possible each certified eligible head of household to determine his/her relocation needs and preferences, and explain to him/her the relocation payments and other assistance for which he/she may be eligible, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of replacement dwellings and commercial and farm properties and locations, as the case may be.

(3) Assure that replacement dwellings are available to all certified eligible heads of households.

(4) Assist any persons displaced from a business or farm operation to obtain and become established in a suitable replacement location;

(5) Supply persons to be displaced with appropriate information concerning Tribal, Federal, State or local housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to persons to be displaced;

(6) Endeavor to minimize the adverse social, economic, cultural and other hardships and impacts of relocation on persons involved in adjusting to such relocation.

(c) *Coordination of relocation activities*. The Commission shall, to the maximum extent feasible, coordinate its relocation assistance advisory services activities with existing local, state, federal and Tribal agencies to the extent necessary to enable it to carry out its program. Referrals of displaced persons for services to existing services providers will be utilized whenever possible.

(d) *Policy*. The Commission shall continue to provide assistance to a family, individual, business concern, non-profit organization, or farm operation until relocation has been achieved unless section § 700.139 becomes applicable.

(e) *Reasons for terminating assistance*. In general, the circumstances under which the Commission's relocation obligations cease are the following:

(1) Two years have elapsed since the family or individual has moved to a decent, safe and sanitary replacement dwelling and has received all assistance payments to which entitled.

(2) All reasonable efforts to trace a family or individual have failed.

(3) The family or individual on his/her own initiative moves to substandard housing and has refused reasonable offers of additional assistance in moving to a decent, safe and sanitary replacement dwelling.

(4) The business concern, farm operation, or non-profit organization has received all assistance and payments to which it is entitled, and has either been successfully relocated or ceased operations.

(5) Other relevant reasons as determined by the Commission.

§ 700.137 Final date for voluntary relocation application.

(a) In order to be considered for voluntary relocation assistance benefits, an applicant must have filed a completed application form with the Commission by the close of business on July 7, 1986.

(b) To qualify for relocation assistance, individuals must meet the eligibility requirements as of July 7, 1986.

[51 FR 19170, May 28, 1986]

§ 700.138 Persons who have not applied for voluntary relocation by July 7, 1986.

(a) Pursuant to 25 U.S.C. 640d–14 (d)(3) heads-of-household who do not make timely arrangements for relocation by filing an application by July 7, 1986, shall be provided a replacement home by the Commission. To be eligible for benefits (Housing and Moving Expenses), such persons must be, as of July 7, 1986, physically residing full time on land partitioned to a tribe of which they are not members and they must also otherwise meet all other current eligibility criteria.

(b) The Commission shall utilize amounts payable with respect to such households pursuant to 25 U.S.C. 640d–14(b)(2) and 25 U.S.C. 640d–34(a) for the construction or acquisition of a home and related facilities for such households.

(c) Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable after July 7, 1986. At such time, the Commission shall—

(1) Request that the head-of-household choose an available area for relocation, and contract with the Commission for relocation; and

(2) Offer the relocatee suitable housing; and

(3) Offer to purchase from the head-of-household the habitation and improvements; and

(4) Offer provisions for the head-of-household and his family to be moved (e.g., moving expenses, etc.).

(d) If a person so identified fails to agree to move after the actions outlined in this section are taken by the Commission and suitable housing is available (or sufficient funds are available to assure the relocation assistance to which the relocatee may be entitled), the Commission will issue a ninety-day notice stating the date by which the person will be required to vacate the area partitioned to the Tribe of which he is not a member.

[51 FR 19170, May 28, 1986]

§ 700.139 Referral for action.

Upon the expiration of all notice periods and upon the failure or refusal of any relocatees to make timely arrangements to move, the Commission shall forward the names and addresses of such relocatees to the Secretary of the Interior and to the U.S. Attorney for the District of Arizona for such action as they deem appropriate. The Commission will assure the availability of relocation assistance to which the relocatees may be entitled.

§ 700.141 General requirements—claims for relocation payments.

(a) *Documentation*. Any claim for a relocation payment under subpart D, E, F, G, or H of this part shall be submitted to the Commission on the appropriate Commission form and supported by such documentation as may reasonably be required by the Commission to demonstrate expenses incurred, such as bills and receipts.

(b) *Time for filing*. All claims for a relocation payment shall be filed with the Commission within sixty (60) days after the family occupies the replacement home unless this time period is extended by the Commission.

(c) *Direct payment of claim*. Relocation payments shall be made in accordance with the terms of the Relocation Contracts and are not subject to claims of creditors or assignments.

§ 700.143 Payments for divorced or separated relocatees.

General. The following considerations apply to certified eligible heads of household who are legally separated or divorced and intend to establish separate eligibility.

(a) Determination of benefits. Eligibility for relocation benefits is determined as of the time that the Relocation Contract is signed.

(1) If the divorce or separation took place before benefits were first applied for, the spouse who vacated the habitation will not be eligibile for benefits and all relocation benefits will accrue to the spouse remaining in occupancy as head of the household remaining to be relocated.

(2) If both husband and wife are in possession of the habitation at the time that benefits are first applied for, and are divorced or separated prior to signing of a Relocation Contract, both husband and wife may qualify separately for benefits if each meets the requirements of eligibility under these regulations.

(3) If both husband and wife are in possession of the habitation at the time a Relocation Contract is signed but are divorced or separated prior to occupancy of the replacement dwelling, only one benefit will be paid to the household. Such benefits (including the assistance payment, moving expenses and replacement dwelling benefit) and the purchase price of the habitation and improvements may be prorated between husband and wife in such manner as they may agree in writing so long as such proration is consistent with the terms of the Relocation Contract. Such proration may also be made by a court of competent jurisdiction. In the absence of an agreement between the parties or a court order, any necessary prorations shall be made by the Commission.

(b) For purposes of this section, a head of household shall be considered as married even though living apart from his or her spouse unless legally separated under a decree or separate maintenance.

[47 FR 17988, Apr. 27, 1982]

§ 700.145 Payments to estates.

(a) Relocation benefits can be paid to the estate of a deceased Certified Eligible Head of Household under the following circumstances:

(1) If there is no household requiring relocation pursuant to the Act surviving the deceased head of household:

(i) Compensation for the habitation and other improvements owned by the deceased head of household and the cost of removing personal property from the acquired habitation and other improvements shall be paid to the estate of a deceased head of household, or as otherwise directed by a court of competent jurisdiction.

(ii) No replacement housing benefit or assistance payment (bonus) shall be paid under this circumstance.

(2) Replacement housing benefits may be paid to an estate only when a certified eligible head of household was qualified for such a housing payment pursuant to the Act and signed a Relocation Contract but died before the replacement housing was occupied. The estate of a certified eligible head of household who had not signed a Relocation Contract at the time of his/her death is not eligible for payment of a replacement housing benefit.

(b) If one of a married couple who was a certified eligible head of household dies, the surviving spouse may be paid the same relocation assistance benefits, including replacement housing payments, which the couple would have received had death not occurred. If there is no surviving spouse, a court of competent jurisdiction may appoint a guardian to act for minor members of the household. The Commission shall deal with such guardian and any members of the household who have attained their majority in a manner to

effect relocation of the remaining household under these regulations.

[47 FR 17988, Apr. 27, 1982]

§ 700.147 Eligibility.

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on December 22, 1974, of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by 25 U.S.C. 640d–13(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

[49 FR 22278, May 29, 1984, as amended at 51 FR 19170, May 28, 1986]

Subpart D—Moving and Related Expenses, Temporary Emergency Moves

§ 700.151 Eligibility.

(a) *General.* All certified eligible heads of household are eligible for moving and related expenses as prescribed in this subpart. A certified eligible head of household who lives on his/her business or farm property may be eligible for both a payment as a dwelling occupant and a payment with respect to the business or farm operation.

(b) *Least costly approach.* The amount of payment for an eligible expense under this subpart shall not exceed the least costly method, as determined by the Commission, of accomplishing the objective of the payment without causing undue hardship to the certified eligible heads of household.

(c) *Prior approval.* Written approval of the Commission must be obtained for all moving and search expenses in this subpart. Such approval shall be obtained by each certified eligible head of household prior to incurring any expense from the real estate specialist to whom the case is assigned. If prior approval and the amount thereof is not obtained from the Commission, the Commission thereafter will determine:

(1) Whether the travel was required and the expenses reasonable and;

(2) The amount of reimbursement to be paid, if any.

§ 700.153 Actual reasonable moving and related expenses—residential moves.

Subject to the limitations contained in this subpart, a certified eligible head of household is entitled to actual reasonable expenses for—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules, meals and lodging away from home required by the Commission.

(b) Transportation computed at prevailing federal per diem and mileage allowance schedules of the household and personal property from the acquired site to the replacement site.

(c) Packing, crating, unpacking and uncrating of the personal property.

(d) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;

(e) Storage of the personal property, not to exceed one year unless extended by the Commission.

(f) Insurance of the personal property in connection with the move and necessary storage; and

(g) Other moving related expenses that are not listed as ineligible under § 700.165, as the Commission determines to be reasonable and necessary.

§ 700.155 Expenses in searching for replacement dwelling—residential move.

(a) A certified eligible head of household is entitled to actual reasonable expenses incurred in the search for a replacement dwelling.

(b) Transportation, meals and lodging when required to be away from home by the Commission, computed at prevailing federal per diem and mileage allowance schedules.

§ 700.157 Actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs*. Subject to the limitations of § 700.151(c) a certified eligible business, farm operation or nonprofit organization is entitled to payment for actual reasonable expenses for:

(1) Transportation of personal property from the acquired site to the replacement site.

(2) Packing, crating, unpacking, and uncrating the personal property.

(3) Disconnecting, dismantling, removing, reassembling and installing relocated and substitute machinery, equipment, and other personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property;

(4) Storage of the personal property;

(5) Insurance of personal property in connection with the move and necessary storage;

(6) Any license, permit or certification required by the displaced person, to the extent such cost is (i) necessary to its re-establishment at the replacement location and (ii) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less;

(7) Professional services, including architect's, attorney's and engineer's fees, and consultant's charges, necessary for (i) planning the move of the personal property, (ii) moving the personal property, or (iii) installing the relocation personal property at the replacement location.

(8) Relettering signs and printing replacement stationery made obsolete as a result of the move;

(9) Actual direct loss of personal property;

(10) Purchase of substitute personal property;

(11) Searching for a replacement location;

(12) Other moving-related expenses that are not listed as ineligible under § 700.165.

(b) *Self-move*. If the displaced person self-moves his business, farm operation, or nonprofit organization, the Commission may approve a payment for his moving expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the Commission, without submission of documentation of moving expenses actually incurred.

(c) *Notification to Commission and inspection*. To be eligible for a payment under this section, the displaced person shall permit the Commission to make reasonable and timely inspections of the personal property at the displacement and replacement sites.

§ 700.159 Payment for direct loss of personal property—nonresidential moves.

(a) *General*. A certified eligible business is entitled to payment for actual direct loss of an item of tangible personal property incurred as a result of moving or discontinuing his business, farm operation, or nonprofit organization. The payment shall consist of the reasonable costs incurred in attempting to sell the item plus the less of—

(1) The fair market value of the item for continued use at the acquired site, less the proceeds from its sale. (When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

(2) The estimated cost of moving the item, but with no allowance for storage. (If the business, farm operation or nonprofit organization is discontinued, the estimated cost shall be based on a moving distance of 50 (fifty) miles.)

(b) *Advertising sign*. The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of—

(1) The depreciated reproduction cost of the sign as determined by the Commission, less the proceeds from its sale; or

(2) The estimated cost of moving the sign.

(c) *Sales effort*. To be eligible for payment for direct loss of personal property, the claimant must make good faith effort to sell the personal property, unless the Commission determines that no such effort is necessary.

(d) *Transfer of ownership.* To be eligible for payment for direct loss of personal property, the claimant shall transfer to the Commission ownership of the unsold personal property.

§ 700.161 Substitute personal property—nonresidential moves.

(a) *General.* If an item of personal property, which is used as part of a business, farm operation or nonprofit organization, is not moved but is promptly replaced with a comparable substitute item at the replacement site, the displaced person is entitled to payment of the lesser of—

(1) The cost of the substitute item, including installation cost at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, if any; or

(2) The estimated cost of moving the replaced item, based on the lowest acceptable bid or estimate obtained by the Commission for eligible moving and related expenses, but with no allowance for storage.

(b) *Transfer of ownership.* To be eligible for a payment under this section, the claimant shall transfer to the Commission ownership of the personal property that has not been sold or traded in.

§ 700.163 Expenses in searching for replacement location—nonresidential moves.

A displaced business, farm or nonprofit organization is entitled to an amount not to exceed $500 (five-hundred dollars), as determined by the Commission, for actual reasonable expenses incurred in searching for a replacement location, including—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules; meals and lodging away from home;

(b) Time spent searching, based on reasonable earnings;

(c) Fees paid to a real estate agent or broker to locate a replacement site.

§ 700.165 Ineligible moving and related expenses.

A displaced person is not entitled to payment for—

(a) The cost of moving any structure or other improvement in which the displaced person reserved ownership; or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Physical changes at replacement location of business, farm or nonprofit organization, except as provided at § 700.157; or

(g) Any additional expense of a business, farm, or nonprofit organization incurred because of operating in a new location.

§ 700.167 Moving and related expenses—fixed payment.

A displaced person (other than an outdoor advertising display business who is eligible for a payment for his actual moving and related expenses under subpart D of these regulations) is entitled to receive a fixed payment in lieu of a payment for such actual moving and related expenses.

§ 700.169 Fixed payment for moving expenses—residential moves.

The fixed payment for moving and related expenses of a certified eligible head of household from a dwelling consists of—

(a) A moving expense allowance not to exceed $300 (three hundred dollars).

(b) A dislocation allowance of $200 (two hundred dollars).

§ 700.171 Fixed payment for moving expenses—nonresidential moves.

(a) *General.* The fixed payment for moving and related expenses of a displaced business or farm operation that meets applicable requirements under this section is an amount equal to its average annual net earnings as computed in accordance with § 700.173, but not less than $2,500 nor more than $10,000. A nonprofit organization which meets the applicable requirements under this section is entitled to a payment of $2,500.

(b) *Business.* A business qualifies for payment under this section if the Commission determines that—

(1) The business cannot be relocated without a substantial loss of its existing patronage.

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Commission, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than $1,000 and average annual net earnings of less than $500, during the two taxable years prior to displacement, shall be considered ''another establishment''; and

(3) The business had (i) average annual gross receipts of at least $1,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least $500 as determined in accordance with § 700.173. However, the Commission may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which—

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business, and

(4) The same person or closely related persons own, control or manage the affairs of the entities.

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the Commission determines that it meets the criteria set forth in § 700.171(b)(3). In the case of a partial acquisition, the fixed payment shall be made only if the Commission determines that—

(1) The part acquired was a farm operation before the acquisition; or

(2) The partial acquisition caused the operator to be displaced from the farm operation; or

(3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a $2,500 payment under this section, if the Commission determines that it—

(1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A nonprofit organization is assumed to meet this test, unless the Commission demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Commission.

§ 700.173 Average net earnings of business or farm.

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes, during the two taxable years immediately prior to the taxable year in which it was displaced. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the Commission determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the Commission proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

§ 700.175 Temporary emergency moves.

(a) *General.* An eligible household may be granted temporary relocation resources, at the Commission's discretion, provided:

(1) That the move is for a limited time period not to exceed 12 months unless extended by the Commission.

(2) That permanent relocation resources are not available at the time of displacement.

(3) Prior approval of the Commission is obtained.

(4) That a Relocation Contract providing for permanent relocation has been executed.

(5) The head of household actually remained domiciled on lands partitioned to the tribe of which he is not a member as of December 22, 1974, and continuously thereafter.

(6) The head of household shall vacate all improvements owned by him on lands partitioned to the tribe of which he is not a member and shall transfer title to said improvements to the Commission.

Temporary relocation shall in no way diminish the responsibility of the Commission to offer relocation assistance and services designed to achieve permanent and suitable facilities.

(b) *Conditions under which move to temporary housing accommodations may be approved*. The move of a family or individual into temporary housing accommodations may be approved by the Commission only if the following conditions are met.

(1) The move will be undertaken because:

(i) It is necessary because of an emergency as determined by the Commission; or

(ii) The individual or family is subject to conditions hazardous to his or his family's health or safety.

(2) The temporary housing is decent, safe, and sanitary.

(3) The Commission shall have determined that within twelve (12) months of the date of the temporary move, replacement housing meeting Commission-approved standards will be available for occupancy by the persons temporarily rehoused.

(4) Prior to the move, the Commission shall provide in writing assurance to each head of household that:

(i) Replacement housing will be available at the earliest possible time but in any event no later than twelve (12) months from the date of the move to temporary housing.

(ii) Replacement housing will be made available on a priority basis, to the individual or family who has been temporarily rehoused.

(iii) The move to temporary rehousing will not, in any way, affect a claimant's eligibility for a replacement housing payment nor deprive him of the same choice or replacement housing units that would have been made available had the temporary move not been made.

(iv) The Commission will pay all costs in connection with the move to temporary housing, including any increased housing costs.

(c) *Agency documentation*. To request Commission approval for a temporary move of a family, the following information shall be submitted to the Commission (additional information may be required on a case-by-case basis):

(1) An explanation of the necessity for the temporary move, based upon the criteria set forth by the Commission.

(2) The estimated duration of the temporary occupancy.

(3) In the case of the family or individual, (i) a copy of the written assurance which will be provided to the person explaining his rights and the continuing obligation of the agency to provide relocation assistance, and (ii) evidence that the family or individual agrees to make the temporary move.

(d) *Costs in connection with temporary move*—(1) *Costs included*. Costs included in a temporary move may cover the following:

(i) Actual reasonable moving costs and related expenses for the move to temporary accommodations.

(ii) For the family or individual moved from a rental unit the difference, if any, between the rental cost of the dwelling vacated and the rental cost of the temporary unit.

(iii) For a homeowner who retains ownership of his dwelling the reasonable cost of renting the temporary dwelling.

(iv) For a homeowner whose dwelling has been acquired the difference, if any, between his housing costs for the acquired dwelling and the rental cost of the temporary unit.

(2) *Costs not a replacement home benefit*. Costs in connection with a move to

temporary accommodations are not to be considered as relocation payments under the Act. (See paragraph (e) of this section.)

(e) *Distinguishing between cost of temporary move and relocation payment.* The costs of a temporary move, as decribed in the foregoing subparagraphs, are not to be considered as all or a part of the relocation payment to which a displaced person is entitled under the Act. Thus, when a family is moved to temporary accommodations, a relocation payment is *not* made and the election or choice of type of payments that would ordinarily be made upon displacement must be delayed until the final move is made. When the move out of temporary accommodations is made, the displaced person shall receive the full relocation payments to which he/she is entitled pursuant to Commission regulations.

Subpart E—Replacement Housing Payments

§ 700.181 Eligibility.

(a) *Basic eligibility requirements.* A certified eligible head of household who established his/her residency requirements in the area partitioned to the tribe of which he/she is not a member, is eligible for the replacement housing payment specified at § 700.183(a).

(b) *Other rules and requirements.* A payment under this subpart E is subject to the other applicable rules and requirements of these regulations.

§ 700.183 Determination of replacement housing benefit.

(a) *Amount of benefit.* The replacement housing benefit for a certified eligible head-of-household is an amount not to exceed fifty-five thousand dollars ($55,000) for a household of three or less and not to exceed sixty-six thousand dollars ($66,000) for a household of four or more. Subject to such other requirements of these regulations as may apply, the replacement housing benefit shall be calculated as follows;

(1) The amount of the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part shall be applied first toward the cost of a replacement dwelling.

(2) An additional amount shall be added to the value of the habitation and improvements to equal the cost of a decent, safe, and sanitary replacement dwelling.

(3) The total value of the replacement dwelling shall not exceed the amount of the replacement housing benefit specified in paragraph (a) of this section.

(4) In the event the cost of providing a decent, safe, and sanitary replacement dwelling is less than the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part, the difference shall be paid to that head-of-household.

(b) The Commission shall, on or before the first Friday in April of each fiscal year, after consultation with the Secretary of the Department of Housing and Urban Development, annually increase, decrease or leave unadjusted the above limitations on replacement housing benefits to reflect changes in housing or development and construction costs, other than costs of land, during the preceding year. In determining whether to increase or decrease the replacement housing benefit limitations set forth above, the Commission shall consider the following:

(1) The most recent percentage rate of increase or decrease in single family housing construction costs reported by HUD. (General Prototype Housing Costs For One to Four Family Dwelling Units).

(2) The most recent Boecht Building Cost Modifier.

(3) The experience of relocatee families in obtaining replacement housing within the current benefits.

(4) The cost of available replacement housing which meets Commission standards as set forth in these regulations.

(5) Such other available information which the Commission deems appropriate and which is relevant to a determination of whether replacement housing benefits should be increased or decreased to reflect change in housing or development and construction costs during the preceding year.

(c) If the owner retains ownership of his dwelling, moves it from the acquired site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the sum of—

(1) The cost of the replacement site, if any; plus

(2) The moving and restoration expenses; plus

(3) The costs, if any, incurred to make the unit a decent, safe, and sanitary replacement dwelling; but not to exceed the above limitation on total replacement home benefits.

[47 FR 17988, Apr. 27, 1982, as amended at 52 FR 21951, June 10, 1987]

§ 700.187 Utilization of replacement home benefits.

The Commission shall assure that all eligible heads of household receive a decent, safe and sanitary replacement dwelling in the following manner:

(a) If the eligible head of household owns no dwelling other than that on the area from which he or she must move pursuant to the Act, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(1) Purchase of an existing home, by the head of household,

(2) Construction of a home by the head of household,

(3) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(b) If the eligible head of household owns or is buying or building a home in an area other than the area from which he or she must move pursuant to the Act, the Commission will expend relocation benefits in one of the following manners:

(1) If the home is decent, safe, and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission will expend replacement housing benefits up to the maximum then existing benefit to accelerate to the maximum extent possible the achievement by that household of debt-free home ownership.

(2) If the home is owned free and clear but does not meet Commission decent, safe, and sanitary standards, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure the home meets decent, safe, and sanitary standards, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(3) If the home is neither owned free and clear nor decent, safe, and sanitary, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure that the home meets decent, safe, and sanitary standards, and to accelerate to the maximium extent possible the achievement of debt-free home ownership, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(4) If the home is decent, safe, and sanitary, and is owned free and clear, no replacement home benefits will be paid.

(c) Home improvements shall include the following: General repairs, painting and texturing, fencing—including corrals, landscaping, grading, room additions, re-modeling, roofing, insulating, repair or improvements to the water, sewerage, cooling, heating, or electrical systems, storage buildings, energy conservation measures, and other home improvements as determined and defined by the Commission.

(d) In implementing these regulations the Commission will encourage the use of innovative energy or other technologies in order to achieve the minimum monthly housing cost feasible for each replacement house.

§ 700.189 Expenditure of replacement home benefits.

Replacement home benefits shall be expended or obligated in full at or before the time of original acquisition except as stated below. It is not anticipated that such exceptions would be common and each such instance shall be reviewed and a determination will be made by the Certification Officer.

(a) Under unusual circumstances such as: Unknown (latent) defects in the replacement dwellings, significant change of circumstances and extreme hardship, benefits may be expended after the time of original acquisition up to the existing maximum replacement home benefit.

(b) All replacement home benefits shall be expended not later than one (1) year after the date of payment of the incentive bonus, except under unusual circumstances as stated above, up to the statutory maximum.

(c) Replacement home benefits shall not be expended for maintenance except under unusual circumstances as stated above, up to the statutory maximum.

(d) For purposes of this paragraph, the time of original acquisition shall be defined as the date of execution of the Commission's Relocation Contract.

Subpart F—Incidental Expenses

§ 700.195 General.

Incidental expenses are those reasonable expenses, as determined by the Commission, to be incidental to the purchase of the replacement dwelling, but not prepaid.

§ 700.197 Basic eligibility requirements.

A certified eligible head of household is eligible for reimbursement of expenses that are incidental to the purchase of a replacement dwelling, as provided in § 700.199 hereof.

§ 700.199 Incidental expenses.

(a) *Eligible costs*. Subject to the limitations in paragraphs (b) and (c) of this section, the incidental expenses to be paid are those actually incurred by the displaced person incident to the purchase of the replacement dwelling, including—

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing plats, recording fees; and title insurance;

(2) Lender, FHA or VA appraisal fees;

(3) FHA or VA application fee;

(4) Certification of structural soundness when required by the lender;

(5) Credit report;

(6) Owner's and mortgagee's evidence or assurance of title;

(7) Escrow agent's fee;

(8) State revenue or documentary stamps, sales or transfer taxes;

(9) Such administrative costs as are necessary to secure and acquire homesite leases and/or allotments on tribal lands. These costs may include survey fees, appropriate tribal fees and other conveyance instruments as may be appropriate;

(10) Costs, such as advertising charges, incurred incident to the purchase of the improvements owned by the head of household.

(11) Cost related to fee inspector's inspections of the replacement dwelling.

(12) Such other costs as the Commission determines to be incidental to the purchase.

(b) *Truth in lending charge*. Any expense, which is determined to be part of the debt service or finance charge under 15 U.S.C. 131–1641 and Regulation Z (12 CFR part 226) issued thereunder by the Board of Governors of the Federal Reserve System, is not eligible for reimbursement as an incidental expense.

Subpart G—Assistance Payments (Incentive Bonus)

§ 700.205 Eligibility requirements.

A certified eligible head of household is eligible for the assistance payment pursuant to section 14(b) of the Act.

(a) *Amount of payment*. The amount of payment shall be computed in accordance with the schedule provided for in section 14(b) of the Act.

(b) *Date for determination of amount of assistance payment*. The date of completion and filing with the Commission of the Application for Relocation Assistance and Agreement to Relocate shall

be the date used for determination of the amount of the assistance payment.

(c) *Time of payment*. Assistance payments provided for in this section shall only be paid upon actual occupancy of the replacement dwelling and vacation of the acquired habitation and/or improvement, if any, in the area partitioned to the Tribe of which he/she is not a member.

Subpart H—Last Resort Replacement Housing

§ 700.209 Applicability.

The provisions of this subpart apply only when the Commission determines that, unless it acts under the provisions of this subpart, there is a reasonable likelihood that replacement dwelling(s) will not be available on a timely basis to person(s) to be displaced.

§ 700.211 Basic rights and rules.

The provisions of this subpart do not deprive any displaced person of any rights described elsewhere in these regulations. The Commission may meet its obligation to provide persons with reasonable opportunities to relocate to a replacement dwelling by offering such opportunities developed or to be developed under this subpart.

§ 700.213 Methods of providing last resort replacement housing.

(a) *General*. The methods of providing last resort housing include, but are not limited to—

(1) Rehabilitation of, and/or additions to, an existing replacement dwelling;

(2) A replacement housing payment in excess of the limits set forth in subparts E and F of this part or the provision of direct Commission mortgage financing;

(3) The construction of a new replacement dwelling;

(4) The relocation and, if necessary, rehabilitation of a replacement dwelling;

(5) The purchase of land and/or a replacement dwelling by the Commission and subsequent sale or lease to, or exchange with, a displaced person; and

(6) The removal of barriers to the handicapped as may be necessary.

Subpart I—Commission Operations

§ 700.219 General.

(a) The operation of the Commission shall be governed by a Management Manual passed, amended or repealed by a majority of the Commission at any regular or special meeting. The Management Manual is the prescribed medium for publication of policies, procedures and instructions which are necessary to facilitate the day-to-day operations and administration of the Commission.

(b) *Meetings*. The Commission shall hold a regular monthly meeting on the first Friday of each month at a time and place designated by public notice unless said Friday falls on a legal holiday, in that event, the meeting shall begin on the next regular workday. The monthly meeting may continue for as many days thereafter as is necessary to complete the regular affairs of the Commission, and may be recessed from time to time and reconvened at times designated by the Chairperson.

(c) *Special public meetings*. May be called by any Commissioner with ten (10) working days written notice given to the other Commissioners. Written notice may be waived by a release bearing the signatures of all three Commissioners.

(d) *Executive Session*. During a regular or special meeting, any Commissioner may request an Executive Session for purposes of personnel and administrative matters.

(e) *Compliance with other laws and regulations*. As a federal agency, the Commission will conduct its activities in conformance with applicable federal statutes and administrative procedures.

Subpart J—Inspection of Records

§ 700.235 Purpose and scope.

(a) This subpart contains the regulations of the Commission implementing the requirement of subsection (a)(3) of the Freedom of Information Act, 5 U.S.C. 552(a)(3), which provides that the Commission ''upon any request for records which (1) Reasonably describes

such records and (2) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.'' This subpart describes the procedures by which records may be obtained from the Commission. The procedures in this subpart are not applicable to requests for records published in the FEDERAL REGISTER or opinions in the adjudication of cases, statements of policy and interpretations and administrative staff manuals which have been published or made available under subpart A of this part.

§ 700.237 Definitions.

Act. As used in this subpart, ''Act'' means the ''Freedom of Information Act,'' 5 U.S.C. 552.

§ 700.239 Records available.

(a) *Commission policy*. It is the policy of the Commission to make the records of the Commission available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement*. The Freedom of Information Act requires that the Commission, on a request from a member of the public to inspect or copy records made in accordance with the procedures in this subpart, shall promptly make the records available.

(c) *Statutory exemptions*. The Act exempts nine categories of records from this disclosure requirement. The Act provides that disclosure is not required of matters that are:

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

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempt from disclosure by statute;

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

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

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

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the indentity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

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

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

(d) *Decisions on requests*. It is the policy of the Commission to withhold information falling within an exemption only if (1) disclosure is prohibited by statute or Executive Order or (2) sound grounds exist for invocation of the exemption.

(e) *Deletion of portions of records*. If a requested record contains material within an exemption together with material not within an exemption and it is determined under the regulations in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material.

(f) *Creation of records*. This subpart applies only to records which exist at the time a request for records is made. Records are not required to be created in response to a request by combining

or compiling selected items from the files or by preparing a new computer program, nor are records required to be created to provide the requester with such data as proportions, percentages, frequency distributions, trends, or comparisons.

(g) *Records of concern to other departments and agencies.* (1) If the release of a record would be of concern to both the Commission and another Federal agency, the record will be made available by the Commission only if the interest of the Commission is the primary interest. If the Commission's interest is not the primary interest, the requester shall be referred in writing to the agency having the primary interest. The Commission has the primary interest in a record if the record was developed pursuant to Commission regulations, directives, or request even though the record originated outside of the Commission.

(2) If the release of a record in which the Commission has a primary interest would be of substantial concern to another agency, the official processing the request, should, if administratively feasible and appropriate, consult with that agency before releasing the record.

(h) *Records obtained from the public.* If a requested record was obtained by the Commission from a person or entity outside of the Government, the official responsible for processing the request shall, when it is administratively feasible to do so, seek the views of that person or entity on whether the record should be released before making a decision on the request.

§ 700.241 Request for records.

(a) *Submission of requests.* A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the person wishing to inspect or copy the records, he may direct his request to the head of the appropriate bureau, or the bureau's chief public information officer, if any.

(b) *Form of request.* (1) Requests invoking the Freedom of Information Act shall be in writing.

(2)(i) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Commission familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, and the person or office that made it, the present custodian of the record, and any other information which will assist in location of the requested records. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(ii) If the description of a record sought is insufficient to allow identification and location of the record, the response denying the request on this ground shall so state and, to the extent possible, indicate what additional descriptive information, if any, would assist in location of the record.

(3) A request shall state the maximum amount of fees which the requester is willing to pay. Requesters are notified that under § 700.251, the failure to state willingness to pay fees as high as are anticipated by the Commission will delay running of the time limit and delay processing of the request, if the responsible official anticipates that the fees chargeable may exceed $25.00.

(4)(i) To insure expeditious handling, requests shall be prominently marked, both on the envelope and on the face of the request, with the legend ''FREEDOM OF INFORMATION REQUEST.'' The failure of a request to bear such a legend will not disqualify a request from processing under the procedures in this subpart if the request otherwise meets the requirments of this section. A request not bearing the legend ''FREEDOM OF INFORMATION REQUEST'' will not, however, be deemed to have been received for purposes of the running of the time limit set out in § 700.245 until it has been identified by bureau personnel as a Freedom of Information request and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend ''FREEDOM OF INFORMATION REQUEST'' as a request otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend ''FREEDOM OF INFORMATION REQUEST.'' (B) date the request to reflect the date on which it was identified, and (C) take steps to assure proper processing of the request under the procedures in this subpart.

(d) *Categorical requests.* (1) A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if (i) it can be determined which particular records are covered by the request and (ii) the records can be searched for, collected and produced without unduly burdening or interfering with Commission operations because of the staff time consumed or the resulting disruption of the files.

(2) If a categorical request is determined under paragraph (d)(1) of this section not to reasonably describe the records requested, the response denying the request on that ground shall specify the reasons why and shall extend to the requester an opportunity to confer with knowledgeable Commission personnel in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

§ 700.243 Action on initial requests.

(a) *Granting of requests.* (1) A requested record shall be made available if (i) the record is not exempt from disclosure or (ii) the record is exempt from disclosure, but its withholding is neither required by statute or Executive order nor supported by sound grounds.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall immediately notify the person requesting the record as to where and when the record is available for inspection or as the case may be, where and when copies will be available. If fees are due under § 700.251, the responsible official shall also state the amount or, if the exact amount cannot be determined, the approximate amount of fees due.

(2) If the record was obtained by the Commission from a person or entity outside of the Government, the responsible official shall, when it is administratively feasible to do so, notify that person or entity that the record has been made available.

(c) *Denial of requests.* (1) A request for a record may be denied only if it is determined that (i) the record is exempt from disclosure and (ii) that withholding of the record is required by statute or Executive order or supported by sound grounds.

(2) A request to inspect or copy a record shall be denied only by the Freedom of Information Act Officer or by an official whom the Executive Director has in writing designated.

(d) *Form of denial.* A reply denying a request shall be in writing and shall include:

(1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record;

(2) The sound ground for withholding;

(3) A listing of the names and titles or positions of each person responsible for the denial;

(4) A statement that the denial may be appealed to the Commission pursuant to § 700.247 and that such appeal must be in writing and be received by this official within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the denial, in the case of the denial of an entire request, or within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) of records being made available, in the case of a partial denial, by writing to the Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(e) *Exception.* The requirements of paragraphs (c), (d), and (e) of this section do not apply to requests denied under § 2.14 on the ground that the request did not reasonably describe the records requested or to requests for records which do not exist.

(f) *Filing of denials.* Copies of all replies denying, in whole or part, a request for a record which are issued under this section of § 700.243 shall be promptly submitted by the Freedom of Information Act Officer, denials to the Executive Director and the Commission's legal counsel.

§ 700.245 Time limits on processing of initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than ten (10) days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* For purposes of paragraph (a) of this section, the time limit commences to run when a request is received at the Commission's office in Flagstaff, Arizona.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting upon an initial request may be extended to the extent reasonably necessary to the proper processing of the particular request, but in no case may the time limit be extended for more than ten (10) working days:

(1) 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;

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

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) *Authority to make extensions.* (1) An extension of time under paragraph (c) of this section may be made only by the Freedom of Information Act Officer or such higher authority as the Commission has in writing designated.

(2) The person requesting the records shall be notified in writing of the extension. The written notice shall state the reason for the extension and the date on which a determination on the request is expected to be dispatched.

(3) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

(e) *Treatment of delay as denial.* (1) If no determination has been reached at the end of the ten (10) day period for deciding an initial request, or the last extension thereof, the requester may deem his request denied and may exercise a right of appeal in accordance with the provisions of § 700.247.

(2) When no determination can be reached within the applicable time limit, the responsible official shall nevertheless continue to process the request. On expiration of the time limit, the responsible official shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial for purposes of appeal to the Commission in accordance with § 700.247. The requester may be asked to consider delaying use of his right to appeal until the date on which the determination is expected to be dispatched. If the requester so agrees, he is deemed not to have treated the failure to respond within the applicable time limit as a denial for purposes of the running of the twenty (20) working-day appeal period set out in § 700.247. If a determination of the request is not issued by the new agreed upon date, or if the request is denied in whole or part, the requester will have available his full right of appeal under § 700.247, including the entire twenty (20) working-day period for filing of the appeal.

§ 700.247 Appeals.

(a) *Right of appeal.* Where a request for records has been denied, in whole or part, the person submitting the request may appeal the denial to the Commission.

(b) *Time for appeal.* An appeal must be received no later than twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the initial denial, in the case of a denial of an entire request, or twenty (20) days

(Saturdays, Sundays, and public legal holidays excepted) after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) 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 and should, in order to expedite the appellate process and give the requester an opportunity to present his arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(3)(i) Both the envelope containing the notice of appeal and the face of the notice shall bear the legend ''FREEDOM OF INFORMATION APPEAL''. The failure of an appeal to bear such a legend will not disqualify an appeal from processing under § 2.18 if the appeal otherwise meets the requirements of this section. An appeal not bearing the legend ''FREEDOM OF INFORMATION APPEAL'' will not, however, be deemed to have been received for purposes of the running of the time limit set out in § 700.249 until it has been identified by Commission personnel as a Freedom of Information appeal and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend ''FREEDOM OF INFORMATION APPEAL'' as an appeal otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend ''FREEDOM OF INFORMATION APPEAL,'' (B) date the appeal to reflect the date on which it was identified, and (C) take steps to assure proper processing of the appeal under the procedures in this subpart.

(4) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

§ 700.249 Action on appeals.

(a) *Authority.* Appeals from initial denials of requests for records shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(b) *Time limit.* A final determination on any appeal shall be made within twenty (20) days (excepting Saturdays, Sundays, and public legal holidays) after receipt of the appeal.

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 700.245 or was extended for fewer than ten (10) working days, the time for processing of the appeal may be extended by the Executive Director to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten (10) working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 700.245(c) requires an extension.

(2) The Executive Director shall, in writing, advise the appellant of the reasons for the extension and the date on which a final determination of the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the twenty (20) working-day period for deciding an appeal, or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review. The requester may be asked to consider delaying resort to his right to judicial review until the date on which the determination on his appeal is expected to be dispatched.

(d) *Form of decision*. The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Freedom of Information Act Officer shall immediately make the records available or instruct the appropriate bureau official to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of his right to obtain judicial review in the U.S. District Court for the district in which the withheld records are located, or in which the requester resides or has his principal place of business or in the U.S. District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(e) *Distribution of copies*. Copies of final determinations issued by the Commission shall be provided to the Commission's legal counsel.

§ 700.251 Fees.

(a) *Services for which fees may be charged*. (1) Unless waived pursuant to the provisions of paragraph (c) of this section, user fees shall be charged for document search and duplication costs incurred in responding to requests for records. User fees also shall be charged for the formal certification of verification attached to authenticated copies of records under the seal of the Commission.

(2) Unless waived or reduced pursuant to paragraph (c) of this section, user fees shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual.

(b) *Services for which fees may not be charged*. No fee may be charged for any services required by the Freedom of Information Act to be performed in responding to a request for records other than those services for which fees may be charged under paragraph (a) of this section. Services for which no fees may be charged include, but are not limited to,

(1) Examining requested records to determine whether they are exempt from mandatory disclosure or whether, even if exempt, they should nevertheless be made available in whole or part,

(2) Deleting exempt matter from records so that the remaining portions of the records may be made available,

(3) Monitoring a requester's inspection of agency records made available to him for inspection, and

(4) Resolving legal and policy issues affecting access to requested records.

(c) *Waiver or reduction of fees*. (1) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests for records may be waived or reduced, as appropriate, if the official making the records available determines that furnishing the records can be considered as primarily benefiting the public as opposed to the requester.

(2) Fees otherwise applicable for document research and duplication costs incurred in responding to requests may be waived and not charged if the request involves:

(i) Furnishing unauthenticated copies of any documents reproduced for gratuitous distribution;

(ii) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Commission;

(iii) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(3) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests may be waived or reduced if the cost of collecting the fee would exceed the amount of the fee or if the request involves:

(i) Furnishing records to press, radio and television representatives for dissemination through the media to the general public;

(ii) Furnishing records to donors with respect to their gifts;

(iii) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Commission to assist the individual or organization in its work with the Commission;

(iv) Furnishing records to state, local and tribal governments and public

international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Commission and to do so will help to accomplish the work of the Commission;

(v) Furnishing records when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Commission's fee for the service would be included in a billing against the Commission);

(vi) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Commission employees);

(vii) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

(d) *Notice of anticipated fees and prepayment.* (1) Where it is anticipated that fees chargeable under this section may amount to more than $25.00 and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the request shall be deemed not to have been received for purposes of the time limits established by § 700.245 until the requester is advised of the fees which are anticipated and has agreed to pay these fees. Advice to requesters with respect to anticipated fees shall be provided promptly.

(2) The appropriate cases, advance payment of fees may be required before requested records are made available to the requester.

(3) A notice of anticipated fees or notice of request for advance payment shall extend an offer to the requester to confer with appropriate personnel in an attempt to reformulate the request in a manner which will reduce the anticipated fees and meet the needs of the requester.

(e) *Form of payment.* Payment of fees shall be made by check or money order payable to the Navajo-Hopi Indian Relocation Commission. The term United States or the initials ''U.S.'' shall not be included on the check or money order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

Subpart K—Privacy Act

§ 700.255 Purpose and scope.

This subpart contains the regulations of the Navajo and Hopi Indian Relocation Commission implementing section 3 of the Privacy Act.

§ 700.257 Definitions.

(a) *Act.* As used in this subpart, ''Act'' means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Individual.* As used in this subpart, ''individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain.* As used in this subpart, the term ''maintain'' includes maintain, collect, use or disseminate.

(d) *Record.* As used in this subpart, ''record'' means any item, collection, or grouping of information about an individual that is maintained by the Commission including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(e) *System of records.* As used in this subpart, ''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 identifying particular assigned to the individual.

(f) *Medical records.* As used in this subpart, ''medical records'' means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(g) *Civil Service Commission personnel records.* As used in this subpart, ''Civil Service Commission personnel records'' means records maintained for the Civil Service Commission by the Commission and used for personnel management programs or processes such as

staffing, employee development, retirement, and grievances and appeals.

(h) *Statistical records.* As used in this subpart, ''statistical records'' means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(i) *Routine use.* As used in this subpart, ''routine use'' means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(j) *System notice.* As used in this subpart, ''system notice'' means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published annually in the FEDERAL REGISTER.

(k) *System manager.* As used in this subpart, ''system manager'' means the official designated in a system notice as having administrative responsibility for a system of records.

(l) *Commission Privacy Act Officer.* As used in the subpart, ''Commission Privacy Act Officer'' means the official in the Commission charged with responsibility for assisting the Commission in carrying out the functions which he is assigned in this subpart and for coordinating the activities of the divisions of the Commission in carrying out the functions which they are assigned in this subpart.

§ 700.259 Records subject to Privacy Act.

The Privacy Act applies to all ''records'' as that term is defined in § 700.257(d), which the Commission maintains in a ''system of records,'' as that term is defined in § 700.257(e).

§ 700.261 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determination about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individual concerning uses of information.* (1) Each individual who is asked to supply information about himself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state;

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on him, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(iii) An individual may be asked to acknowledge, in writing, that he has been afforded the notice required by this section.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

§ 700.263 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 522a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 700.265 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards booklet ''Computer Security Guidelines for Implementing the Privacy Act of 1974'' (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Civil Service Commission personnel records.* A system of records made up of Civil Service Commission personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.

§ 700.265 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Commission may disclose records subject to the Privacy Act unless disclosure is permitted under § 700.267 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Commission may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 700.287–

700.295 or the decision of a court of competent jurisdiction.

§ 700.267 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Commission who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 522.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) For a routine use as defined in § 700.257(i) which has been described in a systems notice published in the FEDERAL REGISTER;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S. Code.

(3) To a recipient who has provided the System Manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(9) Pursuant to the order of a court of competent jurisdiction.

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Commission indicating that the record may not be fully accurate, complete, or timely.

§ 700.269 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 700.267(c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 700.267(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at his request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him shall submit his request by following the procedures of § 700.277.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 700.267(c)(9) as the result of the order of a court of competent juridiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§ 700.271 Requests for notification of existence of records: Submission.

(a) *Submission of requests.* (1)(i) An individual desiring to determine under the Privacy Act whether a system of records contains records pertaining to him shall address his inquiry to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning the existence of records in the system, an individual desiring to determine whether the system contains records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to that individual.

(2) If an individual desires to determine whether records pertaining to him are maintained in two or more systems, he shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend ''PRIVACY ACT INQUIRY.''

(3) The request shall state that the individual is seeking information concerning records pertaining to himself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) If an individual has reason to believe that information pertaining to him or her may be filed under a name other than the name he or she is currently using (e.g., a maiden name), he or she shall include this information in the request.

§ 700.273 Request for notification of existence of records: Action on.

(a) *Decisions on request.* (1) An individual inquiring to determine whether a system of records contains records pertaining to him shall be advised within ten (10) days (excepting Saturdays, Sundays and legal public holidays) whether or not the system does contain records pertaining to him unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individual will be promptly notified that his is not entitled to notification of whether the system contains records pertaining to him.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision informing an individual whether or not a system of records contains records pertaining to him.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Executive Director pursuant to § 700.285 by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona

86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 700.275 Requests for access to records.

The Privacy Act permits an individual, upon his request, to gain access to his record or to any information pertaining to him which is contained in a system and to review the record and have a copy made of all or any portion thereof in a form comprehensive to him, 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

§ 700.277 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) If an individual desires access to records maintained in two or more separate systems, he shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend ''PRIVACY ACT REQUEST FOR ACCESS.''

(3) The request shall specify whether the requester seeks all of the records contained in the system which relate to him or only some portion thereof. If the requester seeks only a portion of the records which relate to him, the request shall reasonably describe the specific records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 700.279(d) the failure to state willingness to pay fees as high as are anticipated by the Commission will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the request of the deficiency in the request.

§ 700.279 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 700.279(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to the Executive Director pursuant to § 700.281 by writing to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal

holidays excepted) of the date of the decision.

(d) *Fees*. (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 700.271.

(2) Fees for copying a record in response to a request made under § 700.271 shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual, unless the official responsible for processing the request determines that, in his/her opinion, reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated he/she is willing to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 700.281 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal*. If an individual has been notified that he/she is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record that individual may appeal to the Executive Director.

(b) *Time for appeal*. (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

(c) *Form of appeal*. (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

(d) *Action on appeals*. (1) Appeals from decisions on initial requests made pursuant to §§ 700.273 and 700.277 shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 700.283 Requests for access to records: Special situations.

(a) *Medical records*. (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party*. (1) An individual wishing to inspect records pertaining to him which have been opened for his inspection may, during the inspection, be accompanied by a person of his own choosing.

(2) When such a procedure is deemed appropriate, the individual to whom the records pertain may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

§ 700.285 Amendment of records.

The Privacy Act permits an individual to request amendment of a record pertaining to him if be believes the record is not accurate, relevant, timely or complete, 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

§ 700.287 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment*. (1) A request for amendment of a

record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record whose amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the portion thereof objectionable to him, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting of the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 700.289 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 700.261. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Commission Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the Privacy Act Officer.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) days (Saturdays, Sundays and public legal holidays excepted), the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 700.287, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 700.287.

(2) If the petitioner fails to submit the additional information within a reasonable time, his petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Executive Director by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(f) *Implementation of initial decision.* If a petitioned for amendment is accepted, in whole or part, the appropriate Commission Division maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 700.269 advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 700.291 Petitions for amendment: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 700.289(c) shall be dispatched not later than ten (10) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition*. A petition for amendment shall be processed promptly. A determination whether to accept or reject the petitioned for amendment shall be made within no more than thirty (30) days (Saturdays, Sundays, and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit*. The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 700.289(d) that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time*. (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, he shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 700.293 Petitions for amendment: Appeals.

(a) *Right of appeal*. Where a petitioned-for amendment has been rejected, in whole or part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal*. (1) An appeal must be received no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

(c) *Form of appeal*. (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

§ 700.295 Petitions for amendment: Action on appeals.

(a) *Authority*. Appeals from decisions on initial petitions for amendment shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel unless the record challenged by the initial petition is a Civil Service Commission personnel record maintained for the Commission by the Navajo and Hopi Indian Relocation Commission. Appeals from decisions on initial petitions requesting amendment of Civil Service Commission records maintained for the Commission by the Navajo and Hopi Indian Relocation Commission shall be transmitted by the Executive Director, for decision.

(b) *Time limit*. (1) A final determination on any appeal shall be made within thirty (30) days (Saturdays, Sundays and legal public holidays excepted) after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Commission. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision*. (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petitioned for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 700.297 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Commission, a brief statement by the Commission summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Commission's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 700.297 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Executive Director under § 700.295 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record, a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Commission for not making the requested amendments may also be provided to recipient.

Subpart L—Determination of Eligibility, Hearing and Administrative Review (Appeals)

SOURCE: 46 FR 46801, Sept. 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.301 Definitions.

(a) Certifying Officer, as used in this subpart, means that member of the Commission staff who certifies eligibility for relocation assistance benefits and/or for life estate leases.

(b) An aggrieved person, as used in this subpart, means a person who has been denied any relocation assistance benefits for which he/she has applied.

§ 700.303 Initial Commission determinations.

(a) Initial Commission Determination concerning individual eligibility or benefits for any person who has filed a claim for benefits or for granting of life estate leases shall be made by the Certifying Officer. The Determination shall include the amount, if any, to which the individual is entitled, and shall state the reasons therefor. Such Determination shall be communicated to the Applicant by certified letter or in person by Commission staff. A record of personal notice shall be maintained by the Commission.

(b) An explanatory conference shall be scheduled by and with the Certifying Officer, if requested by the Applicant or the Certifying Officer, within thirty days of the communication of the Determination; the right to a hearing is not dependent on the holding of such a conference. The Certifying Officer may reverse, amend, or leave standing the Initial Determination as a result of such conference: *Provided, however,* his/her decision shall be communicated in writing to the Applicant by certified letter or in person by Commission staff within five days after such conference.

(c) Communications of Determinations to the Applicant as provided for in § 700.303(a) shall include an explanation of the availability of grievance

procedures, including hearings and representation of counsel and the fact that a hearing must be requested within 30 (thirty) days of receipt of the determination.

(d) No decision which at the time of its rendition is subject to appeal to the Commission shall be considered final agency action subject to judicial review under 5 U.S.C. 704, *Provided* that in the event of a whole or partial denial, no benefits shall be paid unless and until said Determination is reversed or modified as provided for herein.

§ 700.305 Availability of hearings.

All persons aggrieved by Initial Commission Determinations concerning eligibility, benefits, or for granting of life estate leases may have a Hearing to present evidence and argument concerning the Determination. Parties seeking such relief from the Commission's Initial Determination shall be known as ''Applicants.'' When multiple Applicants claim interest in one benefit, determination, or question of eligibility, their hearings may be consolidated at the Presiding Officer's discretion.

§ 700.307 Request for hearings.

Hearing requests shall be made in person or by letter and must be received by the Commission within thirty days after the notice letter was received, the personal notice was given, or if an explanatory conference is held, after the decision of the Certifying Officer. The request shall also contain a specific statement indicating the basis for the request.

§ 700.309 Presiding officers.

The hearing shall be presided over and conducted by one of the Commissioners appointed pursuant to 25 U.S.C. 640d–11(b) or by such other person as the Commission may designate.

§ 700.311 Hearing scheduling and documents.

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, *Provided*, that the 30 (thirty) day notice period as provided in paragraph (b) of this section shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g) A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to § 700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate

licensed to practice in any Hopi or Navajo Tribal Court.

§ 700.313 Evidence and procedure.

(a) At the hearing and taking of evidence the Applicant shall have an opportunity to:

(1) Submit and have considered facts, witnesses, arguments, offers of settlement, or proposals of adjustment;

(2) Be represented by a lawyer or other representative as provided herein;

(3) Have produced Commission evidence relative to the determination, *Provided*, that the scope of pre-hearing discovery of evidence shall be limited to relevant matters as determined by the Presiding Officer;

(4) Examine and cross-examine witnesses;

(5) Receive a transcript of the hearing on request and upon payment of appropriate Commission fees as published by the Commission, which may be waived in cases of indigency.

(b) The Presiding Officer is empowered to:

(1) Administer oaths and afffirmations;

(2) Rule on offers of proof;

(3) Receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served and to permit other pre-hearing discovery within his/her discretion;

(5) Regulate the course and conduct of the hearings; including pre-hearing procedures;

(6) Hold pre-hearing or post-hearing conferences for the settlement or simplification of the issues;

(7) Dispose of procedural requests or similar matters;

(8) Make a record of the proceedings;

(9) Hold the record open for submission of evidence no longer than fourteen days after completion of the hearings;

(10) Make or recommend a decision in the case based upon evidence, testimony, and argument presented;

(11) Enforce the provisions of 5 USCA section 557(d) in the event of a violation thereof;

(12) Issue subpoenas authorized by law; and

(13) Extend any time period of this subpart upon his/her own motion or upon motion of the applicant, for good cause shown.

§ 700.315 Post-hearing briefs.

Applicants may submit post-hearing briefs or written comments to the Presiding Officer within fourteen days after conclusion of the hearings. In the event of multiple applicants or parties to a hearing, such briefs shall be served on all such applicants by the applicant submitting the brief.

§ 700.317 Presiding officer decisions.

(a) The Presiding Officer shall submit to the Commission a written decision based upon the evidence and argument presented, within *sixty* days, not including any period the record is held open, if any, after conclusion of the hearing, unless otherwise extended by the Presiding Officer.

(b) Copies of the Presiding Officer's decision shall be mailed to the Applicant. The Applicant may submit briefs or other written argument to the Commission within fourteen days of the date the Presiding Officer's determination was mailed to the Applicant.

§ 700.319 Final agency action.

Within 30 (thirty) days after receipt of the Presiding Officer's decision, the Commission shall affirm or reverse the decision and issue its final agency action upon the application in writing; *Provided*, that in the event one Commissioner sits as the Presiding Officer, the final agency action shall be determined by the remaining Commissioners and such other person as they may designate who did not so preside over the hearing. Such decisions shall be communicated in writing to the Applicant by certified mail.

§ 700.321 Direct appeal to Commissioners.

Commission determinations concerning issues other than individual eligibility or benefits which do not require a hearing may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

Subpart M—Life Estate Leases

AUTHORITY: Sec. 30(b), Pub. L. 96–305, 94 Stat. 929 (25 U.S.C. 640d).

SOURCE: 46 FR 27921, May 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.331 Application for life estate leases.

The following standards and procedures shall govern the application for life estate leases:

(a) *Filing of application*. Applications for life estate leases shall be filed at the Commission's office in Flagstaff, AZ, not later than July 1, 1981, unless extended for good cause. Application should be made on an approved Commission form known as ''Application for Life Estate Lease'' and should contain the following information:

(1) Name, address, birthdate, social security number, census number, spouse, and date of marriage, if married. The head of household who applies for a life estate lease shall be known as the ''applicant''.

(2) Applicant's Quad Map location in the Former Joint Use Area.

(3) Information listing any other places of Applicant's residence since December 22, 1974.

(4) Name, birthdate, census number, and social security number, if any, of the applicant's minor dependent children.

(5) A statement by the applicant setting forth the nature of the applicant's disability, if any.

(6) Applications should be accompanied, wherever possible, with documentation such as Birth Certificates, Baptismal Records, Tribal Records, Family Census Cards, Marriage Certificates, Tax Returns, and such other documentation required by the Commission.

(b) *Extensions of time for filing of applications for life estate leases*. Extensions of time for filing of applications for life estate leases shall be governed by the following procedures:

(1) The Commission shall, on a case-by-case basis, determine whether good cause exists to warrent a time extension for the receipt of applications.

(2) Initial Commission determinations concerning the time extension for receipt of applications shall be made by the Certification Officer. Any extensions granted shall be in writing and shall state the length of the extensions and the reasons therefore.

(3) In no event shall an extension be granted for more than eighty-nine (89) days after July 1, 1981.

(4) In the event an extension of time is denied or an application is refused for filing, the Certification Officer shall state the reasons therefore and such determination shall be communicated to the applicant by certified letter or in person by Commission staff.

(5) All persons aggrieved by initial Commission determination may have a hearing to present evidence and argument concerning the determination. Such hearings shall be requested and governed by the Commission's Hearings and Administrative Review Procedures contained in § 700.8 of the Commission's Operations and Relocation Procedures.

(6) For purpose of this subsection, ''good cause'' shall be defined as follows:

(i) Lack of actual notice.

(ii) Lack of transportation or physical incapacity preventing timely filing.

(iii) Acts of God.

(iv) Such other facts or reasons deemed sufficient in the discretion of the Commission.

§ 700.333 Determination of disability.

The Commission shall determine disability pursuant to the following:

(a) An applicant shall be considered to be disabled if he/she is unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. A physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(b) Each applicant who claims entitlement to a life estate lease by virture of a disability shall be examined by a physician selected by the Commission

or one selected by the applicant and approved by the Commission. The reasonable costs of such examinations shall be paid by the Commission. The examining physician shall submit a report of his/her examination to the rating physician who shall be a physician selected by the Commission. The rating physician shall submit to the Commission a report stating his/her opinion as to whether or not the applicant is a least 50% (fifty percent) disabled and if so, the percent of disability. In addition, the rating physician shall state in his/her report the conditions or conditions of the applicant upon which the rating is based.

(c) In performing examinations and in making ratings, the physician shall follow the procedures and adopt the standards set forth in subpart I—Determination of Disability or Blindness, of the Social Security Administration, contained in title 20, Code of Federal Regulations, §§ 416.901 through 416.985, including the appendices, etc., to the extent that such procedures and standards are appropriate to this examination and rating.

(d) In making its determination as to the disability and the percentage thereof of an applicant who claims disability, the Commission shall consider the report of the rating physician and such other matters as the Commission deems relevant.

§ 700.335 Grouping and granting of applications for life estate leases.

Upon receipt of applications filed pursuant to this section, the Commission shall group and award life estate leases in the following manner:

(a) Applicants who are determined to be at least 50% (fifty percent) disabled as certified by a physician approved by the Commission. Such applicants shall be ranked in the order of the severity of their disability.

(b) Applicants who are not at least 50% (fifty percent) disabled shall be ranked in order of their age with the oldest listed first and the youngest listed last; provided that, if any applicant physically resides in Quarter Quad Numbers 78 NW, 77NE, 55SW, or 54 SE, as designated on the Quarter Quad Maps of the Former Joint Use Area prepared by the Bureau of Indian Affairs Field Administrative Office, such applicant shall be given priority over another applicant of equal age.

(c) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi Partitioned Lands, and who, but for this subsection would be required to relocate, shall be rejected by the Commission.

(d) Applicants who were not at least forty-nine (49) years of age on December 22, 1974, *or* are not at least 50% (fifty percent) disabled shall also be rejected by the Commission.

(e) The Commission shall award life estate leases to not more than one hundred and twenty (120) Navajo applicants with first priority being given to applicants listed pursuant to § 700.335(a) and the next priority being given to applicants listed pursuant to § 700.335(b), in order of such listing.

(f) The Commission shall award life estate leases to not more than ten (10) Hopi applicants with first priority being given to applicants listed pursuant to § 700.335(a) and the next priority being given to applicants listed pursuant to § 700.335(b) in order of such listing except that the portion of § 700.335(b) concerning residency in Quarter Quad Numbers 78 NW, 77NE, 77NW, 55 SW, 54SE, etc., shall not apply to Hopi applicants.

§ 700.337 Establishment of boundaries of life estate leases.

(a) Prior to the issuance of a life estate lease, the Commission shall, after consultation with the Tribe upon whose land the life estate lease will be located, establish the actual configuration, shape and boundaries of the land area of the life estate lease. The present residence of the life tenant shall be within the boundaries of the life estate lease and the area of the life estate lease shall not exceed ninety (90) acres.

(b) The following factors will be considered in establishing the configuration, shape, and boundaries of a life estate lease:

(1) The location of the present residence of the applicant and the traditional land use area associated with such residence.

(2) The topography and soil conditions of the land in the immediate vicinity of the applicant's present residence.

(3) The location of the nearest source of water.

(4) The proximity of roads.

(5) Such other factors may be necessary or appropriate.

§ 700.339 Residency on life estate leases.

(a) No person may reside on a life estate lease other than the life tenant, his or her spouse, and minor dependents and such persons who are necessarily present, as determined by the Commission, to provide for the care of the life tenant.

(b) In determining who is necessarily present for the care of the life tenant, the Commission shall consider the following criteria:

(1) The age of the life tenant.

(2) The nature and extent of the life tenant's disability, if any.

(3) The location of the life estate lease, including but not limited to, the following factors:

(i) Topography,

(ii) Proximity to water,

(iii) Proximity to fuel,

(iv) Proximity to shopping and medical services, and

(v) Any other factors deemed relevant to the Commission.

(4) The nature and extent of care to be provided to a disabled life tenant.

(5) Any other factors deemed relevant by the Commission.

(c) In the event it becomes necessary to change the identity of the person(s) or number of persons identified as necessarily present for the care of the life tenant, the life tenant shall make such request for change to the Commission. The Commission, upon review of the request, may grant an amended life estate lease to reflect the requested change.

§ 700.341 Access to life estate leases.

(a) Family members and other persons may enter upon the life estate lease premises for the purpose of visiting the life estate lease residents so long as such visit does not exceed thirty (30) consecutive days in any one visit or ninety (90) days total of all visits within any lease year, except that grandchildren and their descendants who are not minor dependents of the life tenant and who have not attained the age of 18 (eighteen) years may visit for ninety (90) consecutive days in any lease year, the first of which shall commence on the date of issuance of the life estate lease. There shall be no limitation on visits which do not extend overnight.

(b) Visitors and residents shall use the existing road systems and access rights of way when traveling to and from life estate lease premises.

§ 700.343 Life estate leases.

The Commission shall execute a life estate lease to each applicant to whom a life estate lease is granted, which lease shall contain the following:

(a) The names of the persons entitled to reside on the life estate lease which shall be the life tenant, his or her spouse, and minor dependents and/or such persons who are necessarily present to provide for the care of life tenant.

(b) A description of the exterior boundaries of the land included in said lease.

(c) The term of the life estate lease which shall end either upon voluntary relinquishment or upon the death of the life tenant or his/her spouse, whichever occurs last.

(d) That the life tenant may feed not to exceed twenty-five (25) sheep units per year or equivalent livestock on the life estate lease premises.

(e) That no person may reside on a life estate lease other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant.

(f) That the Secretary of Interior shall pay, pursuant to 25 U.S.C. 640d–28(i), Pub. L. 96–305, section 30(i), on an annual basis, the fair market rental value of such life estate lease to the tribe to whom the lands leased were partitioned. Rental payments shall be made within thirty (30) days of the execution date of the life estate lease.

(g) That the life tenant may make reasonable improvements on the life estate lease which are related to the residence and agricultural purposes of

the life tenancy as determined by the Commission. Such improvements:

(1) May include the renovation or replacement of existing dwelling structures and privies or outhouses so as to improve their utility, safety or level of modern utilities or amenities, but

(2) Shall not increase the number, size, or capacity of dwelling structures on the leased area except with the express written approval of the Commission based upon a showing of actual need, or to reasonably accommodate a resident care provider for whom there is not adequate existing residential capacity.

(3) May include not more than one shed or barn to be used in connection with livestock and/or agricultural activities permitted.

(4) May include one ceremonial hogan and one traditional ramada type structure.

(5) May include a garden of reasonable size.

(6) May include such other improvements as the Commission finds to be reasonable under the circumstances of each lease.

(h) That no person may visit on a life estate lease for more than thirty (30) consecutive days in any one visit or ninety (90) days total of all visits within any lease year the first of which shall commence on the date of issuance of the life estate lease, except that grandchildren and their descendants who are not minor dependents of the life tenant and who have not attained the age of eighteen (18) years may visit for ninety (90) consecutive days in any lease year. There shall be no limitation on visits which do not extend overnight.

(i) That said life tenant or his or her surviving spouse may relinquish said life estate lease at any time and may receive relocation benefits from the Secretary at the time of relinquishment as provided in 25 U.S.C. 640d–28(h), (Pub. L. 96–305, section 30(h)).

(j) The purposes for which the life estate lease may be used.

(k) The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last, all as provided in 25 U.S.C. 640d–28(g) (Pub. L. 96–305, section 30(g)).

(l) No livestock shall be allowed in the lease area until the perimeter of the lease area is fenced.

(m) Such other terms and conditions deemed necessary or appropriate by the Commission.

Subpart N—Discretionary Funds

SOURCE: 47 FR 57916, Dec 29, 1982, unless otherwise noted.

§ 700.451 Purpose.

(a) The purpose of this subpart is to establish procedures for the submission, review and approval, and administration of applications for financial assistance from the discretionary fund established by Pub. L. 93–531, as amended.

(b) The purpose of the discretionary fund is to provide financial assistance to activities which will facilitate and expedite the relocation and resettlement of individuals under the Act and ease the hardship incurred by these individuals.

§ 700.453 Definitions.

(a) *Act* means Pub. L. 93–531 (88 Stat. 1712, 25 U.S.C. 640d), as amended.

(b) *Applicant* means with respect to this subpart, any applicant as defined under § 700.457(c) or § 700.459(b).

(c) *Business* means any lawful activity, except a nonprofit organization, that is—

(1) Conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public.

(d) *Commissioners* means the three Commissioners of the Navajo and Hopi Indian Relocation Commission.

(e) *In-kind contribution* means a noncash contribution as described in attachment F of OMB Circular A–102.

(f) *Local government* means a local unit of government including specifically a county, municipality, city, town, township, local public authority, special district, council of governments, and other regional or interstate entity, or any agency or instrumentality of a local government.

(g) *Nonprofit organization* means a corporation, partnership, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

(h) *Related facilities* means any building or structure normally found in a community and includes but is not limited to water, sewer and electrical lines, community centers, health centers and clinics, roads, and business establishments.

(i) *Services* means activities relating to human development including, but not limited to, educational and job training, mental health counseling, health care, and technical assistance in business administration, agriculture, and home economics.

(j) *Tribe* means the Navajo Chapter or the Hopi Village.

(k) *Tribal subdivision* means a Navajo Chapter or a Hopi Village.

§ 700.455 Financial assistance.

(a) The Commission may provide financial assistance to applicants eligible under this subpart from funds available for any fiscal year.

(b) To obtain financial assistance, an applicant shall submit an application in accordance with § 700.463.

(c) The Commission may make funding decisions throughout the year as applications are approved. The Commission shall, to the extent possible, make funds available throughout the year for approved applications. Based upon the merit of applications received under this subpart, the Commission shall determine how funds available under this subpart shall be apportioned among the activities described in §§ 700.457 and 700.459.

§ 700.457 Assistance to match or pay 30% of grants, contracts or other expenditures.

(a) The purpose of applications for financial assistance under this section shall be to aid individuals subject to relocation under the Act and to assist the host communities, towns, cities, or other entities in adjusting to and meeting the needs of the relocatees. For this purpose, the discretionary fund may be used to match or pay not to exceed 30% (thirty percent) of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if the Commission determines that such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibility or assist either tribe in meeting the burdens imposed by this Act.

(b) An ''other expenditure'' under this subsection is defined as cooperative agreements, direct provision of services, or in-kind contributions. The Commission may match or pay not to exceed 30% (thirty percent) of another expenditure through a grant, contract, or cooperative agreement.

(c) Eligible applicants under this section for a grant, contract, or cooperative agreement are defined as States, local government, the Navajo and Hopi Tribes, tribal chapters or villages and profit and nonprofit organizations.

(d) Total Federal financial assistance under this section may reach 100% (one hundred percent) if the applicant receives 70% (seventy percent) Federal funding from Federal agencies other than the Commission.

(e) When another Federal agency is a primary source of financial assistance for an applicant, the Commission may, pursuant to an interagency agreement, transfer funds to the primary Federal agency providing financial assistance to the applicant.

(f) The Commission may, pursuant to an interagency agreement, transfer not to exceed 10% (ten percent) of the funds available under this subpart to another Federal agency directly assisting relocatees if such agency's activities would accomplish the purpose of paragraph (a) of this section. Financial assistance transferred to accomplish an eligible activity under paragraph (a) of this section may not exceed the funding limitation of paragraph (a) of this section.

(g) An applicant may apply for financial assistance under this section in accordance with the funding limitations described in paragraph (a) for the purpose of undertaking a technical feasibility study of a construction project

or any major project with a total funding of over $200,000 (two hundred thousand dollars) or any dollar amount which the Commission may prescribe at some future time.

§ 700.459 Assistance for demonstration projects and for provision of related facilities and services.

(a) The purpose of applications for financial assistance under this section shall be to aid individuals subject to relocation under the Act. For this purpose, the discretionary fund may be used by the Commission to engage or participate either directly through Federal activities, or by cooperative agreement, grant, or contract in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this Act.

(b) Applicants eligible under this section to receive grants, cooperative agreements or contracts are: states, local governments, the Navajo and Hopi Tribes, tribal chapters, profit and nonprofit organizations, and individuals.

(c) Applicants for assistance under this section may receive up to 100% (one hundred percent) project or program funding from the Commission, however, the Commission may specify whether applications for certain types of programs or projects under this section require matching funding from the applicant.

(d) Activities described in § 700.457(a) and paragraph (a) of this section may be provided by the Commission through in-house activities which receive financial assistance under this section.

(e) The Commission may, pursuant to an interagency agreement, transfer not to exceed 10% (ten percent) of the funds available under this subpart to another Federal agency directly assisting relocatees if such agency's activities would accomplish the purpose of §§ 700.457(a) and 700.459(a).

(f) An applicant may apply for financial assistance under this section for the purpose of undertaking a technical feasibility study of a construction project, or any major project with a total planned funding of over $200,000, (two hundred thousand dollars) or any dollar amount which the Commission may prescribe at some future time.

§ 700.461 Method for soliciting applications.

(a) The Commission shall utilize two methods to solicit applications for funding:

(1) The Commission shall issue an annual announcement of the availability of funds for programs which will most effectively meet the purposes of § 700.457(a) or 700.459(a). Applicants submitting applications under this announcement must demonstrate that the proposed project or program will effectively facilitate and expedite the relocation effort of the Commission.

(2) As priority needs are identified by the Commission, calls shall be issued during the fiscal year for specific proposals. Requests for proposal shall define the need to be addressed and the scope of work required.

(b) The annual announcements of the availability of funds and periodic requests for proposals shall be issued through the Commerce Business Daily and media which has regional and local circulation. The Commission may fund approved applications through grant, contract, or direct provision of services, pursuant to Pub. L. 93–531, as amended.

§ 700.463 Requirements for applications.

(a) Applicants shall submit preapplications for funding assistance. The preapplication shall be due by the closing date published by the Commission, and shall consist of:

(1) Standard Form 424;

(2) A brief narrative not to exceed one page describing how the program or project will meet the priorities established by the Commission pursuant to § 700.457 or § 700.459.

(b) The Commission shall respond to each preapplication, and shall request each person submitting an acceptable preapplication to submit an application.

(c) Applications for financial assistance for a project or program may be submitted by the due date established by the Commission for a particular

funding cycle. Applications received after the due date will be considered for the next funding cycle, although the Commission, at its discretion, may select such a project for funding under the current cycle. An original and 5 (five) copies of each application must be submitted to the Commission. Applications shall be submitted on such forms as the Commission may prescribe in conformity with OMB circulars A102 or A110.

(d) Applications under § 700.457 for matching financial assistance not to exceed 30% of another expenditure, shall include:

(1) A detail sheet showing the sources of matching funds, including both cash and in-kind contributions, and documentation that the applicant has fulfilled all of the requirements of any Federal agency, state or local government or chapter, or private organization from which the financial assistance is also requested; and

(2) A narrative statement which includes an explanation of how the application would aid relocatees and assist the host communities, towns, cities, or other entities in adjusting to and meeting the needs of relocatees.

(e) Applications for financial assistance under § 700.459 must justify the proposed project or program as a demonstration effort in order to be eligible for 100% funding.

(f) Applications shall contain a statement of how the applicant plans to comply with the provisions of the Indian Self-Determination Act (25 U.S.C. 450e) and the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452–457).

§ 700.465 Technical feasibility.

Unless required by a non-Commission source of financial assistance, completed plans and specifications are not required at the time an application is submitted for construction, technology, or another engineering project, however, an application for a construction, technology or another engineering project shall:

(a) Include sufficient information to determine the nature and scope of the project, its probable useful life, and a reasonable estimate of cost;

(b) Fully show that the applicant will follow design and performance criteria which conform to professionally recognized standards and which adequately define the technical capability of the project to serve current and foreseeable needs; and

(c) Justify any evidence or use of unorthodox design.

(d) Show that the applicant has a management plan for the facility which identifies probable sources of operating funds.

(e) An applicant who is awarded a grant under § 700.465 is required to submit completed plans and specifications for the construction, technology, or other engineering project prior to construction. The Commission shall review the completed plans and specifications for technical adequacy as part of its oversight function.

§ 700.467 Construction costs.

Construction costs and costs relating to construction such as machinery and equipment, architect/engineer services, and administrative services may be allowable as determined by the Commission.

§ 700.469 Unallowable program and project costs.

Costs for program or project operating expenses are not allowable except in the following cases—

(a) An application for an annual contract for services under § 700.457 or 700.459 may include necessary operating expenses; and

(b) An application for a demonstration effort under § 700.459 may include costs relating to the operation of the demonstration.

§ 700.471 Review and approval.

(a) Upon receipt of an application for financial assistance under this subpart, members of the Commission staff shall begin a preliminary review of the application with the intent of submitting a recommendation to the Commissioners of whether to accept or deny the application. The Commission staff may inform the applicant before its recommendation to the Commissioners, of any special problems or impediments which may result in a recommendation for disapproval; may

offer any available technical assistance required to overcome such problems or impediments; and solicit the applicants written response.

(b) The Commission staff may solicit comments on an application from technical specialists, community groups and others, when such advice is needed to fully evaluate the application.

(c) The Commission staff shall forward the application with their recommendation to the Commissioners. The Commissioners may approve applications if they determine that:

(1) The application meets the requirements of this subpart;

(2) The application meets the intent of the Act;

(3) The application fully demonstrates that it will expedite the relocation and resettlement of individuals under the Act and ease the hardship incurred by these individuals or by the Tribes;

(4) The application is compatible with priorities identified by the Commission;

(5) The applicant can carry out the activities described in the application and can maintain proper financial controls on the activities for which financial assistance is requested;

(6) The applicant can and will comply with requirements for Indian preference in employment and training in connection with the administration of the grant, and preference to Indian organizations and Indian owned economic enterprises in the award of subcontracts or subgrants; and

(7) Funds are available.

(d) All applicants shall be notified in writing of the Commission's approval or disapproval of the grant applications.

§ 700.473 Administrative expenditures of the Commission.

The Commission may use funds in an amount not to exceed 5 percent of the funds authorized under this subpart for expenses relating to the administration of the discretionary fund including—

(a) Personnel, whose time is expended directly in support of such administration;

(b) Supplies which are expended directly in support of such administration;

(c) Contracts, where the work performed is directly related to such administration;

(d) Printing, directly in support of such administration; and

(e) Travel, directly related to such administration.

§ 700.475 Reports.

Reports shall be furnished by any recipient of financial assistance under this subpart, in such manner as may be required by the Commission.

§ 700.477 Administration of financial assistance and recordkeeping requirements.

(a) A State or local government (except an institution of higher education or a hospital since they are governed by paragraph (b) of this section), or the Navajo or Hopi Tribe receiving a grant or cooperative agreement under this subpart shall comply with applicable law including the following requirements—

(1) Office of Management and Budget Circular A–102, entitled ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments'' including attachment C describing recordkeeping requirements; and

(2) Federal Management Circular 74–4 5 CFR part 1310, entitled ''Cost Principles Applicable to Grants and Contracts with State and Local Governments.''

(b) A nonprofit organization, institution of higher education, or hospital receiving a grant or cooperative agreement under this subpart shall comply with applicable law including the following requirements—

(1) Office of Management and Budget Circular A–110, entitled ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' including attachment C describing recordkeeping requirements; and

(2) Office of Management and Budget Circular A–122, entitled ''Cost Principles for Nonprofit Organizations.''

(c) A profit organization receiving a grant or cooperative agreement under this subpart shall comply with applicable law including Federal Procurement Regulations (41 CFR subpart 1–15.2) for

determining the reasonableness, allowability, and allocability of costs.

(d) A profit organization, tribal chapter, or individual receiving a grant or cooperative agreement under this subpart shall—

(1) Follow sound and proper procedures for the administration of the financial assistance including any procedures established by the Commission; and

(2) Retain records as required by the Commission.

(e) A State, local government, the Navajo or Hopi Tribe, a tribal chapter or an individual receiving a contract under this subpart shall comply with applicable law including Federal Procurement Regulations (41 CFR parts 1–1 through 1–30). Recordkeeping requirements for contracts are described in §§ 1–3.814–2, 1–7.103–3, 1–7.103–18, 1–7.603–20, and 1–7.603–7 of the Federal Procurement Regulations.

(f) A State, local government, profit or nonprofit organization, or an individual residing off of the Navajo or Hopi reservation applying for a grant or cooperative agreement under this subpart shall comply with Office of Management and Budget Circular A–95, entitled ''Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects'' unless exempted under Part I, section 8.b. of this circular.

(g) Recipients of financial assistance under this subpart shall comply with other procedures which the Commission may from time to time prescribe for the administration of financial assistance provided under this subpart.

(h) A state or local government, nonprofit organization, institution of higher education, hospital, profit organization or individual receiving a grant, subgrant, contract or subcontract under this part shall comply with the provisions of the Indian Self-Determination Act (25 U.S.C. 450e) and the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452–457) which require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organization and to Indian owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).

§ 700.479 Administrative review.

(a) If the Commissioners determine that implementation of an application approved according to § 700.471 fails to meet the requirements of this subpart, the Commissioners shall give notice to the recipient of their intent to terminate or suspend financial assistance to the recipient.

(b) The Commission shall issue such notice in written form sent by registered mail, return receipt requested, which notice shall include a statement of the reasons for the findings referred to in paragraph (a) of this section, and an explanation whether any amendments or actions would result in compliance with grant terms and conditions.

(c) Any person whose approved financial assistance is terminated or suspended under paragraph (b) of this section may request a review of such action by the Commission. Such request for review shall be in writing and must be mailed or delivered to the Commission not later than thirty (30) days after receipt of the notice from the Commission by the applicant. Such request for review shall state the reasons for the request and shall include any additional matters not before the Commission which the applicant deems appropriate. The Commission may grant or deny a review at its discretion and shall inform the applicant of its decision in writing.

Subpart O—Employee Responsibility and Conduct

SOURCE: 47 FR 11858, Mar. 19, 1982, unless otherwise noted.

§ 700.501 Statement of purpose.

This part prescribes appropriate standards of conduct and responsibilites, financial disclosure reports, and rules of ethics in the conduct of Government business that are

mandatory for all who serve with the Navajo and Hopi Indian Relocation Commission, and in order to implement the requirements of law, Executive Order 11222 and 5 CFR part 905. The rules promulgated by the Commission as essential to agency operations are in addition to the criminal laws and other laws governing conduct of Federal employees. Like the laws, they will be strictly interpreted and firmly enforced. Ignorance of these rules or laxity in observance or enforcement of them will not be condoned. They are the prime responsibility of all Commission personnel.

§ 700.503 Definitions.

(a) *Special Government Employee*: An officer or employee who has been employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis (18 U.S.C. 202(a)).

(b) *Employee*: Any officer or employee of the Commission who is not a special government employee.

(c) *Commission personnel*: All officers and employees of the Commission, including special Government employees.

(d) *Persons*: An individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

(e) *Gratuity*: Any gift, honorarium, favor, entertainment, hospitality, transportation, loan, or any other tangible thing, and any other intangible benefit (i.e., discounts) given to or on behalf of Commission employees or their spouses or dependent children for which fair market value is not paid by the recipient or by the Government.

§ 700.505 Coverage.

The regulations contained in this part apply to all Commission personnel. Exceptions applicable to special Government employees and members of the Senior Executive Service are noted in the body of this part.

§ 700.507 Responsibilities.

(a) *Office of the Commission and Office of Executive Direction*. (1) The Chairman of the Commission shall prepare and submit to the Office of Personnel Management for approval, standards of employee conduct which implement requirements of law, Executive Order 11222 and provisions of 5 CFR part 905; and prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the agency. After OPM approval, the Chairman shall submit the agency's regulations to the FEDERAL REGISTER for publication. These requirements also apply to any amendments to agency regulations.

(2) The Commissioners shall appoint a Designated Agency Ethics Official and Deputy Ethics Official in accordance with 5 CFR 738.202(b). Responsibilities of these officials are described below in § 735.15.

(3) The Executive Director shall ensure that the regulations published under this part are disseminated to all Commission personnel and that staff are familiar with and understand the standards of conduct and statutes governing conflicts of interest and post Federal employment restrictions.

(4) The Executive Director shall ensure that disciplinary or remedial action is taken in the case of all agency personnel who violate these standards or related laws and regulations, and against supervisors who fail to carry out their responsibilities in taking disciplinary or remedial action in such cases.

(b) *Managers and supervisors*. Managers and supervisors shall ensure that all Commission personnel under their supervision are familiar with and understand these regulations governing standards of conduct, conflict of interest, and referenced statutory restrictions, and adhere to them at all times. Issues and problems which cannot be resolved through the discussion process inherent in the supervisor-employee relationship shall be referred to the Designated Agency Ethics Official. Managers and supervisors shall ensure that disciplinary or remedial action is taken with all agency personnel who violate these regulations, and against subordinate supervisors who fail to carry out their responsibilities for effecting or recommending disciplinary or remedial action in these cases.

(c) *Employees.* All Commission personnel shall be familiar with the standards of conduct governed in this directive and the laws governing conflicts of interest and post employment restrictions, and shall comply with them. When in doubt as to the permissibility of an action under the terms of this directive, the employee shall not act without first consulting the immediate supervisor and as appropriate seeking the advice of the Designated Agency Ethics Official.

(d) *Office of Management Operations.* (1) The Office of Management Operations shall give each employee a copy of these regulations and shall conduct an oral briefing on their contents, within 30 days of approval. New personnel shall receive a copy and oral briefing promptly upon assuming their duties. Additions and amendments shall be similarly communicated upon approval.

(2) The Office shall conduct annual review sessions of these standards for all personnel.

(3) The Office shall provide the Designated Agency Ethics Official with necessary administrative and clerical staff support.

§ 700.509 Duties of the designated agency ethics official.

The Designated Agency Ethics Official shall coordinate and manage the agency's ethics program. The Deputy Ethics Official shall serve as alternate Agency Ethics Official in the absence of the Designated Agency Ethics Official, or upon his or her express delegation. Specific duties of the Officer include:

(a) *Liaison with Office of Government Ethics (OGE).* The Designated Agency Ethics Official shall establish and maintain close working relations with the OGE, and shall coordinate communications between the Commission and OGE through the Agency Liaison Division and Office of Ethics of the General Services Administration. If the Designated Agency Ethics Official receives a request which he or she believes should be answered by the Office of Government Ethics, a referral procedure is available. Requests for advisory opinions shall be submitted as specified in 5 CFR 738.304. The Designated Agency Ethics Official shall provide the OGE with records, reports and any other information which may be required under the Ethics in Government Act (Pub. L. 95–521, as amended) or requested by the OGE.

(b) *Review of statements.* The Designated Agency Ethics Official shall review the statements of employment and financial interest submitted by agency personnel assessing the application of conflict of interest laws and regulations to the information reported. When the review discloses a conflict, or the appearance of a conflict, between the private interests of an employee and the performance of his or her duties as a Commission employee, the Designated Agency Ethics Official shall bring the conflict to the attention of the employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict is not resolved at this point, the Designated Agency Ethics Official shall forward a written report on the conflict to the Chairman of the Commission recommending appropriate action. In developing the recommendation the Designated Agency Ethics Official may consult, as appropriate, with the agency General Counsel and the GSA Ethics Office.

(c) *Education and counseling program.* The Designated Agency Ethics Official shall design and conduct an education and counseling program for supervisors and employees on all ethics and standards of conduct matters, including post-employment matters. Records shall be kept as appropriate on the advice rendered.

(d) *Administrative systems review.* The Designated Agency Ethics Official shall ensure that these regulations and implementing administrative systems are evaluated annually to determine their adequacy and effectiveness in relation to current agency responsibilities. Amendments shall be developed and approved pursuant to the results of systems review.

§ 700.511 Statements of employment and financial interests.

(a) *Employees required to file statements.* (1) Members of the Commission shall submit Financial Disclosure Reports (SF–278) to the Deputy Ethics

Counselor of the Department of Interior, according to instructions received from that office. Issues of real or apparent conflict of interest which involve employees of the Senior Executive Service shall be resolved by the Ethics Officer of the Department of the Interior.

(2) The Designated Agency Ethics Official shall submit SF–278 to the Office of Government Ethics for review.

(3) The employee appointed as Deputy Ethics Official and incumbents of the positions listed below shall file NHIRC form 738.1F with the Designated Agency Ethics Official:

(i) Executive Director.

(ii) General Counsel.

(iii) Assistant Director for Management Operations.

(iv) Assistant Director for Relocation Operations.

(v) Chief, Technical Services Division.

(vi) Chief, Realty Division.

(vii) Chief, Advisory Services Division.

(viii) Chief, Office of Research, Planning and Evaluation.

(ix) Procurement/Fiscal Officer.

(x) Realty Specialists.

(xi) Construction Inspectors.

(4) The Designated Agency Ethics Official may require Statements of Employment and Financial Interest from employees in other specified positions, if analysis of duties and responsibilities shows the positions meet the criteria listed in paragraph (b) of this section.

(5) Special Government Employees shall file NHIRC form 738.2F with the Designated Agency Ethics Official prior to beginning employment or service with the Commission. The Designated Agency Ethics Official may waive this requirement if the duties of the position held by the special Government employee are of a nature or at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Commission or the Government.

(b) *Criteria for selection of positions subject to filing requirements.* The following criteria govern selection of employees who must also file statements of Employment and Financial Interest (NHIRC Form 738.1F) with the Designated Agency Ethics Official.

(1) Statements of Employment and Financial Interest shall be required of employees holding positions which are responsible for:

(i) Contracting or procurement.

(ii) Administering or monitoring grants and subcontracts.

(iii) Other activities where the decision or action has an economic impact on the interests of any person or non-Federal enterprise.

(2) When a new position is established or the duties of an existing position are materially changed, the position shall be evaluated pursuant to the criteria of this section to determine whether or not it should be designated as one requiring the incumbent to submit a Statement of Employment and Financial Interests.

(c) *Interests of relatives.* The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. Reports must include but are not limited to identification of such an individual's employer, financial holdings and debts. These provisions also apply to special Government employees.

(d) *Employee complaint against filing requirements.* An employee who believes that his or her position has been improperly included among those requiring the submission of a Statement of Employment and Financial Interests may obtain review through the Commission's administrative grievance procedure.

(e) *Procedures for obtaining statements.* Following approval of these regulations, the Designated Agency Ethics Official shall give each employee and special Government employee required to file under this part, a copy of the appropriate NHIRC form. An enclosure with the form shall advise that:

(1) The completed form shall be returned in a sealed envelope marked ''personal-in confidence'' to the Designated Agency Ethics Official within 30 days.

(2) The services of the Designated Agency Ethics Official are available to assist and advise in preparation of the statement.

(3) Any additions or deletions to the information furnished must be reported within 30 days of the time they occur, or in the case of a special Government employee, at the time the change occurs, and

(4) No later than June 1 of each year all employees and special Government employees required to file under paragraph (a)(3) of this section shall file an annual supplementary statement to update the information previously filed.

(5) New employees required to file under paragraph (a)(3) of this section shall submit a statement within 30 days of beginning employment with the Commission.

(e) *Confidentiality of statements*. Statements of employment and financial interest shall be held in confidence. Access to information from the statements shall not be disclosed except to carry out the purpose of this directive.

(f) *Resolving conflicts of interest*. When the Designated Agency Ethics Official determines from review of the statement that a conflict of interest may exist, the submitter shall have the opportunity to provide additional information, which shall become part of the record. The Designated Agency Ethics Official and the concerned employee shall make every effort to resolve the conflict in a manner that is mutually acceptable. If these efforts are not successful the Designated Agency Ethics Official shall forward a report and recommendation to the Chairman of the Commission for final action. Remedial action directed by the Chairman may include but is not limited to:

(1) Disqualification for a particular assignment.

(2) Change in assigned duties.

(3) Divestment of the employee or special Government employee of the conflicting interests.

(4) Disciplinary action, including removal.

§ 700.513 Business dealings on behalf of the government.

(a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Commission. Employees shall observe courtesy, consideration and promptness in dealing with clients, other governmental agencies, and members of the public.

(b) Commission personnel conducting business with contractors, realtors, vendors, service providers and other public and private agencies, organizations, business and individuals shall maintain strict impartiality in their business dealings. Commission employees shall not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict may arise or appear to arise by the acceptance of gratuities or by any action which could reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Commission. However, this requirement of impartiality is not intended to prohibit advocacy of client interests, as is required as a stated duty of certain agency positions. Such advocacy may occur for example during warrantee representation or during technical representation with builders.

§ 700.515 Conflicts of interest.

(a) A conflict of interest may exist when an employee uses, or appears to use, his or her official position to obtain benefits for himself or herself, close friends, relatives, or business associates. A conflict of interest may also exist if an employee's private activities interfere with the proper discharge of his or her official duties. If an employee has any doubt about whether or not a particular situation is, or gives the appearance of being a conflict of interest, the situation should be discussed with the immediate supervisor. Should further review be required, the Designated Agency Ethics Official shall be consulted.

(b) Principal situations where conflict of interest may develop are regulated by the sections which follow. However, these regulations do not preclude other conflict of interest situations which may arise in connection with the work of the Commission.

(c) These prohibitions apply to all Commission employees, whether or not they are required to file financial and employment disclosure statements.

§ 700.517 Affiliations and financial interests.

(a) Commission personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict or apparent conflict between their private interests and the public interests of the United States as related to the duties of their Commission positions.

(b) Employees are prohibited from accepting money, goods or services other than official compensation for any act performed by the employee as part of his or her official duties.

(c) Commission personnel shall not use, directly or indirectly, inside information for private gain for themselves, family members, or others if that information is not generally available to the public and was obtained as a result of Commission employment.

(d) Commission personnel are prohibited from using their official positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any improper benefit, financial or otherwise, to themselves or others.

(e) Employees may not have any personal interest in transactions which are directed, regulated, or effected by the Commission pursuant to the authorities vested in the agency by Pub. L. 93–531 and Pub. L. 96–395. Specifically:

(1) No Commission employee shall have a personal interest in a contract, subcontract, memorandum of understanding or agreement, or other arrangement resulting in payment for the delivery of goods, services, or supplies to the Commission, to the Navajo or Hopi tribal governments, or to individual relocatees or groups of relocatees.

(2) No Commission employee shall have or seek an interest in real or personal property acquired for transfer to the Navajo or Hopi Tribes.

(3) No Commission employee shall have or seek an interest in any activity supported financially by the Commission through the award of Discretionary Funds.

(4) During the process of acquiring replacement housing for relocatees no employee may have a personal interest in the activities of a contractor, realtor, or other business entity selected by the relocatee to furnish replacement housing; nor may the employee influence the relocatee to select any realtor, contractor or other business entity with which the employee has personal or business affiliations.

(5) Nothing in this section shall restrict a relocatee's right to exercise free and independent judgment in selecting a realtor, contractor, or other vendor or service provider; regardless of any personal or business relationship of that entity to a Commission employee, provided the employee has not influenced the choice of the relocatee in any manner.

(6) Nothing in this section shall restrict a Commission employee who is eligible for relocation benefits from applying for and obtaining such benefits according to published criteria; nor to prevent the Commission from employing a member of the Hopi or Navajo Tribe who has been, or is in the process, of being relocated pursuant to the law.

(7) Commission employees shall disqualify themselves from investigating and preparing recommendations regarding eligibility determination for applicants to whom they are closely related by blood or marriage.

§ 700.519 Gifts, entertainment and favors.

(a) Acceptance of gratuities, including gifts, entertainment and favors, (no matter how innocently tendered or received) from those who have or seek business dealings with the Commission, is prohibited as it may be a source of embarrassment to the recipient, and may impair public confidence in the integrity of the conduct of the Government's business. It is emphasized that prohibited conflicts and apparent conficts of interest can sometimes arise even from relationships and transactions that the persons concerned perceive as inconsequential.

(b) Except as provided in paragraphs (c) and (d) of this section, Commission personnel and their spouses, minor children and members of their households shall not solicit nor accept, either directly or indirectly, any gift,

gratuity, favor, entertainment loan or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission,

(2) Conducts operations or activities that are regulated by the Commission or significantly affected by Commission decisions, or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(c) Employees are specifically prohibited from accepting gifts or favors from vendors, contractors, builders, realtors, tribal officials or other individuals with whom Commission employees do business. This prohibition extends to the acceptance of meals and refreshments offered by individuals conducting or seeking business with the Commission whether during duty or non-duty hours.

(d) The following circumstances are excepted from the prohibitions listed above:

(1) An employee may accept unsolicited advertising or promotional material with the name of the company imprinted, such as pencils, calendars and similar items of nominal intrinsic value.

(2) An employee may accept transportation and meals provided by a contractor in connection with official business when arrangements for Government or commercial transportation or meals are clearly impracticable and the supervisor has granted prior approval.

(3) An employee may accept an invitation extended by a relocatee to attend a housewarming, potluck, accept a meal and refreshments while traveling on the reservation, or similar social activity when circumstances would make it rude for the employee to refuse.

(4) Other circumstances may arise in which it would be to the Commission's advantage for an employee to participate in activities ordinarily prohibited. In such cases, the employee shall consult with his or her supervisor about the course of action to be followed. If prior consultation is not possible, the employee shall exercise prudent judgement and promptly inform the supervisor of the activity.

§ 700.521 Outside work and interests.

Commission employees may engage in outside work or other activity which does not create a conflict between the employee's private interests and official duties nor prevent employees from devoting their talents and energies to the Commission. An employee's outside work shall not reflect discredit upon the Commission.

(a) Employees engaged in or considering outside employment shall inform their supervisor of the work, and supply such additional details as may be required to determine whether the employment is compatible with the full and proper discharge of the employee's official duties.

(b) Similarly, employees shall inform the supervisor and request approval of other types of outside activities which may present an actual or apparent conflict of interest between the employees' official duties and their private lives. The supervisor shall determine if the outside employment or activity is prohibited by these regulations, and so inform the employee. The Designated Agency Ethics Official is available to assist supervisors in making such determinations.

(c) *Guidelines and limitations*. Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities and hence is prohibited if:

(1) It would involve the violation of a Federal or State statute, a local ordinance, Executive Order, or regulation to which the employee is subject.

(2) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair the employee's mental or physical capacity to perform them in an acceptable manner.

(3) It would tend to influence the exercise or impartial judgement on any matters coming before the employee in the course of his or her duties;

(4) It would involve work for contractors, subcontractors, realtors, tribal offices, clients or other entities and individuals which have business with or receive services from the Commission or

conduct activities which are regulated by the Commission.

(5) Involves a person or enterprise that may be substantially affected by the performance or nonperformance of the employee's official duties.

(6) It involves the use of the employee's time during official working hours.

(7) It involves the receipt of salary or anything of monetary value from a private source as compensation for services to the Government.

(8) It involves acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value under circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(9) It would be of a nature which might be construed by the general public to be an official act of the Commission, or would give the impression that a business or product which is involved in the relocation project is officially endorsed or approved by the Commission.

(10) It would involve use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours.

(11) It might bring discredit upon, or cause unfavorable criticism of, the Government or the Commission or lead to relationships which might impair public confidence in the integrity of the Government or the Commission.

(12) It would involve the use of information obtained as a result of Government employment that is not freely available to the general public in that it either has not been made available to the general public or would not be made available upon request.

§ 700.523 Business relationships among employees.

Business relationships among Commission employees which take place after working hours and away from Commission premises are not matters for regulation, unless they violate the restrictions listed above.

§ 700.525 Use of government information or expertise.

(a) Commission personnel may engage in teaching, lecturing and writing about the relocation program, provided the Information which they present is public knowledge or would be made available to the public upon request.

(b) Employees shall inform their supervisors in advance of any teaching, writing, or lecturing activity which relates to the Commission operations. The Commissioners may at their discretion exercise the right of review and approval of materials to be presented.

(c) Employees must obtain supervisory approval for release of information considered confidential, and release of information not previously published as public information.

(d) Disclosure of information from records shall conform with the provisions of the Freedom of information and the Privacy Acts (5 U.S.C. 552). An employee may not release confidential information maintained by the Commission and available to the employee because of his position as an employee of the Commission. Violation of this prohibition may result in prosecution under the terms of the Privacy Act in addition to any disciplinary penalties levied by the employee's supervisor.

(e) Commission personnel may not accept compensation for an article, speech, consultant service, or other activity if it involves the use of information obtained as the result of Government employment which is not available to the general public as described in paragraph (a) of this section, or results in an actual or appearance of conflict of interest.

(f) Unless there is a definite Commission position on a matter which is the subject of an employee's writing or speech, and the individual has been authorized by the Commissioners to present that position officially, the employee shall expressly present his or her views on the matter as his or her own and not as those of the Commission.

(g) The right of an employee to express personal opinions is respected. However, once the Commission has established policy and procedure, every employee is obligated to carry out all lawful regulations, orders, and assignments, and to support the programs of the Commission as long as they are part of recognized public policy.

(h) In dealing with the public and with relocatees, employees should

avoid issuing opinions or decisions contrary to Commission policy which can be mistaken as official Commission policy.

§ 700.527 Endorsements.

Employees are prohibited from endorsing in an official capacity business products or processes or the services of commercial firms for advertising publicity or sale purposes. Use of materials, products or services, by the Commission does not constitute official endorsement. Employees may not recommend for or against any particular builder, supplier, realtor, contractor or other person or business seeking to sell any product or service to relocatees.

§ 700.529 Negotiations for employment.

An employee shall inform the supervisor and seek the advice of the Designated Agency Ethics Official if he or she wishes to negotiate for future non-Federal employment with persons or organizations having business with the Commission if the employee is involved in making recommendations or decisions affecting those persons or organizations.

§ 700.531 Government property.

Employees shall be held accountable for Government property and monies entrusted to their individual use or in connection with their official duties. An employee has a positive duty to protect and conserve Government property and to use it economically and for official purposes only, for example:

(a) Only official documents and materials may be reproduced on Government reproduction equipment.

(b) Government vehicles may be used only on official business and may not be used for personal use or for travel to or from an employee's place of residence, unless specifically authorized or assigned by the supervisor.

(c) An employee may not use FTS to make personal phone calls at Government expense.

(d) An employee may not use Government purchase authority for personal acquisitions even though reimbursement is made.

§ 700.533 Restrictions affecting travel and travel expense reimbursement.

(a) When an employee is on officially authorized travel his or her expenses are reimbursed by the Government. The employee may not request nor accept reimbursement in cash or kind for travel expenses from any other source, even when the employee's expenses exceed the maximum Government allowance.

(b) An employee who is authorized to attend a convention, seminar, or similar meeting while on official duty, whose travel is being paid by the sponsoring association, may not also claim travel expenses from the Government.

(c) An employee may accept accommodations and expense reimbursement for attending meetings, functions, etc. in his or her private capacity and on his or her own time, provided that such acceptance does not produce an actual or apparent conflict of interest. This restriction prohibits an employee from accepting accommodations or reimbursement from anyone having or seeking business with the Commission.

(d) Commission employees traveling on official business, as well as employees traveling on personal business, may not accept the use of private airplanes, cars, or other means of transportation offered at no expense by individuals conducting or seeking business dealings with the Commission, nor from clients of the Commission.

Exception: An employee may accept transportation and meals of modest value provided by a contractor or client in connection with official business when it is not practical to make arrangements for Government or commercial accommodations. The employee must receive prior approval of the supervisor in such case. This might occur, for example, if an employee were traveling to a remote area where no Government vehicle were available, or where there are no nearby restaurants or eating places. There is no prohibition against a contractor or private citizen traveling as a passenger in a Government vehicle driven by a Commission employee on official business, provided administrative procedures have been followed in making the travel arrangements.

§ 700.535 Nepotism.

An employee may not appoint or advocate the appointment to any position under his or her control, any individual

who is a relative of the employee. No employee shall supervise a member of his or her own family except in emergency situations.

§ 700.537 Indebtedness.

(a) Commission personnel shall pay their just financial obligations in a timely manner, especially those imposed by law, such as Federal, state, or local taxes. For the purposes of this paragraph, ''just financial obligation'' means one acknowledged by the employee or reduced to judgment by a court.

(b) Employees shall promptly refund any salary overpayments and excess travel advances.

(c) An employee's debts to private creditors are his or her personal concern. Any complaints or questions concerning such obligations will be referred to the employee for handling. Creditors and collectors shall not have access to employees on Agency premises during duty hours.

§ 700.539 Soliciting contributions.

(a) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior or accept a gift from an employee receiving less pay than himself or herself. (5 U.S.C. 7351) However, this paragraph does not preclude a voluntary gift of nominal value made on a special occasion.

(b) If authorized by the supervisor, an employee may solicit contributions for charitable causes. He or she may also be permitted to collect small donations for gifts for fellow employees for special occasions during slack moments.

§ 700.541 Fraud or false statement in a Government matter.

''Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly or wilfully falsifies, conceals or covers up by a trick, scheme or device a material fact, or makes or uses any false writing or document knowing the same to contain false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both (18 U.S.C. 1001).'' Special attention is required in the certification of time and attendance reports, applications for employment, personnel security forms, requests for travel reimbursement, client certification documents, and purchase orders and receiving forms.

§ 700.543 Gambling.

An employee shall not sponsor or participate in any gambling activity during working hours on Government premises.

§ 700.545 Alcoholism and drug abuse.

An employee who habitually uses intoxicants to excess is subject to removal (5 U.S.C. 7352). The Relocation Commission recognizes alcoholism and drug abuse as serious and treatable illnesses. Excessive absence and poor work performance are two of the specific problems resulting from excessive use of alcohol and drugs. The Commission management will assist any employee who has such a problem to obtain professional help and will make reasonable allowance as permitted by work schedules to allow an employee approved leave for professional treatment. Anyone who seeks such assistance will be guaranteed confidential handling of his or her case. Disciplinary action will be considered if an employee rejects or ignores treatment or other appropriate assistance.

§ 700.547 Consuming intoxicants on Government premises or during duty hours.

Consuming alcohol or non-prescription drugs on agency premises, or while driving or riding in a Government vehicle, or during working hours are prohibited conduct and employees violating this regulation are subject to disciplinary acton, including discharge.

§ 700.549 Employee organizations.

An employee may not knowingly be a member of an organization of Government employees that advocates the overthrow of the United States' constitutional form of government (5 U.S.C. 7311). Employees are also prohibited from striking against the Federal Government. With these restrictions, an employee has the right to form, join, or assist lawful employee organizations. Similarly, an employee has

also the right to refrain from such activity. In either case, the employee may exercise his or her right freely and without fear of penalty or reprisal and shall be protected in the exercise of such rights.

§ 700.551 Franking privilege and official stationery.

An employee is strictly prohibited from using Government franked envelopes with or without applied postage, or official letterhead stationery for personal business. (18 U.S.C. 1719)

§ 700.553 Use of official titles.

Employees are prohibited from using their official titles in conducting private business or participation in private or public group activities not concerned with official duties. Use is strictly limited to those occasions and circumstances where representation is official.

§ 700.555 Notary services.

An employee may not charge a fee for performing notarial services as part of his or her job duties (EO 977 Nov. 24, 1908).

§ 700.557 Political activity.

(a) Regulations on the political activity of Federal employees can be found in 5 U.S.C. 73. In general, the law and the rules prohibit using official authority or influence for the purpose of interfering with an election or affecting its results, and taking an active part in partisan political management or partisan political campaigns.

(b) Special Government employees of the Commission are subject to the political activity restrictions contained in 5 U.S.C. 73 and 18 U.S.C. 602, 603, 607 and 608 while on an active duty status only.

(c) Pursuant to provisions of the regulations cited, employees may take part in certain local elections. However, Commission employees are restricted from taking an active role in political elections of the Navajo and Hopi tribal governments, even though such elections are not partisan in the usual meaning of the word. With respect to tribal elections, employees may not:

(1) Run for tribal elective office.

(2) Organize, direct, nor actively participate in a tribal electoral campaign.

(3) Solicit or attempt to coerce fellow employees to contribute anything of value to an individual or group engaged in tribal political activity.

(4) Circulate petitions, posters, or other political materials during working hours or on Commission premises.

(5) Engage in any other type of tribal political activity which produces a conflict of interest between the employee's job responsibilities and the political activity.

§ 700.559 Equal opportunity.

Commission personnel shall scrupulously adhere to the Commission program of equal opportunity regardless of race, color, religion, sex, age, handicap, or national origin.

§ 700.561 Sexual harassment.

(a) Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is defined by the Office of Personnel Management as ''deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.'' Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcome, which is personally offensive and debilitates morale, interfering with the work effectiveness of its victims and their co-workers.

(b) Sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance.

For example:

—If submission to sexual advances is a condition of employment, whether expressed in explicit or implicit terms;

—If employment decisions, such as promotion, training, salary increases, rewards, etc., are based on an employee's submission to or rejection of sexual advances;

—If the sexual conduct substantially interferes with an affected person's work performance, or creates an intimidating, hostile or offensive work environment.

(c) Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary or job of an employee is engaging in sexual harassment. Similarly, an employee of an agency who behaves in this manner in the process of conducting agency business is engaging in sexual harassment. Finally, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and interfere with work productivity is also engaging in sexual harassment.

(d) It is the policy of the Relocation Commission that sexual harassment is unacceptable conduct in the workplace and will not be condoned. An employee who believes that he or she is subject to sexual harassment may contact one or more of the following people within the Commission for assistance:

(1) The immediate supervisor or second level supervisor.

(2) The EEO Counselor.

(3) The agency EEO Officer.

(4) The EEO Counselor at the Agency Liaison Division of the General Services Administration.

§ 700.563 Statutory restrictions from 18 U.S.C. 207, which are applicable to former Government employees.

(a) *Restrictions applicable to all former officers and employees*—(1) *Permanent bar*. A former Government employee is permanently barred from serving as agent or attorney for anyone other than the United States before any Government office or agency on any particular matter involving specific parties in which the former officer or employee had participated personally and substantially while with the Government.

(2) *Two year bar*. A restriction similar to the one summarized above prevents a former employee for two years from representational activities on all particular matters which were actually pending under the former employee's ''official responsibility'' during the one-year period prior to the termination of such responsibility.

(b) *Restrictions applicable only to ''senior employees.''* (1) Members of the Senior Executive Service are considered senior employees.

(2) Two-year ban on assisting in representation by personal presence. A former senior employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which the former employee personally and substantially participated while with the Government.

(3) One-year on attempt to influence former agency. A former senior employee may not represent another person or himself in attempting to influence his own former agency on a matter pending before, or of substantial interest to, such agency. Certain communications are exempted from this provision. These include communications by former senior employees who are employed by State or local governments or by certain educational or medical institutions, other exempt communications are those that are purely social or informational, communications on matters that are personal, including any expression of personal views where the former employee has no pecuniary interest, and response to a former agency's requests for information.

(c) *Implementing regulations*. (1) Detailed regulations implementing this law have been published by the Director, Office of Government Ethics (see 5 CFR part 737). The Designated Agency Ethics Official should be consulted for any additional information.

§ 700.565 Miscellaneous statutory provisions.

Commission personnel shall acquaint themselves with Federal statutes which relate to their ethical and other conducts as employees of the Commission and of the Government. The attention of Commission personnel is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress 2d Session, 72A Stat. B12, the ''Code of Ethics for Government Service.''

(b) Chapter 11 of title 18, United States Code, relating to bribery, graftm and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of the Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosures of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter.

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607 and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart P—Hopi Reservation Evictees

SOURCE: 48 FR 51771, Nov. 14, 1983, unless otherwise noted.

§ 700.601 Definitions.

(a) *Hopi reservation evictees*. Hopi reservation evictees are those members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of *United States v. Kabinto* (456 F. 2d 1087) (1972).

(b) *Head of household*. (1) A household is group of two or more persons who live together at a specific location, who form a unit of permanent and domestic character.

(2) The head of household is the individual who speaks on behalf of the members of the household and who is determined by the Commission to represent the household.

(3) In order to be eligible for benefits under this section, an individual must be a head of household as of the date of certification for benefits.

(4) Those single individuals who actually maintain and support themselves as of the date of certification for benefits shall be considered a head of household.

(c) *Hopi reservation*. For purposes of this subpart Hopi reservation shall mean the lands in Land Management District No. Six as defined in the September 28, 1962, Judgment in *Healing v. Jones* Civ. No. 579 pCT (d), Ariz., and shall not include the Hopi Partitioned Lands.

(d) *Equivalent assistance from federal agencies*. Housing provided for Hopi reservation evictees shall be considered equivalent assistance if it meets the Commission's standards for a decent, safe and sanitary dwelling under § 700.55 of these rules.

§ 700.603 Eligibility.

(a) Those heads of household who were members of the Navajo Tribe and were evicted from the Hopi reservation as a consequence of the decision in the *United States v. Kabinto* shall be eligible to receive relocation assistance on a preference basis.

(b) Proof of eviction shall be determined by one of the following criteria:

(1) Inclusion on the list of defendants in the case of *United States v. Kabinto* (456 F. 2d 1087) (1972);

(2) Inclusion on the lists prepared by the BIA dated May 10, 1979, and May 21, 1979, as a result of having provided services to those heads of household.

(3) Inclusion on a list prepared by the Navajo Tribe and submitted to the Commission on January 16, 1981;

(4) Inclusion on a list prepared by the Navajo Legal Aid Service dated April 29, 1970;

(5) Other evidence furnished by the applicant which is sufficient to prove their status as evictees from the Hopi reservation, as determined by the Commission.

§ 700.605 Relocation assistance.

(a) Each eligible head of household of Hopi reservation evictees shall be entitled to receive the following assistance:

(1) Relocation advisory services as provided in § 700.135 of this part;

(2) Moving and search expenses, as provided in § 700.151 of this part;

(3) Replacement housing payments as set forth below.

(b)(1) If the head of household owns no dwelling, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(i) Purchase of an existing home by the head of household,

(ii) Contracting by the head of household for the construction of a home,

(iii) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(2) If the eligible head of household owns or is buying or building a home, the Commission will expend relocation benefits in one of the following manners:

(i) If the home is decent, safe and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission may expend replacement housing benefits up to the maximum then existing replacement home benefit to accelerate to the maximum extent possible the achievement by that household of debt-free home ownership.

(ii) If the home is owned free and clear but does not meet Commission decent, safe and sanitary standards; or the home is neither owned free and clear, nor is decent, safe and sanitary, the Commission will, at its discretion either:

(A) Expend replacement home benefits for improvements to assure the home meets the Commission's decent, safe and sanitary standards, or

(B) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (b)(1) of this section.

(3) If the home is decent, safe and sanitary, and is owned free and clear, no replacement housing benefits will be paid.

(4) The amount of the replacement housing payment shall be calculated in accordance with § 700.183 of these rules except that no compensation will be paid for habitation and improvements.

(5) The determination of whether the head of household of Hopi reservation evictees currently occupies a decent, safe and sanitary dwelling shall be made in accordance with § 700.55 of these rules.

(C) If the head of household has received equivalent assistance from other federal agencies as defined in § 700.601(d), they shall not be entitled to additional assistance from the Commission.

§ 700.607 Dual eligibility.

Those individuals who moved from the Hopi reservation following eviction to the Hopi partitioned Lands and who are eligible to receive benefits under the general regulations shall not receive benefits under this subpart but shall receive benefits under the general regulations on a preferential basis.

§ 700.609 Appeals.

Appeals of eligibility, hearings and administrative review (appeals) will be administered under subpart L of this part.

§ 700.611 Application deadline.

The deadline for receipt of applications for benefits under this subpart shall be 120 days following publication of these final rules.

Subpart Q—New Lands Grazing

SOURCE: 56 FR 13397, Apr. 2, 1991, unless otherwise noted.

§ 700.701 Definitions.

(a) *Act* means Pub. L. 93–531 (88 Sat. 1712, 25 U.S.C. 640 *et. seq.*) as amended by Pub. L. 96–305 and Pub. L. 100–666.

(b) *New Lands* means the land acquired for the use of relocatees under the authority of Pub. L. 96–305, 25 U.S.C. 640d–10. These lands include the 215,000 acres of lands acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation and 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d–10.

(c) *Commissioner* means the Commissioner of The Office of Navajo and Hopi Indian Relocation in Flagstaff, Arizona. Reference to approval or other action by the Commissioner will also include approval or other action by another Federal officer under delegated authority from the Commissioner.

(d) *Tribe* means the Navajo Nation.

(e) *Range unit* means a tract of range land designated as a management unit for administration of grazing.

(f) *Range Management Plan* means a land use plan for a specific range unit that will provide for a sustained forage production consistent with soil, watershed, wildlife, and other values.

(g) *Stocking rate* means the authorized stocking rate by range unit as determined by the Commissioner. The stocking rate shall be based on forage production, range utilization, land management applications being applied, and range improvements in place to achieve uniformity of grazing under sustained yield management principles.

(h) *Grazing permit* means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term, as used herein, shall include written authorization issued to enable the crossing or trailing of domestic livestock across specified tracts or range.

(i) *Animal unit* (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: Sheep and Goats—one ewe, doe, buck, or ram equals 0.25 AU. Horses and Mules—one horse, mule, donkey or burro equals 1.25 AU.

(j) *Sheep unit* means one ewe with lamb at side or a doe goat with kid.

(k) *SUYL* means one sheep unit grazed yearlong.

(l) *HPL* means the area partitioned to the Hopi Tribe pursuant to Pub. L. 93–531 known as the Hopi Partitioned Land.

§ 700.703 Authority.

It is within the authority of the Commissioner on Navajo and Hopi Indian Relocation to administer the New Lands added to the Navajo Reservation pursuant to 25 U.S.C. 6–10(d)–10.

§ 700.705 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the New Lands.

(b) The resettlement of Navajo Indians physically residing on the HPL to the New Lands.

§ 700.707 Regulations; scope.

The grazing regulations in this part apply to the New Lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe which lands were added to the Navajo Reservation pursuant to 25 U.S.C. 640(d)–10; 25 CFR parts 166 and 167 are not applicable to the New Lands.

§ 700.709 Grazing privileges.

(a) A list of permittees eligible to receive grazing permits is kept at the Office of Navajo and Hopi Indian Relocation in Flagstaff, Arizona. This list is composed of individuals eligible for New Lands grazing permits who:

(1) Have a current HPL grazing permit, or have had an HPL permit issued since 1980, or are current HPL residents and can show documentation of a past grazing permit issued in their name for grazing on an area now on the HPL, and

(2) Who have not received relocation benefits under Pub. L. 93–531, and who relocate from the HPL on to a New Lands range unit. Individuals on this list will receive a commitment that a permit will be issued to them.

(b) If such persons cannot relocate immediately because their chosen relocation site is not ready for occupancy, the Office will issue a commitment to them that a grazing permit will be granted upon their relocation.

(c) If such persons are notified by the Office that their relocation site is ready for occupancy and they fail or refuse to make timely arrangements to relocate when requested by the Office to do so, the commitment may be withdrawn.

(d) Persons on this list must file an application for a New Lands Grazing Permit. The Commissioner will determine when the application period will close and will publish notice of that date. After the close of the period for application, the Commissioner, in his sole discretion, may issue permits to individuals if it is determined that to do so will facilitate relocation.

(e) Initial determinations on eligibility for grazing permits will be made by the Range Supervisor.

[56 FR 13397, Apr. 2, 1991, as amended at 57 FR 24363, June 9, 1992]

§ 700.711 Grazing permits.

(a) All livestock grazed on the New Lands must be covered by a grazing permit authorized and issued by the Commissioner on Navajo and Hopi Indian Relocation.

(b) Permit holders must:

(1) Be enrolled Navajo Tribal members,

(2) Be over 18 years of age,

(3) Maintain a permanent residency on the New Lands Range Unit of permit issue, and

(4) Own livestock which graze on the range unit of permit issue.

(c) Permits will be issued for a base of 80 SUYL (20 AU) and may not be divided or transferred for less than 80 SUYL.

(d)(1) Temporary seasonal grazing permits for periods not to exceed one year may be issued to permittees:

(i) To use extra forage made available under rotation grazing management as regulated by a range unit management plan,

(ii) To use forage created by unusually favorable climatic conditions,

(iii) To allow use of range while term permits are held in suspension under § 700.715(d).

(2) These temporary permits may be reissued prior to termination provided:

(i) The permittee is managing grazing in compliance with grazing regulations,

(ii) Livestock grazing is in compliance with the cooperative range unit range management plan, and

(iii) Forage is available on the range to sustain the livestock authorized under the temporary permit.

§ 700.713 Tenure of grazing permits.

(a) All active regular grazing permits shall be for five years and shall be automatically reissued for another five-year period provided the permittee is not in violation of § 700.711 or 700.715 or 700.719 or 700.723 or 700.725 of the regulations. Permits will initially be issued with an ending date of October 31 of the fifth year following the date of initial issuance.

(b) Amendments to these regulations extending or limiting the tenure of grazing permits are applicable and become a condition of all previously granted permits.

§ 700.715 Assignment, modification, and cancellation of grazing permits.

(a) Grazing permits may be assigned or transferred with the written consent of the contracting parties. The Commissioner will issue a new permit provided the transferee meets qualifications under § 700.711(b).

(b) Temporary permits issued under § 700.711(d) are directly tied to the term permit and may be transferred with the term permit if the transferee signs the range unit management plan which provides the management for continuation of the temporary grazing permit.

Temporary permits will not be transferred and shall be null and void if the term permit transferee does not sign the management plan agreeing to practice conservation management.

(c) Grazing permits may be assigned for transfer through a notarized document to an heir who meets the qualifications for a grazing permit under § 700.711.

(d) Grazing permits must be transferred in whole to a single transferee—the transferor relinquishing all grazing privileges at the time of transfer.

(e) The Commissioner may revoke or withdraw all or any part of a grazing permit by cancellation or modification on a 30 day written notice for violation of the permit or of the management plan, non-payment of grazing fees, violation of these regulations, or because of the termination of the trust status of the permitted land.

§ 700.717 Stocking rate.

The Commissioner will determine livestock carrying capacity for each range unit and set the stocking rate and adjust that rate as conditions warrant. The Commissioner may consult with the Tribe when making adjustments to the stocking rate.

§ 700.719 Establishment of grazing fees.

The Commissioner may establish a minimum acceptable grazing fee per SUYL. The Commissioner may consult with the Tribe prior to establishing fees.

§ 700.721 Range management plans.

The Commissioner (or his designee) and the permittees of each range unit will meet as a group and develop a Range Management Plan for the common use of the range unit. The plan will include but will not be limited to the following:

(a) Goals for improving vegetative productivity.

(b) Incentives for carrying out the goals.

(c) Stocking rate.

(d) Record of brands of livestock authorized to graze on the range unit.

(e) Grazing plan and schedule.

(f) Range monitoring schedule.

(g) Wildlife management.

(h) Needs assessment for range and livestock improvements.

(i) Scheduling for operation and maintenance of existing range improvements.

§ 700.722 Grazing associations.

(a) The Commissioner may recognize, cooperate with, and assist range unit livestock associations in the management of livestock and range resources.

(b) These associations will provide the means for the members:

(1) To jointly manage their permitted livestock and the range resources,

(2) To meet jointly with the ONHIR range staff to discuss and formulate range management plans,

(3) To express their wishes through designated officers or committees,

(4) To share costs for handling livestock, construction of range improvements, fence and livestock facilities maintenance, and other land or livestock improvement projects agreed on, and

(5) To formulate association special rules needed to assure cooperation and resource management.

(c) The requirements for receiving recognition by the Commissioner are:

(1) The members of the association must be grazing permittees and constitute a majority of the grazing permittees on the range unit involved.

(2) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(3) The officers other than secretary and treasurer must be grazing permittees on the range unit involved.

(4) The association's activities must be governed by a constitution and bylaws acceptable to the Commissioner and signed by him.

(5) The association's constitution and bylaws must recognize conservation management goals and the need to follow a range unit management plan.

(d) The Commissioner may withdraw his recognition of the association whenever:

(1) The majority of the grazing permittees request that the association be dissolved.

(2) The association becomes inactive and does not meet in annual or special

meetings during a consecutive two-year period.

(e) A recognized association may hold a grazing permit to benefit its members according to the rules of the association constitution and bylaws. All of the association's livestock will be run under an association brand properly registered with the Navajo Tribe and the ONHIR.

(f) Associations may acquire permits from consenting permittees on the range unit in accordance with § 700.711 and may assign or transfer these permits in accordance with § 700.715.

§ 700.723 Control of livestock disease and parasites.

Whenever livestock within the New Lands become infected with contagious or infectious disease or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted by the responsible permittee in accordance with applicable laws.

§ 700.725 Livestock trespass.

The following acts are prohibited:

(a) The grazing of livestock upon, or driving of livestock across, any of the New Lands without a current approved grazing or crossing permit.

(b) The grazing of livestock upon an area specifically rested from the grazing of livestock according to the range unit Range Management Plan.

(c) The grazing of livestock upon any land withdrawn from use for grazing to protect it from damage after receipt of appropriate notice from the Commissioner.

(d) The grazing of livestock in excess of those numbers authorized on the livestock grazing permit approved by the Commissioner.

(e) Grazing of livestock whose brand is not recorded in the range unit Range Management Plan.

The owner of any livestock grazing in trespass on the New Lands is liable to a civil penalty of $1 per head per day for each cow, bull, horse, mule or donkey and 25¢ per head per day for each sheep or goat in trespass and a reasonable value for damages to property injured or destroyed. The Commissioner may take appropriate action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be paid to the Commissioner for use as a range improvement fund.

§ 700.727 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the New Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Commissioner as provided herein.

(a) When the Commissioner determines that unauthorized livestock use is occurring, and has definite knowledge of the kind of unauthorized livestock and knows the name and address of the owners, the owner shall be given written notice and a 10 day period shall be allowed for the permittee to solve the unauthorized use without penalty. If after this 10 day period the unauthorized use is not resolved, such livestock may be impounded at any time after five days after written Notice of Intent to Impound Unauthorized Livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Commissioner determines that unauthorized livestock use is occurring, but does not have complete knowledge of the number and class of livestock, or if the name and address of the owner thereof are unknown, such livestock may be impounded at anytime after 15 days after the date a General Notice of Intent to Impound Unauthorized Livestock is first published in a local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the New Lands which are owned by persons given notice under paragraph (a) of this section and any unauthorized livestock in areas for which notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the 12-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock or unauthorized livestock will be published in a local newspaper, posted at the nearest

chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time, and place of sale. The date set shall be at least five days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding, and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner, and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. When livestock are sold pursuant to this regulation, the Commissioner shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock.

(2) Trespass penalties assessed pursuant to § 700.725 shall be paid to a separate account to be administered by the Commissioner for use as a range improvement fund for the New Lands.

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above, not claimed within one year from the date of sale, will be credited to the United States.

§ 700.729 Amendments.

These regulations may be amended or superseded as needed.

§ 700.731 Appeals.

Persons who have filed a claim for a grazing permit and whose claim has been denied by the Range Supervisor may appeal to the Commissioner. Appeals must be made in writing and must be received by the Office not more than 30 days after the date the claim was denied. The appeal shall state with specificity why the decision being appealed is in error and shall incorporate all supporting documents. The Commissioner will issue a decision affirming or reversing the decision of the Range Supervisor within 60 days of receipt of the appeal. Such decision will constitute final action by the Office and will be communicated to the appellant by certified mail.

Subpart R—Protection of Archaeological Resources

SOURCE: 62 FR 35078, June 30, 1997, unless otherwise noted.

§ 700.801 Purpose.

(a) The regulations in this subpart implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11) by establishing the uniform definitions, standards, and procedures to be followed by the O.N.H.I.R. New Lands Manager in providing protection for archaeological resources, located on the New Lands. The regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 43 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 700.803 Authority.

The regulations in this part are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii). Section 10(b) of the Act (16 U.S.C. 470ii)

provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 700.805 Definitions.

As used for purposes of this part:

(a) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470–aa–11).

(b) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section.

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars, or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits, or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons, and weapon projectiles, clothing, and ornaments (including, but not limited to pottery and other ceramics, cordage, basketry and other weaving, bottles and other glasseware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked ground or pecked stone);

(iv) By products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains described in this paragraph (a);

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any material remains described in this paragraph (a).

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal Land Manager may determine that certain material remains, in specified areas under the Federal Land Manager's jurisdiction and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this paragraph (a)(5) shall be documented. Such determination shall in no way affect the Federal Land Manager's obligations under other applicable laws or regulations. Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal Land Manager shall consult with the Navajo Nation to obtain their concurrences.

(c) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(d) *Commissioner* means the Commissioner of the Office of Navajo and Hopi Indian Relocation. Reference to approval of other action by the Commissioner will also include approval or other action by another Federal Officer under delegated authority from the Commissioner.

(e) *Federal Land Manager* means: With respect to the New Lands, the Commissioner of Navajo and Hopi Indian Relocation, having primary management authority over such lands, including persons to whom such management authority has been officially delegated.

(f) *Indian tribe* or *Tribe* means the Navajo Nation.

(g) *New Lands* means the land acquired for the use of relocatees under the authority of Pub. L. 96–305, 25 U.S.C., 640(d)–10. These lands include the 250,000 acres of land acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation, 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d–10 and up to 35,000 acres of land in the State of New Mexico to be acquired and added to the Navajo Reservation.

(h) *Office* means the Office of Navajo and Hopi Indian Relocation.

(i) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(j) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(k) *Tribe* means the Navajo Nation.

§ 700.807 Prohibited Acts.

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on the New Lands unless such activity is pursuant to a permit issued under § 700.815 or exempted by § 700.809(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 700.809 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from the New Lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal Land Manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal Land Manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 700.815(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the New Lands under other permits leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal Land Manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this

part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by the Navajo Nation or member thereof of any archaeological resource located on the New Lands, except that in the absence of tribal law regulating the excavation or removal of archaeological resources, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal Land Manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 700.811. However, the Federal Land Manager shall insure that provisions of §§ 700.815 and 700.817 have been met by other documented means and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal Land Manager, have been the subject of consideration.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal Land Manager with the concurrence of the Navajo Nation, shall issue a permit, subject to the provisions of §§ 700.809(b)(5), 700.815(a) (3), (4), (5), (6), and (7), 700.817, 700.819, 700.823, 700.825(a), to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating, and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal Land Manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of the New Lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on the New Lands any activity related to but believed to fall outside the scope of this part should consult with the Federal Land Manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 700.811 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal Land Manager for a permit to excavate and/or remove archaeological resources from the New Lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training and experience in accord with the minimal qualifications listed in § 700.815(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on the New Lands, the name of the university, museum, or

other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal Land Manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The purpose of the information collection under § 700.811 is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the New Lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 700.813 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 700.817.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat or loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w–3).

(2) If the Federal Land Manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to

communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 700.815 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of the permit; and

(v) Applicants proposing to engage in historical archaeology should have at least one year of experience in research concerning archaelogoical resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the New Lands;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the New Lands, and the proposed work has been agreed to in writing by the Federal Land Manager, pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on the New Lands, from the Indian land owner and the Navajo Nation which is the Indian Tribe having jurisdiction.

(6) Evidence is submitted to the Federal Land Manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal Land Manger, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit;

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

§ 700.817 Terms and conditions of permits.

(a) In all permits issued, the Federal Land Manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institution in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal Land Manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal Land Manager shall include in permits issued for archaeological work on the New Lands such terms and conditions as may be requested by the Indian landowner and the Navajo Nation.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal Land Manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal Land Manager, at least annually.

§ 700.819 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal Land Manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 700.807. The Federal Land Manager shall provide written notice to the permittee of suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal Land Manager may revoke a permit upon assessment of a civil penalty under § 700.831 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal Land Manager may suspend or revoke a permit without liability to the United States, its agents, or employees when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal Land Manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 700.821 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal Land Manager pursuant to section 10(b) of the Act and this part.

§ 700.823 Permit reviews and disputes.

(a) Any affected person disputing the decision of the Federal Land Manager with respect to the issuance or denial of a permit, the inclusion of specific terms and conditions in a permit, or the modification, suspension, or revocation or a permit may request the Federal Land Manager to review the disputed decision and may request a conference to discuss the decision and its basis.

(b) Any disputant unsatisfied with the higher level review, and desiring to appeal the decision, pursuant to § 700.821 of this part, should consult with the Federal Land Manager regarding the existence of published appeal

procedures. In the absence of published appeal procedures, the review by the head of the Office will constitute the final decision.

(c) Any affected person may request a review by the Department of Interior Consulting Archaeologist of any professional issues involved in a permitting decision, such as professional qualifications, research design, or other professional archaeological matters. The Departmental Consulting Archaeologist shall make a final professional recommendation to the head of the Office. The head of the Office will consider the recommendation, but may reject it, in whole or in part, for good cause. This request should be in writing and should state the reasons for the request.

§ 700.825 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1996 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal Land Manager from compliance with section 106 where otherwise required.

§ 700.827 Custody of Archaeological resources.

(a) Archaeological resources excavated or removed from the New Lands remain the property of the Navajo Nation.

(b) [Reserved]

§ 700.829 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtained prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting filed work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be for its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damages as a result of a violation or prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following.

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with Pub. L. 101–601, the Native American Grave Protection and Repatriation Act.

(8) Preparation of reports relating to any of the above activities.

§ 700.831 Assessment of civil penalties.

(a) The Federal Land Manager may assess a civil penalty against any person who has violated any prohibition contained in § 700.807 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation*. The Federal Land Manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of the proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal Land Manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal Land Manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal Land Manger's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief*. The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal Land Manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later.) The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty*. (1) The Federal Land Manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion or informal discussions, whichever is later.

(2) The Federal Land Manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal Land Manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal Land Manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal Land Manager shall determine a penalty amount in accordance with § 700.831.

(f) *Notice of assessment*. The Federal Land Manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include the following in the notice of assessment.

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 700.831 for determining the penalty amount assessed

and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request, as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal Land Manager under paragraph (f) of this section of any offer of mitigation or remission made by the Federal Land Manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court, as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal Land Manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal Land Manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal Land Manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 700.833 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal Land Manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors.

(i) Agreement by the person being assessed a civil penalty to return to the Federal Land Manager and ultimately to the Navajo Nation archaeological resources removed from the New Lands.

(ii) Agreement by the person being assessed a civil penalty to assist the Federal Land Manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on the New Lands.

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation.

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances.

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) The Federal Land Manager shall consult with and consider the interests of the Navajo Nation prior to proposing to mitigate or remit the penalty.

§ 700.835 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal Land Manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or tribal government who furnish information or render services in the performance of their official duties, and persons who have provided information under § 700.833(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) All civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the Navajo Nation.

§ 700.837 Confidentiality of archaeological resource information.

The Federal Land Manager shall not make available to the public under subchapter II of chapter 5 of title 5 of the United States Code or any other provisions of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(a) The Federal Land Manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) With the concurrence of the Navajo Nation, the Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 700.839 Report.

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

§ 700.841 Determination of loss or absence of archaeological interest.

(a) Under certain circumstances, a Federal land manager may determine, pursuant to § 700.805(a)(5) of this part, that certain material remains are not or are no longer of archaeological interest, and therefore not to be considered archaeological resources under this part.

(b) The Federal land manager may make such a determination if he/she finds that the material remains are not capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics.

(c) Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal land manager shall ensure that the following procedures are completed.

(1) A professional archaeological evaluation of material remains and similar materials within the area under consideration shall be completed, consistent with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation and with the 36 CFR parts 60, 63, and 65.

(2) The principal Office archaeologist or, in the absence of a principal Office archaeologist, the Office Consulting Archaeologist, shall establish whether the material remains under consideration contribute to scientific or humanistic understandings of past human behavior, cultural adaption and related topics. The principal Office archaeologist or the Office Consulting Archaeologist, as appropriate, shall make a recommendation to the Federal land manager concerning these material remains.

(d) The Federal land manager shall make the determination based upon the facts established by and the recommendation of the principal Office archaeologist or the Office Consulting Archaeologist, as appropriate, and shall fully document the basis therefor, including consultation with Indian tribes for determinations regarding sites of religious or cultural importance.

(e) The Federal land manger shall make public notice of the determination and its limitations, including any permitting requirements, for activities associated with the materials determined not to be archaeological resources for the purposes of this part.

(f) Any interested individual may request in writing that the Office Consulting Archaeologist review any final determination by the Federal land manager that certain remains are not, or are no longer, archaeological resources. Two (2) copies of the request should be sent to the Office Consulting Archaeologist, care of Land Use Manager, Office of Navajo and Hopi Indian Relocation, PO Box KK, Flagstaff, AZ 86002, and should document why the requestor disagrees with the determination of the Federal land manger. The Office Consulting Archaeologist shall review the request, and, if appropriate, shall review the Federal land manager's determination and its supporting documentation. Based upon this review, the Departmental Consulting Archaeologist shall prepare a final professional recommendation, and shall transmit the recommendation and the basis therefor to the head of the bureau for further consideration within 60 days of the receipt of the request.

(g) Any determination made pursuant to this section shall in no way affect the Federal land manager's obligation under other applicable laws or regulations.

§ 700.843 Permitting procedures for Navajo Nation Lands.

(a) Pursuant to the Act and this subpart, the written consent of the Navajo Nation is required. Written consent shall consist of a Navajo Nation permit issued in accordance with the Navajo Nation Code or a resolution of the Navajo Nation Council or delegated committee of that Council.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is

sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Navajo Nation and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office. The Office shall ensure that consultation with the Navajo Nation or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. Permits shall include terms and conditions requested by the Navajo Nation or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit by Indian tribal law.

PART 720—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Sec.

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AUTHORITY: 29 U.S.C 794.

SOURCE: 51 FR 22891, 22896, June 23, 1986, unless otherwise noted.

§ 720.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§ 720.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 720.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 720.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 720.104–720.109 [Reserved]

§ 720.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 720.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 720.112–720.129 [Reserved]

§ 720.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination

under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 720.131–720.139 [Reserved]

§ 720.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 720.141–720.148 [Reserved]

§ 720.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 720.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 720.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 720.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens

but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 720.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 720.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) *Housing*. The agency shall ensure that any dwelling purchased for a relocatee household is readily accessible to and usable by any handicapped person who is a member of that household.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22892, June 23, 1986]

§ 720.151 Program accessibility: New construction and alterations.

(a) Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established

in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

(b) The agency shall ensure that any dwelling that is constructed for a relocatee household is designed and constructed so as to be readily accessible to and usable by any handicapped person who is a member of that household.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22892, June 23, 1986]

§§ 720.152–720.159 [Reserved]

§ 720.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 720.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 720.161–720.169 [Reserved]

§ 720.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Director for Relocation Operations shall be responsible for coordinating implementation of this section. Complaints may be mailed to Assistant Director for Relocation Operations, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180

days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (g) of this section. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22891, June 23, 1986]

PARTS 721–899 [RESERVED]

CHAPTER V—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AND INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PART 900—CONTRACTS UNDER THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

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AUTHORITY: 25 U.S.C. 450f et seq.

SOURCE: 61 FR 32501, June 24, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 900 appear at 67 FR 34602, May 15, 2002.

Subpart A—General Provisions

§ 900.1 Authority.

These regulations are prepared, issued, and maintained jointly by the Secretary of Health and Human Services and the Secretary of the Interior, with the active participation and representation of Indian tribes, tribal organizations, and individual tribal members pursuant to the guidance of the Negotiated Rulemaking procedures required by section 107 of the Indian Self-Determination and Education Assistance Act.

§ 900.2 Purpose and scope.

(a) *General*. These regulations codify uniform and consistent rules for contracts by the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) in implementing title I of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 25 U.S.C. 450 et seq., as amended and sections 1 through 9 preceding that title.

(b) *Programs funded by other Departments and agencies*. Included under this part are programs administered (under current or future law or interagency agreement) by the DHHS and the DOI for the benefit of Indians for which appropriations are made to other Federal agencies.

(c) *This part included in contracts by reference*. Each contract, including grants and cooperative agreements in lieu of contracts awarded under section 9 of the Act, shall include by reference the provisions of this part, and any amendment thereto, and they are binding on the Secretary and the contractor except as otherwise specifically authorized by a waiver under section 107(e) of the Act.

(d) *Freedom of Information*. Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping systems of the DHHS or the DOI, or both, records of the contractors (including archived records) shall not be considered Federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act does not apply to records maintained solely by Indian tribes and tribal organizations.

(e) *Privacy Act*. Section 108(b) of the Indian Self-Determination Act states that records of the tribal government or tribal organizations shall not be considered Federal records for the purposes of the Privacy Act.

(f) *Information collection*. The Office of Management and Budget has approved, under 44 U.S.C. chapter 35, the information collection requirements in part 900 under assigned control number 1076–0136. The information for part 900 is being collected and used by the Departments to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Departments to administer and evaluate contract programs.

§ 900.3 Policy statements.

(a) *Congressional policy*. (1) Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction, planning, conduct and administration of educational as well as other Federal programs and services to Indian communities so as to render such programs and services more responsive to the needs and desires of those communities.

(2) Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(3) Congress has declared that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(4) Congress has declared that the programs, functions, services, or activities that are contracted and funded under this Act shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractible. The administrative functions referred to in the preceding sentence shall be contractible without regard to the organizational level within the Department that carries out such functions. Contracting of the administrative functions described herein shall not be construed to limit or reduce in any way the funding for any program, function, service, or activity serving any other tribe under the Act or any other law. The Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another Indian tribe or tribal organization under this Act.

(5) Congress has further declared that each provision of the Act and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the tribes or tribal organizations to transfer the funding and the related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under the Act, including all related administrative functions, from the Federal government to the contractor.

(6) Congress has declared that one of the primary goals of the 1994 amendments to the Act was to minimize the reporting requirements applicable to tribal contractors and to eliminate excessive and burdensome reporting requirements. Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to the declination procedures of section 102 of the Act.

(7) Congress has declared that there not be any threshold issues which would avoid the declination, contract review, approval, and appeal process.

(8) Congress has declared that all self-determination contract proposals must be supported by the resolution of an Indian tribe(s).

(9) Congress has declared that to the extent that programs, functions, services, and activities carried out by tribes and tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under section 106(a) of the Act, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(b) *Secretarial policy*. (1) It is the policy of the Secretary to facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer programs, functions, services and activities, or portions thereof, which

the Departments are authorized to administer for the benefit of Indians because of their status as Indians. The Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes and tribal organizations including obstacles that hinder tribal autonomy and flexibility in the administration of such programs.

(2) It is the policy of the Secretary to encourage Indian tribes and tribal organizations to become increasingly knowledgeable about the Departments' programs administered for the benefit of Indians by providing information on such programs, functions and activities and the opportunities Indian tribes have regarding them.

(3) It is the policy of the Secretary to provide a uniform and consistent set of rules for contracts under the Act. The rules contained herein are designed to facilitate and encourage Indian tribes to participate in the planning, conduct, and administration of those Federal programs serving Indian people. The Secretary shall afford Indian tribes and tribal organizations the flexibility, information, and discretion necessary to design contractible programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs.

(4) The Secretary recognizes that contracting under the Act is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes. When an Indian tribe contracts, there is a transfer of the responsibility with the associated funding. The tribal contractor is accountable for managing the day-to-day operations of the contracted Federal programs, functions, services, and activities. The contracting tribe thereby accepts the responsibility and accountability to the beneficiaries under the contract with respect to use of the funds and the satisfactory performance of the programs, functions, services and activities funded under the contract. The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes and the trust resources of individual Indians.

(5) The Secretary recognizes that tribal decisions to contract or not to contract are equal expressions of self-determination.

(6) The Secretary shall maintain consultation with tribal governments and tribal organizations in the Secretary's budget process relating to programs, functions, services and activities subject to the Act. In addition, on an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(7) The Secretary is committed to implementing and fully supporting the policy of Indian self-determination by recognizing and supporting the many positive and successful efforts and directions of tribal governments and extending the applicability of this policy to all operational components within the Department. By fully extending Indian self-determination contracting to all operational components within the Department having programs or portions of programs for the benefit of Indians under section 102(a)(1) (A) through (D) and for the benefit of Indians because of their status as Indians under section 102(a)(1)(E), it is the Secretary's intent to support and assist Indian tribes in the development of strong and stable tribal governments capable of administering quality programs that meet the tribally determined needs and directions of their respective communities. It is also the policy of the Secretary to have all other operational components within the Department work cooperatively with tribal governments on a government-to-government basis so as to expedite the transition away from Federal domination of Indian programs and make the ideals of Indian self-government and self-determination a reality.

(8) It is the policy of the Secretary that the contractibility of programs under this Act should be encouraged.

In this regard, Federal laws and regulations should be interpreted in a manner that will facilitate the inclusion of those programs or portions of those programs that are for the benefit of Indians under section 102(a)(1) (A) through (D) of the Act, and that are for the benefit of Indians because of their status of Indians under section 102(a)(1)(E) of the Act.

(9) It is the Secretary's policy that no later than upon receipt of a contract proposal under the Act (or written notice of an Indian tribe or tribal organization's intention to contract), the Secretary shall commence planning such administrative actions, including but not limited to transfers or reductions in force, transfers of property, and transfers of contractible functions, as may be necessary to ensure a timely transfer of responsibilities and funding to Indian tribes and tribal organizations.

(10) It is the policy of the Secretary to make available to Indian tribes and tribal organizations all administrative functions that may lawfully be contracted under the Act, employing methodologies consistent with the methodology employed with respect to such functions under titles III and IV of the Act.

(11) The Secretary's commitment to Indian self-determination requires that these regulations be liberally construed for the benefit of Indian tribes and tribal organizations to effectuate the strong Federal policy of self-determination and, further, that any ambiguities herein be construed in favor of the Indian tribe or tribal organization so as to facilitate and enable the transfer of services, programs, functions, and activities, or portions thereof, authorized by the Act.

§ 900.4 Effect on existing tribal rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminating, waiving, modifying, or reducing the trust responsibility of the United States to the Indian tribe(s) or individual Indians. The Secretary shall act in good faith in upholding this trust responsibility;

(c) Mandating an Indian tribe to apply for a contract(s) or grant(s) as described in the Act; or

(d) Impeding awards by other Departments and agencies of the United States to Indian tribes to administer Indian programs under any other applicable law.

§ 900.5 Effect of these regulations on Federal program guidelines, manual, or policy directives.

Except as specifically provided in the Act, or as specified in subpart J, an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, or otherwise required by law.

Subpart B—Definitions

§ 900.6 Definitions.

Unless otherwise provided in this part:

Act means secs. 1 through 9, and title I of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Annual funding agreement means a document that represents the negotiated agreement of the Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to an Indian tribe or tribal organization under the Act.

Appeal means a request by an Indian tribe or tribal organization for an administrative review of an adverse Agency decision.

Awarding official means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. Pursuant to the Act, this person can be any Federal official, including but not limited to, contracting officers.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

Contract means a self-determination contract as defined in section 4(j) of the Act.

Contract appeals board means the Interior Board of Contract Appeals.

Contractor means an Indian tribe or tribal organization to which a contract has been awarded.

Days means calendar days; except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Department(s) means the Department of Health and Human Services (HHS) or the Department of the Interior (DOI), or both.

IHS means the Indian Health Service of the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal Agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one contract objective or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.

Initial contract proposal means a proposal for programs, functions, services, or activities that the Secretary is authorized to perform but which the Indian tribe or tribal organization is not now carrying out.

Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances thereto.

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in subpart P.

Retrocession means the voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

Secretary means the Secretary of Health and Human Services (HHS) or the Secretary of the Interior (DOI), or both (and their respective delegates).

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Trust resources means an interest in land, water, minerals, funds, or other assets or property which is held by the United States in trust for an Indian tribe or an individual Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.

Subpart C—Contract Proposal Contents

§ 900.7 What technical assistance is available to assist in preparing an initial contract proposal?

The Secretary shall, upon request of an Indian tribe or tribal organization and subject to the availability of appropriations, provide technical assistance on a non-reimbursable basis to such Indian tribe or tribal organization to develop a new contract proposal or to provide for the assumption by the Indian tribe or tribal organization of any program, service, function, or activity (or portion thereof) that is

contractible under the Act. The Secretary may also make a grant to an Indian tribe or tribal organization for the purpose of obtaining technical assistance, as provided in section 103 of the Act. An Indian tribe or tribal organization may also request reimbursement for pre-award costs for obtaining technical assistance under sections 106(a)(2) and (5) of the Act.

§ 900.8 What must an initial contract proposal contain?

An initial contract proposal must contain the following information:

(a) The full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.

(b) If the tribal organization is not an Indian tribe, the proposal must also include:

(1) A copy of the tribal organization's organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).

(2) The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.

(c) The full name(s) of the Indian tribe(s) proposed to be served.

(d) A copy of the authorizing resolution from the Indian tribe(s) to be served.

(1) If an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.

(2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, a reference to that resolution.

(e) The name, title, and signature of the authorized representative of the Indian tribe or tribal organization submitting the contract proposal.

(f) The date of submission of the proposal.

(g) A brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform, including:

(1) A description of the geographical service area, if applicable, to be served.

(2) The estimated number of Indian people who will receive the benefits or services under the proposed contract.

(3) An identification of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.

(4) A description of the proposed program standards;

(5) An identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency.

(6) A description of any proposed redesign of the programs, services, functions, or activities to be contracted,

(7) Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and

(8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in subpart F, subject to any waiver that may have been granted under subpart K.

(h) The amount of funds requested, including:

(1) An identification of the funds requested by programs, functions, services, or activities, under section 106(a)(1) of the Act, including the Indian tribe or tribal organization's share of funds related to such programs, functions, services, or activities, if any, from any Departmental local, area, regional, or national level.

(2) An identification of the amount of direct contract support costs, including one-time start-up or preaward costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:

(i) Personnel (differentiating between salary and fringe benefits);

(ii) Equipment;

(iii) Materials and supplies;

(iv) Travel;

(v) Subcontracts; and

(vi) Other appropriate items of cost.

(3) An identification of funds the Indian tribe or tribal organization requests to recover for indirect contract

support costs. This funding request must include either:

(i) A copy of the most recent negotiated indirect cost rate agreement; or

(ii) An estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.

(4) To the extent not stated elsewhere in the budget or previously reported to the Secretary, any preaward costs, including the amount and time period covered or to be covered; and

(5) At the option of the Indian tribe or tribal organization, an identification of programs, functions, services, or activities specified in the contract proposal which will be funded from sources other than the Secretary.

(i) The proposed starting date and term of the contract.

(j) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.

(k) The extent of any planned use of Federal personnel and Federal resources.

(l) Any proposed waiver(s) of the regulations in this part; and

(m) A statement that the Indian tribe or tribal organization will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.

§ 900.9 May the Secretary require an Indian tribe or tribal organization to submit any other information beyond that identified in § 900.8?

No.

§ 900.10 How does an Indian tribe or tribal organization secure a list of all Federal property currently in use in carrying out the programs, functions, services, or activities that benefit the Indian tribe or tribal organization to assist in negotiating a contract?

The Indian tribe or tribal organization submits a written request to the Secretary. The Secretary shall provide the requested information, including the condition of the property, within 60 days.

§ 900.11 What should an Indian tribe or tribal organization that is proposing a contract do about specifying the Federal property that the Indian tribe or tribal organization may wish to use in carrying out the contract?

The Indian tribe or tribal organization is encouraged to provide the Secretary, as early as possible, with:

(a) A list of the following Federal property intended for use under the contract:

(1) Equipment;

(2) Furnishings;

(3) Facilities; and

(4) Other real and personal property.

(b) A statement of how the Indian tribe or tribal organization will obtain each item by transfer of title under section 105(f)(2) of the Act and section 1(b)(8) of the model agreement set forth in section 108(c) of the Act, through a temporary use permit, similar arrangement, or otherwise; and

(c) Where equipment is to be shared by contracted and non-contracted programs, services, functions, or activities, a proposal outlining proposed equipment sharing or other arrangements.

§ 900.12 Are the proposal contents requirements the same for renewal of a contract that is expiring and for securing an annual funding agreement after the first year of the funding agreement?

No. In these situations, an Indian tribe or tribal organization should submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal at least 90 days before the expiration date of the contract or existing annual funding agreement. The proposal shall provide funding information in the same detail and format as the original proposal and may also identify any significant proposed changes.

§ 900.13 Does the contract proposal become part of the final contract?

No, unless the parties agree.

Subpart D—Review and Approval of Contract Proposals

§ 900.14 What does this subpart cover?

This subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.

§ 900.15 What shall the Secretary do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

(a) Within two days notify the applicant in writing that the proposal has been received;

(b) Within 15 days notify the applicant in writing of any missing items required by § 900.8 and request that the items be submitted within 15 days of receipt of the notification; and

(c) Review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.

§ 900.16 How long does the Secretary have to review and approve the proposal and award the contract, or decline a proposal?

The Secretary has 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.

§ 900.17 Can the statutory 90-day period be extended?

Yes, with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.

§ 900.18 What happens if a proposal is not declined within 90 days after it is received by the Secretary?

A proposal that is not declined within 90 days (or within any agreed extension under § 900.17) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to the contract the full amount of funds pursuant to section 106(a) of the Act.

§ 900.19 What happens when a proposal is approved?

Upon approval the Secretary shall award the contract and add to the contract the full amount of funds to which the contractor is entitled under section 106(a) of the Act.

Subpart E—Declination Procedures

§ 900.20 What does this subpart cover?

This subpart explains how and under what circumstances the Secretary may decline a proposal to contract, to amend an existing contract, to renew an existing contract, to redesign a program, or to waive any provisions of these regulations. For annual funding agreements, see § 900.32.

§ 900.21 When can a proposal be declined?

As explained in §§ 900.16 and 900.17, a proposal can only be declined within 90 days after the Secretary receives the proposal, unless that period is extended with the voluntary and express written consent of the Indian tribe or tribal organization.

§ 900.22 For what reasons can the Secretary decline a proposal?

The Secretary may only decline to approve a proposal for one of five specific reasons:

(a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond

the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.23 Can the Secretary decline a proposal where the Secretary's objection can be overcome through the contract?

No. The Secretary may not decline to enter into a contract with an Indian tribe or tribal organization based on any objection that will be overcome through the contract.

§ 900.24 Can a contract proposal for an Indian tribe or tribal organization's share of administrative programs, functions, services, and activities be declined for any reason other than the five reasons specified in § 900.22?

No. The Secretary may only decline a proposal based upon one or more of the five reasons listed above. If a contract affects the preexisting level of services to any other tribe, the Secretary shall address that effect in the Secretary's annual report to Congress under section 106(c)(6) of the Act.

§ 900.25 What if only a portion of a proposal raises one of the five declination criteria?

The Secretary must approve any severable portion of a proposal that does not support a declination finding described in § 900.20, subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.26 What happens if the Secretary declines a part of a proposal on the ground that the proposal proposes in part to plan, conduct, or administer a program, function, service or activity that is beyond the scope of programs covered under section 102(a) of the Act, or proposes a level of funding that is in excess of the applicable level determined under section 106(a) of the Act?

In those situations the Secretary is required, as appropriate, to approve the portion of the program, function, service, or activity that is authorized under section 102(a) of the Act, or approve a level of funding that is authorized under section 106(a) of the Act. As noted in § 900.25, the approval is subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.27 If an Indian tribe or tribal organization elects to contract for a severable portion of a proposal, does the Indian tribe or tribal organization lose its appeal rights to challenge the portion of the proposal that was declined?

No, but the hearing and appeal procedures contained in these regulations only apply to the portion of the proposal that was declined.

§ 900.28 Is technical assistance available to an Indian tribe or tribal organization to avoid declination of a proposal?

Yes. In accordance with section 103(d) of the Act, upon receiving a proposal, the Secretary shall provide any necessary requested technical assistance to an Indian tribe or tribal organization, and shall share all relevant information with the Indian tribe or tribal organization, in order to avoid declination of the proposal.

§ 900.29 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required:

(a) To advise the Indian tribe or tribal organization in writing of the Secretary's objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority that) one of the conditions set forth in § 900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and, within 20 days, any documents relied on in making the decision; and

(b) To advise the Indian tribe or tribal organization in writing of the rights described in § 900.31.

§ 900.30 When the Secretary declines all or a portion of a proposal, is the Secretary required to provide an Indian tribe or tribal organization with technical assistance?

Yes. The Secretary shall provide additional technical assistance to overcome the stated objections, in accordance with section 102(b) of the Act, and shall provide any necessary requested technical assistance to develop any modifications to overcome the Secretary's stated objections.

§ 900.31 When the Secretary declines all or a portion of a proposal, is an Indian tribe or tribal organization entitled to any appeal?

Yes. The Indian tribe or tribal organization is entitled to an appeal on the objections raised by the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are in subpart L of these regulations. Alternatively, at its option the Indian tribe or tribal organization has the right to sue in Federal district court to challenge the Secretary's decision.

§ 900.32 Can the Secretary decline an Indian tribe or tribal organization's proposed successor annual funding agreement?

No. If it is substantially the same as the prior annual funding agreement (except for funding increases included in appropriations acts or funding reductions as provided in section 106(b) of the Act) and the contract is with DHHS or the BIA, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement. Any portion of an annual funding agreement proposal which is not substantially the same as that which was funded previously (e.g., a redesign proposal; waiver proposal; different proposed funding amount; or different program, service, function, or activity), or any annual funding agreement proposal which pertains to a contract with an agency of DOI other than the BIA, is subject to the declination criteria and procedures in subpart E. If there is a disagreement over the availability of appropriations, the Secretary may decline the proposal in part under the procedure in subpart E.

§ 900.33 Are all proposals to renew term contracts subject to the declination criteria?

Department of Health and Human Services and the Bureau of Indian Affairs will not review the renewal of a term contract for declination issues where no material and substantial change to the scope or funding of a program, functions, services, or activities has been proposed by the Indian tribe or tribal organization. Proposals to renew term contracts with DOI agencies other than the Bureau of Indian Affairs may be reviewed under the declination criteria.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

GENERAL

§ 900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

§ 900.36 What requirements are imposed upon Indian tribes or tribal organizations by this subpart?

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and subpart K.

§ 900.37 What provisions of Office of Management and Budget (OMB) circulars or the "common rule" apply to self-determination contracts?

The only provisions of OMB Circulars and the only provisions of the ''common rule'' that apply to self-determination contracts are the provisions

adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

§ 900.38 Do these standards apply to the subcontractors of an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its subcontractors when carrying out a self-determination contract.

§ 900.39 What is the difference between a standard and a system?

(a) Standards are the minimum baseline requirements for the performance of an activity. Standards establish the ''what'' that an activity should accomplish.

(b) Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are ''how'' the activity will be accomplished.

§ 900.40 When are Indian tribe or tribal organization management standards and management systems evaluated?

(a) Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.

(b) Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A–128.

§ 900.41 How long must an Indian tribe or tribal organization keep management system records?

The Indian tribe or tribal organization must retain financial, procurement and property records for the minimum periods described below. Electronic, magnetic or photographic records may be substituted for hard copies.

(a) *Financial records.* Financial records include documentation of supporting costs incurred under the contract. These records must be retained for three years from the date of submission of the single audit report to the Secretary.

(b) *Procurement records.* Procurement records include solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions. These records must be retained for three years after the Indian tribe or tribal organization or subcontractors make final payment and all other pending matters are closed.

(c) *Property management records.* Property management records of real and personal property transactions must be retained for three years from the date of disposition, replacement, or transfer.

(d) *Litigation, audit exceptions and claims.* Records pertaining to any litigation, audit exceptions or claims requiring management systems data must be retained until the action has been completed.

STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS

§ 900.42 What are the general financial management system standards that apply to an Indian tribe carrying out a self-determination contract?

An Indian tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

§ 900.43 What are the general financial management system standards that apply to a tribal organization carrying out a self-determination contract?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

§ 900.44 What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a self-determination contract and the Act; and

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any

statute that applies to the self-determination contract.

§ 900.45 What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) *Financial reports.* The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities. This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the self-determination contract.

(b) *Accounting records.* The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) *Internal controls.* The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) *Budget controls.* The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each self-determination contract.

(e) *Allowable costs.* The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of self-determination contract costs based upon the terms of the self-determination contract and the Indian tribe or tribal organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the Indian tribe or tribal organization and the Secretary. Agreements between an Indian tribe or tribal organization and the Secretary currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

Type of tribal organization	Applicable OMB cost circular
Tribal Government	A–87, "Cost Principles for State, Local and Indian Tribal Governments."
Tribal private non-profit other than: (1) an institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A–122 as not subject to that circular.	A–122, "Cost Principles for Non-Profit Organizations."
Tribal educational institution	A–21, "Cost Principles for Educational Institutions."

(f) *Source documentation.* The financial management system shall contain accounting records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) *Cash management.* The financial management system shall provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Indian tribe or tribal organization, and subcontractor if applicable, so that complete and accurate cash transactions may be prepared as required by the self-determination contract.

§ 900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the self-determination contract and the annual funding agreement.

PROCUREMENT MANAGEMENT SYSTEM STANDARDS

§ 900.47 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

§ 900.48 If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for ''major procurement transactions.''

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not

limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§ 900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

(a) Be in writing;

(b) Identify the interested parties, their authorities, and the purposes of the contract;

(c) State the work to be performed under the contract;

(d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and

(e) Be subject to sections 7 (b) and (c) of the Act.

§ 900.50 What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under self-determination contracts. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the self-determination contract and, if so identified, these requirements should be identified in subcontracts.

PROPERTY MANAGEMENT SYSTEM STANDARDS

§ 900.51 What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a self-determination contract or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

(a) Personal property with an acquisition value in excess of $5,000 per item;

(b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and

(c) Real property provided by the Secretary for use under the contract.

§ 900.53 What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

(a) For the conduct of periodic inventories;

(b) To prevent loss or damage to property; and

(c) To ensure that property is used for an Indian tribe or tribal organization's self-determination contract(s)

until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 Do the same accountability and control procedures described above apply to Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

(a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;

(b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) The inventory shall report any increase or decrease of $5,000 or more in the value of any item of real property.

§ 900.60 How does an Indian tribe or tribal organization dispose of Federal personal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

(a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.

(b) If the Secretary does not respond within 60 days, the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).

Subpart G—Programmatic Reports and Data Requirements

§ 900.65 What programmatic reports and data shall the Indian tribe or tribal organization provide?

Unless required by statute, there are no mandatory reporting requirements. Each Indian tribe or tribal organization shall negotiate with the Secretary the type and frequency of program narrative and program data report(s) which respond to the needs of the contracting parties and that are appropriate for the purposes of the contract. The extent of available resources will be a consideration in the negotiations.

§ 900.66 What happens if the Indian tribe or tribal organization and the Secretary cannot come to an agreement concerning the type and/or frequency of program narrative and/or program data report(s)?

Any disagreements over reporting requirements are subject to the declination criteria and procedures in section 102 of the Act and subpart E.

§ 900.67 Will there be a uniform data set for all IHS programs?

IHS will work with Indian tribe or tribal organization representatives to develop a mutually defined uniform subset of data that is consistent with Congressional intent, imposes a minimal reporting burden, and which responds to the needs of the contracting parties.

§ 900.68 Will this uniform data set be required of all Indian tribe or tribal organizations contracting with the IHS under the Act?

No. The uniform data set, applicable to the services to be performed, will serve as the target for the Secretary and the Indian tribes or tribal organizations during individual negotiations on program data reporting requirements.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

§ 900.69 What is the purpose of this subpart?

Section 105(l) of the Act requires the Secretary, at the request of an Indian tribe or tribal organization, to enter into a lease with the Indian tribe or tribal organization for a building owned or leased by the tribe or tribal organization that is used for administration or delivery of services under the Act. The lease is to include compensation as provided in the statute as well as ''such other reasonable expenses that the Secretary determines, by regulation, to be allowable.'' This subpart contains requirements for these leases.

§ 900.70 What elements are included in the compensation for a lease entered into between the Secretary and an Indian tribe or tribal organization for a building owned or leased by the Indian tribe or tribal organization that is used for administration or delivery of services under the Act?

To the extent that no element is duplicative, the following elements may be included in the lease compensation:

(a) Rent (sublease);

(b) Depreciation and use allowance based on the useful life of the facility based on acquisition costs not financed with Federal funds;

(c) Contributions to a reserve for replacement of facilities;

(d) Principal and interest paid or accrued;

(e) Operation and maintenance expenses, to the extent not otherwise included in rent or use allowances, including, but not limited to, the following:

(1) Water, sewage;

(2) Utilities;

(3) Fuel;

(4) Insurance;

(5) Building management supervision and custodial services;

(6) Custodial and maintenance supplies;

(7) Pest control;

(8) Site maintenance (including snow and mud removal);

(9) Trash and waste removal and disposal;

(10) Fire protection/fire fighting services and equipment;

(11) Monitoring and preventive maintenance of building structures and systems, including but not limited to:

(i) Heating/ventilation/air conditioning;

(ii) Plumbing;

(iii) Electrical;

(iv) Elevators;

(v) Boilers;

(vi) Fire safety system;

(vii) Security system; and

(viii) Roof, foundation, walls, floors.

(12) Unscheduled maintenance;

(13) Scheduled maintenance (including replacement of floor coverings, lighting fixtures, repainting);

(14) Security services;

(15) Management fees; and

(16) Other reasonable and necessary operation or maintenance costs justified by the contractor;

(f) Repairs to buildings and equipment;

(g) Alterations needed to meet contract requirements;

(h) Other reasonable expenses; and

(i) The fair market rental for buildings or portions of buildings and land, exclusive of the Federal share of building construction or acquisition costs, or the fair market rental for buildings constructed with Federal funds exclusive of fee or profit, and for land.

§ 900.71 What type of reserve fund is anticipated for funds deposited into a reserve for replacement of facilities as specified in § 900.70(c)?

Reserve funds must be accounted for as a capital project fund or a special revenue fund.

§ 900.72 Who is the guardian of the fund and may the funds be invested?

(a) The Indian tribe or tribal organization is the guardian of the fund.

(b) Funds may be invested in accordance with the laws, regulations and policies of the Indian tribe or tribal organization subject to the terms of the lease or the self-determination contract.

§ 900.73 Is a lease with the Secretary the only method available to recover the types of cost described in § 900.70?

No. With the exception of paragraph (i) in § 900.70, the same types of costs may be recovered in whole or in part under section 106(a) of the Act as direct or indirect charges to a self-determination contract.

§ 900.74 How may an Indian tribe or tribal organization propose a lease to be compensated for the use of facilities?

There are three options available:

(a) The lease may be based on fair market rental.

(b) The lease may be based on a combination of fair market rental and paragraphs (a) through (h) of § 900.70, provided that no element of expense is duplicated in fair market rental.

(c) The lease may be based on paragraphs (a) through (h) of § 900.70 only.

Subpart I—Property Donation Procedures

GENERAL

§ 900.85 What is the purpose of this subpart?

This subpart implements section 105(f) of the Act regarding donation of Federal excess and surplus property to Indian tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract or grant.

§ 900.86 How will the Secretary exercise discretion to acquire and donate BIA or IHS excess property and excess and surplus Federal property to an Indian tribe or tribal organization?

The Secretary will exercise discretion in a way that gives maximum effect to the requests of Indian tribes or tribal organizations for donation of BIA or IHS excess property and excess or surplus Federal property, provided that the requesting Indian tribe or tribal organization shall state how the requested property is appropriate for use for any purpose for which a self-determination contract or grant is authorized.

GOVERNMENT-FURNISHED PROPERTY

§ 900.87 How does an Indian tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

(a) For government-furnished personal property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with each Indian tribe or tribal organization, shall develop a list of the property used in a self-determination contract.

(2) The Indian tribe or tribal organization shall indicate any items on the list to which the Indian tribe or tribal organization wants the Secretary to retain title.

(3) The Secretary shall provide the Indian tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the Indian tribe or tribal organization.

(b) For government-furnished real property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with the Indian tribe or tribal organization, shall develop a list of the property furnished for use in a self-determination contract.

(2) The Secretary shall inspect any real property on the list to determine

the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10). If the Indian tribe or tribal organization desires to take title to any real property on the list, the Indian tribe or tribal organization shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe or tribal organization.

(c) For government-furnished real and personal property made available to an Indian tribe or tribal organization on or after October 25, 1994:

(1) The Indian tribe or tribal organization shall take title to all property unless the Indian tribe or tribal organization requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10).

§ 900.88 What should the Indian tribe or tribal organization do if it wants to obtain title to government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title.

(b) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) If the request is submitted to the Secretary of Health and Human Services for land under the jurisdiction of that Secretary, the Secretary shall take all necessary steps to effect a transfer of the land to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the tribe's resolution.

(3) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(4) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.89 When may the Secretary elect to reacquire government-furnished property whose title has been transferred to an Indian tribe or tribal organization?

(a) Except as provided in paragraph (b) of this section, when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) That title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.90 Does government-furnished real property to which an Indian tribe or tribal organization has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

CONTRACTOR-PURCHASED PROPERTY

§ 900.91 Who takes title to property purchased with funds under a self-determination contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

The contractor takes title to such property, unless the contractor chooses to have the United States take title. In that event, the contractor must inform the Secretary of the purchase and identify the property and its location in such manner as the contractor and the Secretary deem necessary. A request for the United States to take title to any item of contractor-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable Federal law and regulation.

§ 900.92 What should the Indian tribe or tribal organization do if it wants contractor-purchased real property to be taken into trust?

The contractor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. If the request to take contractor-purchased real property into trust is submitted to the Secretary of Health and Human Services, that Secretary shall transfer the request to the Secretary of the Interior. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulation.

§ 900.93 When may the Secretary elect to acquire title to contractor-purchased property?

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.94 Is contractor-purchased real property to which an Indian tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

BIA AND IHS EXCESS PROPERTY

§ 900.95 What is BIA or IHS excess property?

BIA or IHS excess property means property under the jurisdiction of the BIA or IHS that is excess to the agency's needs and the discharge of its responsibilities.

§ 900.96 How can Indian tribes or tribal organizations learn about BIA and IHS excess property?

The Secretary shall not less than annually send to Indian tribes and tribal organizations a listing of all excess BIA or IHS personal property before reporting the property to GSA or to any other Federal agency as excess. The listing shall identify the agency official to whom a request for donation shall be submitted.

§ 900.97 How can an Indian tribe or tribal organization acquire excess BIA or IHS property?

(a) The Indian tribe or tribal organization shall submit to the appropriate Secretary a request for specific property that includes a statement of how the property is intended for use in connection with a self-determination contract or grant. The Secretary shall expeditiously process the request and shall exercise discretion in a way that

gives maximum effect to the request of Indian tribes or tribal organizations for the donation of excess BIA or IHS property.

(b) If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the requestor whose request is received on the earliest date. If two or more requests are received on the same date, the Secretary shall award the item to the requestor with the lowest transportation costs. The Secretary shall make the donation as expeditiously as possible.

(c) If more than one request for the same parcel of real property is submitted, the Secretary shall award the property to the Indian tribe or tribal organization whose reservation or trust land is closest to the real property requested.

§ 900.98 Who takes title to excess BIA or IHS property donated to an Indian tribe or tribal organization?

The Indian tribe or tribal organization takes title to donated excess BIA or IHS property. The Secretary shall provide the Indian tribe or tribal organization with all documentation needed to vest title in the Indian tribe or tribal organization.

§ 900.99 Who takes title to any land that is part of excess BIA or IHS real property donated to an Indian tribe or tribal organization?

(a) If an Indian tribe or tribal organization requests donation of fee title to excess real property that includes land not held in trust for an Indian tribe, the Indian tribe or tribal organization shall so specify in its request for donation. The Secretary shall take the necessary action under Federal law and regulations to transfer the title to the Indian tribe or tribal organization.

(b) If an Indian tribe or tribal organization asks the Secretary to donate excess real property that includes land and requests that fee title to the land be held by the United States in trust for an Indian tribe, the requestor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(1) If the donation request is submitted to the Secretary of Health and Human Services, that Secretary shall take all steps necessary to transfer the land to the Secretary of the Interior with the Indian tribe or tribal organization's request and the Indian tribe's resolution. The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(2) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.100 May the Secretary elect to reacquire excess BIA or IHS property whose title has been transferred to an Indian tribe or tribal organization?

Yes. When a self-determination contract or grant agreement, or portion—thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of the property;

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

(b) To the extent that any property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.101 Is excess BIA or IHS real property to which an Indian tribe or tribal organization has taken title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

EXCESS OR SURPLUS GOVERNMENT PROPERTY OF OTHER AGENCIES

§ 900.102 What is excess or surplus government property of other agencies?

(a) ''Excess government property'' is real or personal property under the control of a Federal agency, other than BIA and IHS, which is not required for the agency's needs and the discharge of its responsibilities.

(b) ''Surplus government property'' means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration (GSA).

§ 900.103 How can Indian tribes or tribal organizations learn about property that has been designated as excess or surplus government property?

The Secretary shall furnish, not less than annually, to Indian tribes or tribal organizations listings of such property as may be made available from time to time by GSA or other Federal agencies, and shall obtain listings upon the request of an Indian tribe or tribal organization.

§ 900.104 How may an Indian tribe or tribal organization receive excess or surplus government property of other agencies?

(a) The Indian tribe or tribal organization shall file a request for specific property with the Secretary, and shall state how the property is appropriate for use for a purpose for which a self-determination contract or grant is authorized under the Act.

(b) The Secretary shall expeditiously process such request and shall exercise discretion to acquire the property in the manner described in § 900.86 of this subpart.

(c) Upon approval of the Indian tribe or tribal organization's request, the Secretary shall immediately request acquisition of the property from the GSA or the holding agency, as appropriate, by submitting the necessary documentation in order to acquire the requested property prior to the expiration of any ''freeze'' placed on the property by the Indian tribe or tribal organization.

(d) The Secretary shall specify that the property is requested for donation to an Indian tribe or tribal organization pursuant to authority provided in section 105(f)(3) of the Act.

(e) The Secretary shall request a waiver of any fees for transfer of the property in accordance with applicable Federal regulations.

§ 900.105 Who takes title to excess or surplus Federal property donated to an Indian tribe or tribal organization?

(a) Title to any donated excess or surplus Federal personal property shall vest in the Indian tribe or tribal organization upon taking possession.

(b) Legal title to donated excess or surplus Federal real property shall vest in the Indian tribe or tribal organization upon acceptance by the Indian tribe or tribal organization of a proper deed of conveyance.

(c) If the donation of excess or surplus Federal real property includes land owned by the United States but not held in trust for an Indian tribe, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of an Indian tribe.

(1) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title to the Indian tribe or tribal organization.

(2) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(i) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(ii) If the donation request of the Indian tribe or tribal organization is submitted to the Secretary of Health and Human Services, that Secretary shall take all necessary steps to acquire the land and transfer it to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the Indian tribe's resolution.

(iii) The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

(iv) The Secretary shall not require submission of any information other than that required by Federal law and regulation.

§ 900.106 If a contract or grant agreement or portion thereof is retroceded, reassumed, terminated, or expires, may the Secretary reacquire title to excess or surplus Federal property of other agencies that was donated to an Indian tribe or tribal organization?

No. Section 105(f)(3) of the Act does not give the Secretary the authority to reacquire title to excess or surplus government property acquired from other agencies for donation to an Indian tribe or tribal organization.

PROPERTY ELIGIBLE FOR REPLACEMENT FUNDING

§ 900.107 What property to which an Indian tribe or tribal organization obtains title under this subpart is eligible for replacement funding?

Government-furnished property, contractor-purchased property and excess BIA and IHS property donated to an Indian tribe or tribal organization to which an Indian tribe or tribal organization holds title shall remain eligible for replacement funding to the same extent as if title to that property were held by the United States.

Subpart J—Construction

§ 900.110 What does this subpart cover?

(a) This subpart establishes requirements for issuing fixed-price or cost-reimbursable contracts to provide: design, construction, repair, improvement, expansion, replacement, erection of new space, or demolition and other related work for one or more Federal facilities. It applies to tribal facilities where the Secretary is authorized by law to design, construct and/or renovate, or make improvements to such tribal facilities.

(b) Activities covered by construction contracts under this subpart are: design and architectural/engineering services, construction project management, and the actual construction of the building or facility in accordance with the construction documents, including all labor, materials, equipment, and services necessary to complete the work defined in the construction documents.

(1) Such contracts may include the provision of movable equipment, telecommunications and data processing equipment, furnishings (including works of art), and special purpose equipment, when part of a construction contract let under this subpart.

(2) While planning services and construction management services as defined in § 900.113 may be included in a construction contract under this subpart, they may also be contracted separately using the model agreement in section 108 of the Act.

§ 900.111 What activities of construction programs are contractible?

The Secretary shall, upon the request of any Indian tribe or tribal organization authorized by tribal resolution, enter into a self-determination contract to plan, conduct, and administer construction programs or portions thereof.

§ 900.112 What are construction phases?

(a) Construction programs generally include the following activities in phases which can vary by funding source (an Indian tribe or tribal organization should contact its funding source for more information regarding the conduct of its program):

(1) *The preplanning phase.* The phase during which an initial assessment and determination of project need is made and supporting information collected for presentation in a project application. This project application process is explained in more detail in § 900.122;

(2) *The planning phase*. The phase during which planning services are provided. This phase can include conducting and preparing a detailed needs assessment, developing justification documents, completing and/or verifying master plans, conducting predesign site investigations and selection, developing budget cost estimates, conducting feasibility studies, and developing a project Program of Requirements (POR);

(3) *The design phase*. The phase during which licensed design professional(s) using the POR as the basis for design of the project, prepare project plans, specifications, and other documents that are a part of the construction documents used to build the project. Site investigation and selection activities are completed in this phase if not conducted as part of the planning phase.

(4) *The construction phase*. The phase during which the project is constructed. The construction phase includes providing the labor, materials, equipment, and services necessary to complete the work in accordance with the construction documents prepared as part of the design phase.

(b) The following activities may be part of phases described in paragraphs (a)(2), (a)(3), and (a)(4) of this section:

(1) Management; and

(2) Environmental, archeological, cultural resource, historic preservation, and similar assessments and associated activities.

§ 900.113 Definitions.

(a) *Construction contract* means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract:

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(b) *Construction management services* (CMS) means activities limited to administrative support services; coordination; and monitoring oversight of the planning, design, and construction process. An Indian tribe or tribal organization's employee or construction management services consultant (typically an engineer or architect) performs such activities as:

(1) Coordination and information exchange between the Indian tribe or tribal organization and the Federal government;

(2) Preparation of Indian tribe or tribal organization's construction contract proposals;

(3) Indian tribe or tribal organization subcontract scope of work identification and subcontract preparation, and competitive selection of Indian tribe or tribal organization construction contract subcontractors (see § 900.110);

(4) Review of work to ensure compliance with the POR and/or the construction contract. This does not involve construction project management as defined in paragraph (d) of this section.

(c) *Construction programs* include programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, water conservation, flood control, and port facilities, and environmental, archeological, cultural resource, historic preservation, and conduct of similar assessments.

(d) *Construction project management* means direct responsibility for the construction project through day-to-day on-site management and administration of the project. Activities may include cost management, project budgeting, project scheduling, procurement services.

(e) *Design* means services performed by licensed design professionals related to preparing drawings, specifications, and other design submissions specified in the contract, as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project.

(f) *Planning services* means activities undertaken to support agency and/or Congressional funding of a construction project. Planning services may include performing a needs assessment, completing and/or verifying master plans, developing justification documents, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies as needed and completion of approved justification documents and a program of requirements (POR) for the project.

(g) *Program of Requirements* (POR) is a planning document developed during the planning phase for an individual project. It provides background about the project; site information; programmatic needs; and, for facilities projects, a detailed room-by-room listing of spaces, including net and gross sizes, finish materials to be used, furnishings and equipment, and other information and design criteria on which to base the construction project documents.

(h) *Scope of work* means the description of the work to be provided through a contract issued under this subpart and the methods and processes to be used to accomplish that work. A scope of work is typically developed based on criteria provided in a POR during the design phase, and project construction documents (plans and specifications) during the construction phase.

§ 900.114 Why is there a separate subpart in these regulations for construction contracts and grants?

There is a separate subpart because the Act differentiates between construction contracts and the model agreement in section 108 of the Act which is required for contracting other activities. Construction contracts are separately defined in the Act and are subject to a separate proposal and review process.

§ 900.115 How do self-determination construction contracts relate to ordinary Federal procurement contracts?

(a) A self-determination construction contract is a government-to-government agreement that transfers control of the construction project, including administrative functions, to the contracting Indian tribe or tribal organization to facilitate effective and meaningful participation by the Indian tribe or tribal organization in planning, conducting, and administering the construction project, and so that the construction project is responsive to the true needs of the Indian community. The Secretary's role in the conduct of a contracted construction project is limited to the Secretary's responsibilities set out in § 900.131.

(b) Self-determination construction contracts are not traditional ''procurement'' contracts.

(1) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations promulgated under that Act, shall apply to a construction contract or subcontract only to the extent that application of the provision is:

(i) Necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) Directly related to the construction activity; and

(iii) Not inconsistent with the Act.

(2) A list of the Federal requirements that meet the requirements of this paragraph shall be included in an attachment to the contract under negotiations between the Secretary and the Indian tribe or tribal organization.

(3) Except as provided in paragraph (b)(2) of this section, no Federal law listed in section 105(3)(C)(ii) of the Act or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal government shall apply to a construction contract that an Indian tribe or tribal organization enters into under this Act, unless expressly provided in the law.

(c) Provisions of a construction contract under this subpart shall be liberally construed in favor of the contracting Indian tribe or tribal organization.

§ 900.116 Are negotiated fixed-price contracts treated the same as cost-reimbursable contracts?

Yes, except that in negotiated fixed-price construction contracts, appropriate clauses shall be negotiated to allocate properly the contract risks between the government and the contractor.

§ 900.117 Do these "construction contract" regulations apply to planning services?

(a) These regulations apply to planning services contracts only as provided in this section.

(1) The Indian tribe or tribal organization shall submit to the Secretary for review and approval the POR documents produced as a part of a model contract under section 108 of the Act or under a construction contract under this subpart.

(i) Within 60 days after receipt of the POR from the Indian tribe or tribal organization for a project that has achieved priority ranking or that is funded, the Secretary shall:

(A) Approve the POR;

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR that the Secretary may have; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 60 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(ii) Within a maximum of 180 days after receipt of a POR from an Indian tribe or tribal organization for a project that is not funded and is not described in paragraph (a)(1)(i) of this section, the Secretary shall:

(A) Approve the POR; or

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 180 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(2) Any failure of the Secretary to act on a POR within the applicable period required in paragraph (a)(1) of this section will be deemed a rejection of the POR and will authorize the commencement of any appeal as provided in section 110 of the Act, or, if a model agreement under section 108 of the Act is used, the disputes provision of that agreement.

(3) If an Indian tribe or tribal organization elects to provide planning services as part of a construction contract rather than under a model agreement as set out in section 108 of the Act, the regulations in this subpart shall apply.

(b) The parties to the contract are encouraged to consult during the development of the POR and following submission of the POR to the Secretary.

§ 900.118 Do these "construction contract" regulations apply to construction management services?

No. Construction management services may be contracted separately under section 108 of the Act. Construction management services consultants and/or Indian tribe or tribal organization employees assist and advise the Indian tribe or tribal organization to implement construction contracts, but have no contractual relationship with or authority to direct construction contract subcontractors.

(a) If the Indian tribe or tribal organization chooses to contract solely for construction management services, these services shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and the Secretary;

(2) Review of work produced by the Secretary to determine compliance with:

(i) The POR and design contract during the design stage; or

(ii) The project construction documents during the construction stage;

(3) Disputes shall be resolved in accordance with the disputes clause of the CMS contract.

(b) If the Indian tribe or tribal organization conducts CMS under section 108 of the Act and the Indian tribe or

tribal organization contracts separately under this subpart for all or some of the activities in § 900.110, the contracted activities shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and Secretary;

(2) Preparation of tribal or tribal organization construction subcontract scope of work identification and subcontract preparation, and competitive selection of tribal or tribal organization construction contract subcontractors;

(3) Review of work produced by tribal or tribal organization construction subcontractors to determine compliance with:

(i) The POR and the design contract during the design stage; or

(ii) The project construction documents during the construction stage.

§ 900.119 To what extent shall the Secretary consult with affected Indian tribes before spending funds for any construction project?

Before spending any funds for a planning, design, construction, or renovation project, whether subject to a competitive application and ranking process or not, the Secretary shall consult with any Indian tribe or tribal organization(s) that would be significantly affected by the expenditure to determine and to follow tribal preferences to the greatest extent feasible concerning: size, location, type, and other characteristics of the project.

§ 900.120 How does an Indian tribe or tribal organization find out about a construction project?

Within 30 days after the Secretary's allocation of funds for planning phase, design phase, or construction phase activities for a specific project, the Secretary shall notify, by registered mail with return receipt in order to document mailing, the Indian tribe or tribal organization(s) to be benefitted by the availability of the funds for each phase of a project. The Secretarial notice of fund allocation shall offer technical assistance in the preparation of a contract proposal.

(a) The Secretary shall, within 30 days after receiving a request from an Indian tribe or tribal organization, furnish the Indian tribe or tribal organization with all information available to the Secretary about the project including, but not limited to: construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archeological reports.

(b) An Indian tribe or tribal organization is not required to request this information prior to submitting a notification of intent to contract or a contract proposal.

(c) The Secretary shall have a continuing responsibility to furnish information.

§ 900.121 What happens during the preplanning phase and can an Indian tribe or tribal organization perform any of the activities involved in this process?

(a) The application and ranking process for developing a priority listing of projects varies between agencies. There are, however, steps in the selection process that are common to most selection processes. An Indian tribe or tribal organization that wishes to secure a construction project should contact the appropriate agency to determine the specific steps involved in the application and selection process used to fund specific types of projects. When a priority process is used in the selection of construction projects, the steps involved in the application and ranking process are as follows:

(1) *Application.* The agency solicits applications from Indian tribes or tribal organizations. In the request for applications, the Secretary provides specific information regarding the type of project to be funded, the objective criteria that will be used to evaluate applications, the points or weight that each criterion will be assigned, and the time when applications are due. An Indian tribe or tribal organization may prepare the application (technical assistance from the agency, within resources available, shall be provided upon request from an Indian tribe or tribal organization) or may rely upon the agency to prepare the application.

(2) *Ranking/Prioritization.* The Secretary evaluates the applications based on the criteria provided as part of the application preparation process. The

Secretary applies only criteria and weights assigned to each criteria that were disclosed to the Indian tribe or tribal organization during the application stage. The applications are then ranked in order from the application that best meets application criteria to the application that least meet the application criteria.

(3) *Validation*. Before final acceptance of a ranked application, the information, such as demographic information, deficiency levels reported in application, the condition of existing facilities, and program housing needs, is validated. During this process, additional information may be developed by the Indian tribe or tribal organization in support of the original information or the Secretary may designate a representative of the Department to conduct an on-site review of the information contained in the application.

(b) [Reserved]

§ 900.122 What does an Indian tribe or tribal organization do if it wants to secure a construction contract?

(a) The Act establishes a special process for review and negotiation of proposals for construction contracts which is different than that for other self-determination contract proposals. The Indian tribe or tribal organization should notify the Secretary of its intent to contract. After notification, the Indian tribe or tribal organization should prepare its contract proposal in accordance with the sections of this subpart. While developing its construction contract proposal, the Indian tribe or tribal organization can request technical assistance from the Secretary. Not later than 30 days after receiving a request from an Indian tribe or tribal organization, the Secretary shall provide to the Indian tribe or tribal organization all information available about the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports, and archaeological reports. The responsibility of the Secretary to furnish this information shall be a continuing one.

(b) At the request of the Indian tribe or tribal organization and before finalizing its construction contract proposal, the Secretary shall provide for a precontract negotiation phase during the development of a contract proposal. Within 30 days the Secretary shall acknowledge receipt of the proposal and, if requested by the Indian tribe or tribal organization, shall confer with the Indian tribe or tribal organization to develop a negotiation schedule. The negotiation phase shall include, at a minimum:

(1) The provision of technical assistance under section 103 of the Act and paragraph (a) of this section;

(2) A joint scoping session between the Secretary and the Indian tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement;

(3) An opportunity for the Secretary to revise plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the Indian tribe or tribal organization;

(4) A negotiation session during which the Secretary and the Indian tribe or tribal organization shall seek to develop a mutually agreeable contract proposal; and

(5) Upon the request of the Indian tribe or tribal organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions under subchapter IV of chapter 5 of the United States Code.

§ 900.123 What happens if the Indian tribe or tribal organization and the Secretary cannot develop a mutually agreeable contract proposal?

(a) If the Secretary and the Indian tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal under the procedures in § 900.122, the Indian tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving the final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during the period the Secretary declines the proposal under sections

102(a)(2) and 102(b) of the Act (including providing opportunity for an appeal under section 102(b)).

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts under section 102(a)(2) of the Act, the Secretary shall:

(1) State any objections to the contract proposal (as submitted by the Indian tribe or tribal organization) in writing and provide all documents relied on in making the declination decision within 20 days of such decision to the Indian tribe or tribal organization;

(2) Provide assistance to the Indian tribe or tribal organization to overcome the stated objections;

(3) Provide the Indian tribe or tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under the regulations set forth in subpart L, except that the Indian tribe or tribal organization may, in lieu of filing the appeal, initiate an action in a Federal district court and proceed directly under section 110(a) of the Act.

§ 900.124 May the Indian tribe or tribal organization elect to use a grant in lieu of a contract?

Yes. A grant agreement or a cooperative agreement may be used in lieu of a contract under sections 102 and 103 of the Act when agreed to by the Secretary and the Indian tribe or tribal organization. Under the grant concept, the grantee will assume full responsibility and accountability for design and construction performance within the funding limitations. The grantee will manage and administer the work with minimal involvement by the government. The grantee will be expected to have acceptable management systems for finance, procurement, and property. The Secretary may issue Federal construction guidelines and manuals applicable to its construction programs, and the government shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.

§ 900.125 What shall a construction contract proposal contain?

(a) In addition to the full name, address, and telephone number of the Indian tribe or tribal organization submitting the construction proposal, a construction contract proposal shall contain descriptions of the following standards under which they propose to operate the contract:

(1) The use of licensed and qualified architects;

(2) Applicable health and safety standards;

(3) Adherence to applicable Federal, State, local, or tribal building codes and engineering standards;

(4) Structural integrity;

(5) Accountability of funds;

(6) Adequate competition for subcontracting under tribal or other applicable law;

(7) The commencement, performance, and completion of the contract;

(8) Adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals and the Secretary shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs);

(9) The use of proper materials and workmanship;

(10) Necessary inspection and testing;

(11) With respect to the self-determination contract between the Indian tribe or tribal organization and Federal government, a process for changes, modifications, stop work, and termination of the work when warranted;

(b) In addition to provisions regarding the program standards listed in paragraph (a) of this section or the assurances listed in paragraph (c) of this section, the Indian tribe or tribal organization shall also include in its construction contract proposal the following:

(1) In the case of a contract for design activities, this statement, ''Construction documents produced as part of this contract will be produced in accordance with the Program of Requirements and/or Scope of Work,'' and the POR and/or Scope of Work shall be attached to the contract proposal. If tribal construction procedures, standards

and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(2) In the case of a contract for construction activities, this statement, ''The facility will be built in accordance with the construction documents produced as a part of design activities. The project documents, including plans and specifications, are hereby incorporated into this contract through this reference.'' If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(3) Proposed methods to accommodate the responsibilities of the Secretary provided in § 900.131; and

(4) Proposed methods to accommodate the responsibilities of the Indian tribe or tribal organization provided in § 900.130 unless otherwise addressed in paragraph (a) of this section and minimum staff qualifications proposed by the Indian tribe or tribal organization, if any;

(5) A contract budget as described in § 900.127; and

(6) A period of performance for the conduct of all activities to be contracted;

(7) A payment schedule as described in § 900.132;

(8) A statement indicating whether or not the Indian tribe or tribal organization has a CMS contract related to this project;

(9) Current (unrevoked) authorizing resolutions in accordance with § 900.5(d) from all Indian tribes benefitting from the contract proposal; and

(10) Any responsibilities, in addition to the Federal responsibilities listed in § 900.131, which the Indian tribe or tribal organization proposes the Federal government perform to assist with the completion of the scope of work;

(c) The Indian tribe or tribal organization will provide the following assurances in its contract proposal:

(1) If the Indian tribe or tribal organization elects not to take title (pursuant to subpart I) to Federal property used in carrying out the contract, ''The Indian tribe or tribal organization will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. The Indian tribe or tribal organization will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project''; and

(2) ''The Indian tribe or tribal organization will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.)'' which prohibits the use of lead based paint in construction or rehabilitation of residential structures;

(3) ''The Indian tribe or tribal organization will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646),'' which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal participation in purchases; and

(4) ''Except for work performed by tribal or tribal organization employees, the Indian tribe or tribal organization will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874),'' for Federally assisted construction subagreements;

(5) ''The Indian tribe or tribal organization will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234),'' which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(6) ''The Indian tribe or tribal organization will comply with all applicable

Federal environmental laws, regulations, and Executive Orders;''

(7) ''The Indian tribe or tribal organization will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting the components or potential components of the national wild and scenic rivers system;''

(8) ''The Indian tribe or tribal organization will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).''

(d) The Indian tribe or tribal organization and the Secretary will both make a good faith effort to identify any other applicable Federal laws, Executive Orders, or regulations applicable to the contract, share them with the other party, and refer to them in the construction contract. The parties will make a good faith effort to identify tribal laws, ordinances, and resolutions which may affect either party in the performance of the contract.

§ 900.126 Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?

Each agency may provide or the Indian tribe or tribal organization may request Federal construction guidelines and manuals for consideration by the Indian tribe or tribal organization in the preparation of its contract proposal. If tribal construction procedures, standards and methods (including national, regional, State, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards, the Secretary shall accept the tribally proposed standards.

§ 900.127 What can be included in the Indian tribe or tribal organization's contract budget?

(a) The costs incurred will vary depending on which phase (see § 900.112) of the construction process the Indian tribe or tribal organization is conducting and the type of contract that will be used. The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties (see § 900.129).

(b) Costs for activities under this subpart that have not been billed, allocated, or recovered under a contract issued under section 108 of the Act should be included.

(c) The Indian tribe or tribal organization's budget should include the cost elements that reflect an overall fair and reasonable price. These costs include:

(1) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(2) The costs of preparing the contract proposal and supporting cost data;

(3) The costs associated with auditing the general and administrative costs of the Indian tribe or tribal organization associated with the management of the construction contract; and

(4) In cases where the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(i) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations.

(d) In establishing a contract budget for a construction project, the Secretary shall not be required to identify separately the components described in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(e) The Indian tribe or tribal organization's budget proposal includes a detailed budget breakdown for performing the scope of work including a total ''not to exceed'' dollar amount with which to perform the scope of work. Specific budget line items, if requested by the Indian tribe or tribal organization, can include the following:

(1) The administrative costs the Indian tribe or tribal organization may incur including:

(i) Personnel needed to provide administrative oversight of the contract;

(ii) Travel costs incurred, both local travel incurred as a direct result of conducting the contract and remote travel necessary to review project status with the Secretary;

(iii) Meeting costs incurred while meeting with community residents to develop project documents;

(iv) Fees to be paid to consultants, such as demographic consultants, planning consultants, attorneys, accountants, and personnel who will provide construction management services;

(2) The fees to be paid to architects and engineers to assist in preparing project documents and to assist in oversight of the construction process;

(3) The fees to be paid to develop project surveys including topographical surveys, site boundary descriptions, geotechnical surveys, archeological surveys, and NEPA compliance, and;

(4) In the case of a contract to conduct project construction activities, the fees to provide a part-time or full-time on-site inspector, depending on the terms of the contract, to monitor construction activities;

(5) In the case of a contract to conduct project construction activities, project site development costs;

(6) In the case of a contract to conduct project construction activities, project construction costs including those costs described in paragraph (c)(4), of this section;

(7) The cost of securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, including works of art, and special purpose equipment when part of a construction contract;

(8) A contingency amount for unanticipated conditions of the construction phase of cost-reimbursable contracts. The amount of the contingency provided shall be 3 percent of activities being contracted or 50 percent of the available contingency funds, whichever is greater. In the event provision of required contingency funds will cause the project to exceed available project funds, the discrepancy shall be reconciled in accordance with § 900.129(e). Any additional contingency funds for the construction phase will be negotiated on an as-needed basis subject to the availability of funds and the nature, scope, and complexity of the project. Any contingency for other phases will be negotiated on a contract-by-contract basis. Unused contingency funds obligated to the contract and remaining at the end of the contract will be considered savings.

(9) Other costs incurred that are directly related to the conduct of contract activities.

§ 900.128 What funding shall the Secretary provide in a construction contract?

The Secretary shall provide an amount under a construction contract that reflects an overall fair and reasonable price to the parties. These costs include:

(a) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(b) The costs of preparing the contract proposal and supporting cost data; and

(c) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract; and

(d) If the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(1) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(2) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations including but not limited to contingency.

(3) In establishing a contract budget for a construction project, the Secretary is not required to identify separately the components described in paragraph (d) (1) and (d) (2) of this sections.

§ 900.129 How do the Secretary and Indian tribe or tribal organization arrive at an overall fair and reasonable price for the performance of a construction contract?

(a) Throughout the contract award process, the Secretary and Indian tribe or tribal organization shall share all construction project cost information available to them in order to facilitate reaching agreement on an overall fair and reasonable price for the project or part thereof. In order to enhance this communication, the government's estimate of an overall fair and reasonable price shall:

(1) Contain a level of detail appropriate to the nature and phase of the work and sufficient to allow comparisons to the Indian tribe or tribal organization's estimate;

(2) Be prepared in a format coordinated with the Indian tribe or tribal organization; and

(3) Include the cost elements contained in section 105(m)(4) of the Act.

(b) The government's cost estimate shall be an independent cost estimate based on such information as the following:

(1) Prior costs to the government for similar projects adjusted for comparison to the target location, typically in unit costs, such as dollars per pound, square meter cost of building, or other unit cost that can be used to make a comparison;

(2) Actual costs previously incurred by the Indian tribe or tribal organization for similar projects;

(3) Published price lists, to include regional adjustment factors, for materials, equipment, and labor; and

(4) Projections of inflation and cost trends, including projected changes such as labor, material, and transportation costs.

(c) The Secretary shall provide the initial government cost estimate to the Indian tribe or tribal organization and make appropriate revisions based on concerns raised or information provided by the Indian tribe or tribal organization. The Secretary and the Indian tribe or tribal organization shall continue to revise, as appropriate, their respective cost estimates based on changed or additional information such as the following:

(1) Actual subcontract bids;

(2) Changes in inflation rates and market conditions, including local market conditions;

(3) Cost and price analyses conducted by the Secretary and the Indian tribe or tribal organization during negotiations;

(4) Agreed-upon changes in the size, scope and schedule of the construction project; and

(5) Agreed-upon changes in project plans and specifications.

(d) Considering all of the information available, the Secretary and the Indian tribe or tribal organization shall negotiate the amount of the construction contract. The objective of the negotiations is to arrive at an amount that is fair under current market conditions and reasonable to both the government and the Indian tribe or tribal organization. As a result, the agreement does not necessarily have to be in strict conformance with either party's cost estimate nor does agreement have to be reached on every element of cost, but only on the overall fair and reasonable price of each phase of the work included in the contract.

(e) If the fair and reasonable price arrived at under paragraph (d) of this section would exceed the amount available to the Secretary, then:

(1) If the Indian tribe or tribal organization elects to submit a final proposal, the Secretary may decline the proposal under section 105(m)(4)(C)(v) of the Act or if the contract has been awarded, dispute the matter under the Contract Disputes Act; or

(2) If requested by the Indian tribe or tribal organization:

(i) The Indian tribe or tribal organization and the Secretary may jointly explore methods of expanding the available funds through the use of contingency funds, advance payments in accordance with § 900.132, rebudgeting, or seeking additional appropriations; or

(ii) The Indian tribe or tribal organization may elect to propose a reduction in project scope to bring the project price within available funds; or

(iii) The Secretary and Indian tribe or tribal organization may agree that the project be executed in phases.

§ 900.130 What role does the Indian tribe or tribal organization play during the performance of a self-determination construction contract?

(a) The Indian tribe or tribal organization is responsible for the successful completion of the project in accordance with the approved contract documents.

(b) If the Indian tribe or tribal organization is contracting to perform design phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) The Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and other consultants needed to accomplish the self-determination construction contract.

(2) The Indian tribe or tribal organization shall administer and disburse funds provided through the contract in accordance with subpart F, § 900.42 through § 900.45 and implement a property management system in accordance with subpart F, § 900.51 through § 900.60.

(3) The Indian tribe or tribal organization shall direct the activities of project architects, engineers, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between the Indian tribe or tribal organization and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to ensure compliance with the POR.

(4) The Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and contract performance period as negotiated between and agreed to by the parties.

(5) The Indian tribe or tribal organization shall provide the Secretary with an opportunity to review and provide written comments on the project plans and specifications only at the concept phase, the schematic phase (or the preliminary design), the design development phase, and the final construction documents phase and approve the project plans and specifications for general compliance with contract requirements only at the schematic phase (or the preliminary design) and the final construction documents phase or as otherwise negotiated.

(6) The Indian tribe or tribal organization shall provide the Secretary with the plans and specifications after their final review so, if needed, the Secretary may obtain an independent government cost estimate in accordance with § 900.131(b)(4) for the construction of the project.

(7) The Indian tribe or tribal organization shall retain project records and design documents for a minimum of 3 years following completion of the contract.

(8) The Indian tribe or tribal organization shall provide progress reports and financial status reports quarterly, or as negotiated, that contain a narrative of the work accomplished, including but not limited to descriptions of contracts, major subcontracts, and modifications implemented during the report period and A/E service deliverables, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project. The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial work and payment schedule and updates as they may occur.

(c) If the Indian tribe or tribal organization is contracting to perform project construction phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) The Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and other consultants as needed to accomplish the self-determination construction contract.

(2) The Indian tribe or tribal organization shall administer and dispense funds provided through the contract in accordance with subpart F, § 900.42 through § 900.45 and implement a property management system in accordance with subpart F, § 900.51 through § 900.60.

(3) The Indian tribe or tribal organization shall subcontract with or provide the services of construction contractors or provide its own forces to

conduct construction activities in accordance with the project construction documents or as otherwise negotiated between and agreed to by the parties.

(4) The Indian tribe or tribal organization shall direct the activities of project architects, engineers, construction contractors, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between itself and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to assure compliance with the project plans and specifications.

(5) The Indian tribe or tribal organization shall manage or provide for the management of day-to-day activities of the contract including the issuance of construction change orders to subcontractors except that, unless the Secretary agrees:

(i) The Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed its self-determination contract budget;

(ii) The Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed the performance period in its self-determination contract budget; or

(iii) The Indian tribe or tribal organization may not issue to a construction subcontractor a change order that is a significant departure from the scope or objective of the project.

(6) The Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and performance period as negotiated between and agreed to by the parties.

(7) The Indian tribe or tribal organization shall provide to the Secretary progress and financial status reports.

(i) The reports shall be provided quarterly, or as negotiated, and shall contain a narrative of the work accomplished, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project.

(ii) The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial schedule of values and updates as they may occur, and an initial construction schedule and updates as they occur.

(8) The Indian tribe or tribal organization shall maintain on the job-site or project office, and make available to the Secretary during monitoring visits: contracts, major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, testing reports, and current redline drawings.

(d) Upon completion of the project, the Indian tribe or tribal organization shall provide to the Secretary a reproducible copy of the record plans and a contract closeout report.

(e) For cost-reimbursable projects, the Indian tribe or tribal organization shall not be obligated to continue performance that requires an expenditure of more funds than were awarded under the contract. If the Indian tribe or tribal organization has a reason to believe that the total amount required for performance of the contract will be greater than the amount of funds awarded, it shall provide reasonable notice to the Secretary. If the Secretary does not increase the amount of funds awarded under the contract, the Indian tribe or tribal organization may suspend performance of the contract until sufficient additional funds are awarded.

§ 900.131 What role does the Secretary play during the performance of a self-determination construction contract?

(a) If the Indian tribe or tribal organization is contracting solely to perform construction management services either under this subpart or section 108 of the Act, the Secretary has the following responsibilities:

(1) The Secretary is responsible for the successful completion of the project in accordance with the approved contract documents. In fulfilling those responsibilities, the Secretary shall consult with the Indian tribe or tribal organization on a regular basis as agreed to by the parties to

facilitate the exchange of information between the Indian tribe or tribal organization and Secretary;

(2) The Secretary shall provide the Indian tribe or tribal organization with regular opportunities to review work produced to determine compliance with the following documents:

(i) The POR, during the conduct of design phase activities. The Secretary shall provide the Indian tribe or tribal organization with an opportunity to review the project construction documents at the concept phase, the schematic phase, the design development phase, and the final construction documents phase, or as otherwise negotiated. Upon receipt of project construction documents for review, the Indian tribe or tribal organization shall not take more than 21 days to make available to the Secretary any comments or objections to the construction documents as submitted by the Secretary. Resolution of any comments or objections shall be in accordance with dispute resolution procedures as agreed to by the parties and contained in the contract; or

(ii) The project construction documents, during conduct of the construction phase activities. The Indian tribe or tribal organization shall have the right to conduct monthly or critical milestone on-site monitoring visits or as negotiated with the Secretary;

(b) If the Indian tribe or tribal organization is contracting to perform design and/or construction phase activities, the Secretary shall have the following responsibilities:

(1) In carrying out the responsibilities of this section, and specifically in carrying out review, comment, and approval functions under this section, the Secretary shall provide for full tribal participation in the decision making process and shall honor tribal preferences and recommendations to the greatest extent feasible. This includes promptly notifying the Indian tribe or tribal organization of any concerns or issues in writing that may lead to disapproval, meeting with the Indian tribe or tribal organization to discuss these concerns and issues and to share relevant information and documents, and making a good faith effort to resolve all issues and concerns of the Indian tribe or tribal organization. The time allowed for Secretarial review, comment, and approval shall be no more than 21 days per review unless a different time period is negotiated and specified in individual contracts. The 21-day time period may be extended if the Indian tribe or tribal organization agrees to the extension in writing. Disagreements over the Secretary's decisions in carrying out these responsibilities shall be handled under subpart N governing contract disputes under the Contract Disputes Act.

(2) To the extent the construction project is subject to NEPA or other environmental laws, the appropriate Secretary shall make the final determination under such laws. All other environmentally related functions are contractible.

(3) If the Indian tribe or tribal organization conducts planning activities under this subpart, the Secretary shall review and approve final planning documents for the project to ensure compliance with applicable planning standards.

(4) When a contract or portion of a contract is for project construction activities, the Secretary may rely on the Indian tribe or tribal organization's cost estimate or the Secretary may obtain an independent government cost estimate that is derived from the final project plans and specifications. The Secretary shall obtain the cost estimate, if any, within 90 days or less of receiving the final plans and specifications from the Indian tribe or tribal organization and shall provide all supporting documentation of the independent cost estimate to the Indian tribe or tribal organization within the 90 day time limit.

(5) If the contracted project involves design activities, the Secretary shall have the authority to review for general compliance with the contract requirements and provide written comments on the project plans and specifications only at the concept phase, the schematic phase, the design development phase and the final construction documents phase, and approve for general compliance with contract requirements the project plans and specifications only at the schematic phase and

the final construction documents phase or as otherwise negotiated.

(6) If the contracted project involves design activities, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal government purposes:

(i) The copyright in any work developed under a contract or subcontract of this subpart; and

(ii) Any rights of copyright to which an Indian tribe or tribal organization or a tribal subcontractor purchases ownership through this contract.

(7) Changes that require an increase to the negotiated contract budget or an increase in the negotiated performance period or are a significant departure from the scope or objective of the project shall require approval of the Secretary.

(8) Review and comment on specific shop drawings as negotiated and specified in individual contracts.

(9) The Secretary may conduct monthly on-site monitoring visits, or alternatively if negotiated with the Indian tribe or tribal organization, critical milestone on-site monitoring visits.

(10) The Secretary retains the right to conduct final project inspections jointly with the Indian tribe or tribal organization and to accept the building or facility. If the Secretary identifies problems during final project inspections the information shall be provide to the Indian tribe or tribal organization and shall be limited to items that are materially noncompliant.

(11) The Secretary can require an Indian tribe or tribal organization to suspend work under a contract in accordance with this paragraph. The Secretary may suspend a contract for no more than 30 days unless the Indian tribe or tribal organization has failed to correct the reason(s) for the suspension or unless the cause of the suspension cannot be resolved through either the efforts of the Secretary or the Indian tribe or tribal organization.

(i) The following are reasons the Secretary may suspend work under a self-determination contract for construction:

(A) Differing site conditions encountered upon commencement of construction activities that impact health or safety concerns or shall require an increase in the negotiated project budget;

(B) The Secretary discovers materially non-compliant work;

(C) Funds allocated for the project that is the subject of this contract are rescinded by Congressional action; or

(D) Other Congressional actions occur that materially affect the subject matter of the contract.

(ii) If the Secretary wishes to suspend the work, the Secretary shall first provide written notice and an opportunity for the Indian tribe or tribal organization to correct the problem. The Secretary may direct the Indian tribe or tribal organization to suspend temporarily work under a contract only after providing a minimum of 5 working days' advance written notice to the Indian tribe or tribal organization describing the nature of the performance deficiencies or imminent safety, health or environmental issues which are the cause for suspending the work.

(iii) The Indian tribe or tribal organization shall be compensated for reasonable costs, including but not limited to overhead costs, incurred due to any suspension of work that occurred through no fault of the Indian tribe or tribal organization.

(iv) Disputes arising as a result of a suspension of the work by the Secretary shall be subject to the Contract Disputes Act or any other alternative dispute resolution mechanism as negotiated between and agreed to by the parties and contained in the contract.

(12) The Secretary can terminate the project for cause in the event non-compliant work is not corrected through the suspension process specified in paragraph (11) of this section.

(13) The Secretary retains authority to terminate the project for convenience for the following reasons:

(i) Termination for convenience is requested by the Indian tribe or tribal organization;

(ii) Termination for convenience is requested by the Secretary and agreed to by the Indian tribe or tribal organization;

(iii) Funds allocated for the project that is the subject of the contract are rescinded by Congressional action;

(iv) Other Congressional actions take place that affect the subject matter of the contract;

(v) If the Secretary terminates a self-determination construction contract for convenience, the Secretary shall provide the Indian tribe or tribal organization 21 days advance written notice of intent to terminate a contract for convenience; or

(vi) The Indian tribe or tribal organization shall be compensated for reasonable costs incurred due to termination of the contract.

§ 900.132 Once a contract and/or grant is awarded, how will the Indian tribe or tribal organization receive payments?

(a) A schedule for advance payments shall be developed based on progress, need, and other considerations in accordance with applicable law. The payment schedule shall be negotiated by the parties and included in the contract. The payment schedule may be adjusted as negotiated by the parties during the course of the project based on progress and need.

(b) Payments shall be made to the Indian tribe or tribal organization according to the payment schedule contained in the contract. If the contract does not provide for the length of each allocation period, the Secretary shall make payments to the Indian tribe or tribal organization at least quarterly. Each allocation shall be adequate to provide funds for the contract activities anticipated to be conducted during the allocation period, except that:

(1) The first allocation may be greater than subsequent allocations and include mobilization costs, and contingency funds described in § 900.128(e)(8); and

(2) Any allocation may include funds for payment for materials that will be used during subsequent allocation periods.

(c) The Indian tribe or tribal organization may propose a schedule of payment amounts measured by time or measured by phase of the project (e.g., planning, design, construction).

(d) The amount of each payment allocation shall be stated in the Indian tribe or tribal organization's contract proposal. Upon award of the contract, the Secretary shall transfer the amount of the first allocation to the Indian tribe or tribal organization within 21 days after the date of contract award. The second allocation shall be made not later than 7 days before the end of the first allocation period.

(e) Not later than 7 days before the end of each subsequent allocation period after the second allocation, the Secretary shall transfer to the Indian tribe or tribal organization the amount for the next allocation period, unless the Indian tribe or tribal organization is delinquent in submission of allocation period progress reports and financial reports or the Secretary takes action to suspend or terminate the contract in accordance with § 900.131(b)(11), § 900.131(b)(12), or § 900.131(b)(13).

§ 900.133 Does the declination process or the Contract Dispute Act apply to construction contract amendments proposed either by an Indian tribe or tribal organization or the Secretary?

The Contract Disputes Act generally applies to such amendments. However, the declination process and the procedures in § 900.122 and § 900.123 apply to the proposal by an Indian tribe or tribal organization when the proposal is for a new project, a new phase or discreet stage of a phase of a project, or an expansion of a project resulting from an additional allocation of funds by the Secretary under § 900.120.

§ 900.134 At the end of a self-determination construction contract, what happens to savings on a cost-reimbursement contract?

The savings shall be used by the Indian tribe or tribal organization to provide additional services or benefits under the contract. Unexpended contingency funds obligated to the contract, and remaining at the end of the contract, are savings. No further approval or justifying documentation by the Indian tribe or tribal organization shall be required before expenditure of funds.

§ 900.135 May the time frames for action set out in this subpart be reduced?

Yes. The time frames in this subpart are intended to be maximum times and may be reduced based on urgency and need, by agreement of the parties. If the Indian tribe or tribal organization requests reduced time frames for action due to unusual or special conditions (such as limited construction periods), the Secretary shall make a good faith effort to accommodate the requested time frames.

§ 900.136 Do tribal employment rights ordinances apply to construction contracts and subcontracts?

Yes. Tribal employment rights ordinances do apply to construction contracts and subcontracts pursuant to section 7(b) and section 7(c) of the Act.

§ 900.137 Do all provisions of the other subparts apply to contracts awarded under this subpart?

Yes, except as otherwise provided in this subpart and unless excluded as follows: programmatic reports and data requirements, reassumption, contract review and approval process, contract proposal contents, and § 900.150 (d) and (e) of these regulations.

Subpart K—Waiver Procedures

§ 900.140 Can any provision of the regulations under this part be waived?

Yes. Upon the request of an Indian tribe or tribal organization, the Secretary shall waive any provision of these regulations, including any cost principles adopted by the regulations under this part, if the Secretary finds that granting the waiver is either in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law.

§ 900.141 How does an Indian tribe or tribal organization get a waiver?

To obtain a waiver, an Indian tribe or tribal organization shall submit a written request to the Secretary identifying the regulation to be waived and the basis for the request. The Indian tribe or tribal organization shall explain the intended effect of the waiver, the impact upon the Indian tribe or tribal organization if the waiver is not granted, and the specific contract(s) to which the waiver will apply.

§ 900.142 Does an Indian tribe or tribal organization's waiver request have to be included in an initial contract proposal?

No. Although a waiver request may be included in a contract proposal, it can also be submitted separately.

§ 900.143 How is a waiver request processed?

The Secretary shall approve or deny a waiver within 90 days after the Secretary receives a written waiver request. The Secretary's decision shall be in writing. If the requested waiver is denied, the Secretary shall include in the decision a full explanation of the basis for the decision.

§ 900.144 What happens if the Secretary makes no decision within the 90-day period?

The waiver request is deemed approved.

§ 900.145 On what basis may the Secretary deny a waiver request?

Consistent with section 107(e) of the Act, the Secretary may only deny a waiver request based on a specific written finding. The finding must clearly demonstrate (or be supported by controlling legal authority) that if the waiver is granted:

(a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or portion of it) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities that are contractible

under the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.146 Is technical assistance available for waiver requests?

Yes. Technical assistance is available as provided in § 900.7 to prepare a waiver request or to overcome any stated objection which the Secretary might have to the request.

§ 900.147 What appeal rights are available?

If the Secretary denies a waiver request, the Indian tribe or tribal organization has the right to appeal the decision and request a hearing on the record under the procedures for hearings and appeals contained in subpart L of these regulations. Alternatively, the Indian tribe or tribal organization may sue in Federal district court to challenge the Secretary's action.

§ 900.148 How can an Indian tribe or tribal organization secure a determination that a law or regulation has been superseded by the Indian Self-Determination Act, as specified in section 107(b) of the Act?

Any Indian tribe or tribal organization may at any time submit a request to the Secretary for a determination that any law or regulation has been superseded by the Act and that the law has no applicability to any contract or proposed contract under the Act. The Secretary is required to provide an initial decision on such a request within 90 days after receipt. If such a request is denied, the Indian tribe or tribal organization may appeal under subpart L of these regulations. The Secretary shall provide notice of each determination made under this subpart to all Indian tribes and tribal organizations.

Subpart L—Appeals

APPEALS OTHER THAN EMERGENCY REASSUMPTION AND SUSPENSION, WITHHOLDING OR DELAY IN PAYMENT

§ 900.150 What decisions can an Indian tribe or tribal organization appeal under this subpart?

(a) A decision to decline to award a self-determination contract, or a portion thereof, under section 102 of the Act;

(b) A decision to decline to award a construction contract, or a portion thereof, under sections 105(m) and 102 of the Act;

(c) A decision to decline a proposed amendment to a self-determination contract, or a portion thereof, under section 102 of the Act;

(d) A decision not to approve a proposal, in whole or in part, to redesign a program;

(e) A decision to rescind and reassume a self-determination contract, in whole or in part, under section 109 of the Act except for emergency reassumptions;

(f) A decision to refuse to waive a regulation under section 107(e) of the Act;

(g) A disagreement between an Indian tribe or tribal organization and the Federal government over proposed reporting requirements;

(h) A decision to refuse to allow an Indian tribe or tribal organization to convert a contract to mature status, under section 4(h) of the Act;

(i) All other appealable pre-award decisions by a Federal official as specified in these regulations, whether an official of the Department of the Interior or the Department of Health and Human Services; or

(j) A decision relating to a request for a determination that a law or regulation has been superseded by the Act.

§ 900.151 Are there any appeals this subpart does not cover?

This subpart does not cover:

(a) Disputes which arise after a self-determination contract has been awarded, or emergency reassumption of self-determination contracts or suspension of payments under self-determination contracts, which are covered under § 900.170 through § 900.176 of these regulations.

(b) Other post-award contract disputes, which are covered under subpart N.

(c) Denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 43 CFR 2 for the Department of the Interior and 45 CFR 5 for the Department of Health and Human Services; and

(d) Decisions relating to the award of discretionary grants under section 103 of the Act, which may be appealed under 25 CFR 2 for the Department of the Interior, and under 45 CFR 5 for the Department of Health and Human Services.

§ 900.152 How does an Indian tribe or tribal organization know where and when to file its appeal from decisions made by agencies of DOI or DHHS?

Every decision in any of the ten areas listed above shall contain information which shall tell the Indian tribe or tribal organization where and when to file the Indian tribe or tribal organization's appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.153 Does an Indian tribe or tribal organization have any options besides an appeal?

Yes. The Indian tribe or tribal organization may request an informal conference. An informal conference is a way to resolve issues as quickly as possible, without the need for a formal hearing. The Indian tribe or tribal organization may also choose to sue in U.S. District Court under section 102(b)(3) and section 110(a) of the Act.

§ 900.154 How does an Indian tribe or tribal organization request an informal conference?

The Indian tribe or tribal organization shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision. The Indian tribe or tribal organization may either hand-deliver the request for an informal conference to that person's office, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the request, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail.

§ 900.155 How is an informal conference held?

(a) The informal conference shall be held within 30 days of the date the request was received, unless the Indian tribe or tribal organization and the authorized representative of the Secretary agree on another date.

(b) If possible, the informal conference will be held at the Indian tribe or tribal organization's office. If the meeting cannot be held at the Indian tribe or tribal organization's office and is held more than fifty miles from its office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only people who are the designated representatives of the Indian tribe or tribal organization, or authorized by the Secretary of Health and Human Services or by the appropriate agency of the Department of the Interior, are allowed to make presentations at the informal conference.

§ 900.156 What happens after the informal conference?

(a) Within 10 days of the informal conference, the person who conducted the informal conference shall prepare and mail to the Indian tribe or tribal organization a written report which summarizes what happened at the informal conference and a recommended decision.

(b) Every report of an informal conference shall contain the following language:

Within 30 days of the receipt of this recommended decision, you may file an appeal of the initial decision of the DOI or DHHS agency with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.157. You may request a hearing on the record. An appeal to

the IBIA under 25 CFR 900.157 shall be filed with the IBIA by certified mail or hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.157 Is the recommended decision always final?

No. If the Indian tribe or tribal organization is dissatisfied with the recommended decision, it may still appeal the initial decision within 30 days of receiving the recommended decision and the report of the informal conference. If the Indian tribe or tribal organization does not file a notice of appeal within 30 days, or before the expiration of the extension it has received under § 900.159, the recommended decision becomes final.

§ 900.158 How does an Indian tribe or tribal organization appeal the initial decision, if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?

(a) If the Indian tribe or tribal organization decides to appeal, it shall file a notice of appeal with the IBIA within 30 days of receiving either the initial decision or the recommended decision.

(b) The Indian tribe or tribal organization may either hand-deliver the notice of appeal to the IBIA, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the Notice of Appeal, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail. The Indian tribe or tribal organization should mail the notice of appeal to: Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203.

(c) The Notice of Appeal shall:

(1) Briefly state why the Indian tribe or tribal organization thinks the initial decision is wrong;

(2) Briefly identify the issues involved in the appeal; and

(3) State whether the Indian tribe or tribal organization wants a hearing on the record, or whether the Indian tribe or tribal organization wants to waive its right to a hearing.

(d) The Indian tribe or tribal organization shall serve a copy of the notice of appeal upon the official whose decision it is appealing. The Indian tribe or tribal organization shall certify to the IBIA that it has done so.

(e) The authorized representative of the Secretary of Health and Human Services or the authorized representative of the Secretary of the Interior will be considered a party to all appeals filed with the IBIA under the Act.

§ 900.159 May an Indian tribe or tribal organization get an extension of time to file a notice of appeal?

Yes. If the Indian tribe or tribal organization needs more time, it can request an extension of time to file its Notice of Appeal within 60 days of receiving either the initial decision or the recommended decision resulting from the informal conference. The request of the Indian tribe or tribal organization shall be in writing, and shall give a reason for not filing its notice of appeal within the 30-day time period. If the Indian tribe or tribal organization has a valid reason for not filing its notice of appeal on time, it may receive an extension from the IBIA.

§ 900.160 What happens after an Indian tribe or tribal organization files an appeal?

(a) Within 5 days of receiving the Indian tribe or tribal organization's notice of appeal, the IBIA will decide whether the appeal falls under § 900.150(a) through § 900.150(g). If so, the Indian tribe or tribal organization is entitled to a hearing.

(1) If the IBIA determines that the appeal of the Indian tribe or tribal organization falls under § 900.150(h), § 900.150(i), or § 900.150(j), and the Indian tribe or tribal organization has requested a hearing, the IBIA will grant the request for a hearing unless the IBIA determines that there are no genuine issues of material fact to be resolved.

(2) If the IBIA cannot make that decision based on the information included in the notice of appeal, the IBIA may ask for additional statements

from the Indian tribe or tribal organization, or from the appropriate Federal agency. If the IBIA asks for more statements, it will make its decision within 5 days of receiving those statements.

(b) If the IBIA decides that the Indian tribe or tribal organization is not entitled to a hearing or if the Indian tribe or tribal organization has waived its right to a hearing on the record, the IBIA will ask for the administrative record under 43 CFR 4.335. The IBIA shall tell the parties that the appeal will be considered under the regulations at 43 CFR 4, subpart D, except the case shall be docketed immediately, without waiting for the 20-day period described in 43 CFR 4.336.

§ 900.161 How is a hearing arranged?

(a) If a hearing is to be held, the IBIA will refer the Indian tribe or tribal organization's case to the Hearings Division of the Office of Hearings and Appeals of the U.S. Department of the Interior. The case will then be assigned to an Administrative Law Judge (ALJ), appointed under 5 U.S.C. 3105.

(b) Within 15 days of the date of the referral, the ALJ will hold a pre-hearing conference, by telephone or in person, to decide whether an evidentiary hearing is necessary, or whether it is possible to decide the appeal based on the written record. At the pre-hearing conference the ALJ will provide for:

(1) A briefing and discovery schedule;

(2) A schedule for the exchange of information, including, but not limited to witness and exhibit lists, if an evidentiary hearing is to be held;

(3) The simplification or clarification of issues;

(4) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if an evidentiary hearing is to be held;

(5) The possibility of agreement disposing of all or any of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(c) The ALJ shall order a written record to be made of any conference results that are not reflected in a transcript.

§ 900.162 What happens when a hearing is necessary?

(a) The ALJ shall hold a hearing within 60 days of the date of the order referring the appeal to the ALJ, unless the parties agree to have the hearing on a later date.

(b) At least 30 days before the hearing, the government agency shall file and serve the Indian tribe or tribal organization with a response to the notice of appeal.

(c) If the hearing is held more than 50 miles from the Indian tribe or tribal organization's office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(d) The hearing shall be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.163 What is the Secretary's burden of proof for appeals from decisions under § 900.150(a) through § 900.150(g)?

For those appeals, the Secretary has the burden of proof (as required by section 102(e)(1) of the Act) to establish by clearly demonstrating the validity of the grounds for declining the contract proposal.

§ 900.164 What rights do Indian tribes, tribal organizations, and the government have during the appeal process?

Both the Indian tribe or tribal organization and the government agency have the same rights during the appeal process. These rights include the right to:

(a) Be represented by legal counsel;

(b) Have the parties provide witnesses who have knowledge of the relevant issues, including specific witnesses with that knowledge, who are requested by either party;

(c) Cross-examine witnesses;

(d) Introduce oral or documentary evidence, or both;

(e) Require that oral testimony be under oath;

(f) Receive a copy of the transcript of the hearing, and copies of all documentary evidence which is introduced at the hearing;

(g) Compel the presence of witnesses, or the production of documents, or both, by subpoena at hearings or at depositions;

(h) Take depositions, to request the production of documents, to serve interrogatories on other parties, and to request admissions; and

(i) Any other procedural rights under the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.165 What happens after the hearing?

(a) Within 30 days of the end of the formal hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all the parties a recommended decision, by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that the Indian tribe or tribal organization has the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC, 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 801 North Quincy Street, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

§ 900.166 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 30 days of receiving the recommended decision. Objections shall be served on all other parties. The recommended decision shall become final 30 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 30-day period. If no party files a written statement of objections within 30 days, the recommended decision shall become final.

§ 900.167 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary of Health and Human Services or the IBIA has 20 days from the date it receives any timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary of Health and Human Services or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or the IBIA shall:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law which are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 900.168 Will an appeal hurt the Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.169 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

APPEALS OF EMERGENCY REASSUMPTION OF SELF-DETERMINATION CONTRACTS OR SUSPENSIONS, WITHHOLDING OR DELAY OF PAYMENTS UNDER A SELF-DETERMINATION CONTRACT

§ 900.170 What happens in the case of emergency reassumption or suspension or withholding or delay of payments?

(a) This subpart applies when the Secretary gives notice to an Indian tribe or tribal organization that the Secretary intends to:

(1) Immediately rescind a contract or grant and reassume a program; or

(2) Suspend, withhold, or delay payment under a contract.

(b) When the Secretary advises an Indian tribe or tribal organization that the Secretary intends to take an action referred to in paragraph (a)(1) of this section, the Secretary shall also notify the Deputy Director of the Office of Hearings and Appeals, Department of the Interior, 801 North Quincy Street, Arlington, VA 22203.

§ 900.171 Will there be a hearing?

Yes. The Deputy Director of the Office of Hearings and Appeals shall appoint an Administrative Law Judge (ALJ) to hold a hearing.

(a) The hearing shall be held within 10 days of the date of the notice referred to in § 900.170 unless the Indian tribe or tribal organization agrees to a later date.

(b) If possible, the hearing will be held at the office of the Indian tribe or tribal organization. If the hearing is held more than 50 miles from the office of the Indian tribe or tribal organization, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses. This will allow for adequate representation of the Indian tribe or tribal organization.

§ 900.172 What happens after the hearing?

(a) Within 30 days after the end of the hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all parties a recommended decision by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that the Indian tribe or tribal organization has the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

> Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

> Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 801 North Quincy Street, Arlington, VA 22203.
>
> You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

§ 900.173 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 15 days of receiving the recommended decision. You shall serve a copy of your objections on the other party. The recommended decision will become final 15 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 15-day period. If no party files a written statement of objections within 15 days, the recommended decision will become final.

§ 900.174 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary or the IBIA has 15 days from the date he/she receives timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or of the IBIA shall:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law which are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 900.175 Will an appeal hurt an Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.176 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

APPLICABILITY OF THE EQUAL ACCESS TO JUSTICE ACT

§ 900.177 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes. EAJA claims against the DOI or the DHHS will be heard by the IBIA under 43 CFR 4.601–4.619. For DHHS, appeals from the EAJA award will be according to 25 CFR 900.165(b).

Subpart M—Federal Tort Claims Act Coverage General Provisions

§ 900.180 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance of medical-related functions under self-determination contracts;

(b) Coverage of claims arising out of the performance of non-medical-related functions under self-determination contracts; and

(c) Procedures for filing claims under FTCA.

§ 900.181 What definitions apply to this subpart?

Indian contractor means:

(1) In California, subcontractors of the California Rural Indian Health Board, Inc. or, subject to approval of the IHS Director after consultation with the DHHS Office of General Counsel, subcontractors of an Indian tribe or tribal organization which are:

(i) Governed by Indians eligible to receive services from the Indian Health Service;

(ii) Which carry out comprehensive IHS service programs within geographically defined service areas; and

(iii) Which are selected and identified through tribal resolution as the local provider of Indian health care services.

(2) Subject to the approval of the IHS Director after consultation with the DHHS Office of General Counsel, Indian tribes and tribal organizations which meet in all respects the requirements of the Indian Self-Determination Act to contract directly with the Federal Government but which choose through tribal resolution to subcontract to carry out IHS service programs within geographically defined service areas with another Indian tribe or tribal organization which contracts directly with IHS.

(3) Any other contractor that qualifies as an ''Indian contractor'' under the Indian Self-Determination Act.

§ 900.182 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations in 28 CFR part 14.

§ 900.183 Do Indian tribes and tribal organizations need to be aware of areas which FTCA does not cover?

Yes. There are claims against self-determination contractors which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. General guidance is provided below as to these matters but is not intended as a definitive description of coverage, which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) *What claims are expressly barred by FTCA and therefore may not be made against the United States, an Indian tribe or tribal organization?* Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) *What claims may not be pursued under FTCA?* (1) Except as provided in § 900.181(a)(1) and § 900.189, claims against subcontractors arising out of the performance of subcontracts with a self-determination contractor;

(2) Claims for on-the-job injuries which are covered by workmen's compensation;

(3) Claims for breach of contract rather than tort claims; or

(4) Claims resulting from activities performed by an employee which are outside the scope of employment.

(c) *What remedies are expressly excluded by FTCA and therefore are barred?* (1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) Other remedies not permitted under applicable state law.

§ 900.184 Is there a deadline for filing FTCA claims?

Yes. Claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 900.185 How long does the Federal government have to process an FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

Six months.

§ 900.186 Is it necessary for a self-determination contract to include any clauses about Federal Tort Claims Act coverage?

No, it is optional. At the request of Indian tribes and tribal organizations, self-determination contracts shall include the following clauses to clarify the scope of FTCA coverage:

(a) The following clause may be used for all contracts:

> For purposes of Federal Tort Claims Act coverage, the contractor and its employees (including individuals performing personal services contracts with the contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this contract. This status is not changed by the source of the funds used by the contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the contractor.

(b) The following clause is for IHS contracts only:

> Under this contract, the contractor's employee may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet contractual obligations. These services may be provided in either contractor or non-contractor

facilities. The employee's status for Federal Tort Claims Act purposes is not affected.

§ 900.187 Does FTCA apply to a self-determination contract if FTCA is not referenced in the contract?

Yes.

§ 900.188 To what extent shall the contractor cooperate with the Federal government in connection with tort claims arising out of the contractor's performance?

(a) The contractor shall designate an individual to serve as tort claims liaison with the Federal government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the contractor shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the contractor or any of its employees that relates to performance of a self-determination contract or subcontract.

(c) The contractor, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) The contractor's determination as to whether any of its employees (including Federal employees assigned to the contractor) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The contractor shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the contractor shall make an assignment and subrogation of all the contractor's rights and claims (except those against the Federal government) arising out of a tort claim against the contractor.

(f) If requested by the Secretary, the contractor shall authorize representatives of the Secretary to settle or defend any claim and to represent the contractor in or take charge of any action. If the Federal government undertakes the settlement or defense of any claim or action the contractor shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 900.189 Does this coverage extend to subcontractors of self-determination contracts?

No. Subcontractors or subgrantees providing services to a Public Law 93–638 contractor or grantee are generally not covered. The only exceptions are Indian contractors such as those under subcontract with the California Rural Indian Health Board to carry out IHS programs in geographically defined service areas in California and personal services contracts under § 900.193 (for § 900.183(b)(1)) or § 900.183(b) (for § 900.190).

MEDICAL-RELATED CLAIMS

§ 900.190 Is FTCA the exclusive remedy for a tort claim for personal injury or death resulting from the performance of a self-determination contract?

Yes, except as explained in § 900.183(b). No claim may be filed against a self-determination contractor or employee for personal injury or death arising from the performance of medical, surgical, dental, or related functions by the contractor in carrying out self-determination contracts under the Act. Related functions include services such as those provided by nurses, laboratory and x-ray technicians, emergency medical technicians and other health care providers including psychologists and social workers. All such claims shall be filed against the United States and are subject to the limitations and restrictions of the FTCA.

§ 900.191 Are employees of self-determination contractors providing health services under the self-determination contract protected by FTCA?

Yes. For the purpose of Federal Tort Claims Act coverage, an Indian tribe or tribal organization and its employees performing medical-related functions under a self-determination contract are deemed a part of the Public Health Service if the employees are acting within the scope of their employment in carrying out the contract.

§ 900.192 What employees are covered by FTCA for medical-related claims?

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and

(e) Federal employees assigned to the contract.

§ 900.193 Does FTCA coverage extend to individuals who provide health care services under a personal services contract providing services in a facility that is owned, operated, or constructed under the jurisdiction of the IHS?

Yes. The coverage extends to individual personal services contractors providing health services in such a facility, including a facility owned by an Indian tribe or tribal organization but operated under a self-determination contract with IHS.

§ 900.194 Does FTCA coverage extend to services provided under a staff privileges agreement with a non-IHS facility where the agreement requires a health care practitioner to provide reciprocal services to the general population?

Yes. Those services are covered, as long as the contractor's health care practitioners do not receive additional compensation from a third party for the performance of these services and they are acting within the scope of their employment under a self-determination contract. Reciprocal services include:

(a) Cross-covering other medical personnel who temporarily cannot attend their patients;

(b) Assisting other personnel with surgeries or other medical procedures;

(c) Assisting with unstable patients or at deliveries; or

(d) Assisting in any patient care situation where additional assistance by health care personnel is needed.

§ 900.195 Does FTCA coverage extend to the contractor's health care practitioners providing services to private patients on a fee-for-services basis when such personnel (not the self-determination contractor) receive the fee?

No.

§ 900.196 Do covered services include the conduct of clinical studies and investigations and the provision of emergency services, including the operation of emergency motor vehicles?

Yes, if the services are provided in carrying out a self-determination contract. (An emergency motor vehicle is

a vehicle, whether government, contractor, or employee-owned, used to transport passengers for medical services.)

§ 900.197 Does FTCA cover employees of the contractor who are paid by the contractor from funds other than those provided through the self-determination contract?

Yes, as long as the services out of which the claim arose were performed in carrying out the self-determination contract.

§ 900.198 Are Federal employees assigned to a self-determination contractor under the Intergovernmental Personnel Act or detailed under section 214 of the Public Health Service Act covered to the same extent that they would be if working directly for a Federal agency?

Yes.

§ 900.199 Does FTCA coverage extend to health care practitioners to whom staff privileges have been extended in contractor health care facilities operated under a self-determination contract on the condition that such practitioner provide health services to IHS beneficiaries covered by FTCA?

Yes, health care practitioners with staff privileges in a facility operated by a contractor are covered when they perform services to IHS beneficiaries. Such personnel are not covered when providing services to non-IHS beneficiaries.

§ 900.200 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes. Non-Indian individuals served under the contract whether or not on a fee-for-service basis, may assert claims under this subpart.

PROCEDURE FOR FILING MEDICAL-RELATED CLAIMS

§ 900.201 How should claims arising out of the performance of medical-related functions be filed?

Claims should be filed on Standard Form 95 (Claim for Damage, Injury or Death) or by submitting comparable written information (including a definite amount of monetary damage claimed) with the Office of the General Counsel, General Law Division, Claims Office, 330 Independence Avenue, SW, Room 4256, Wilbur J. Cohen Federal Building, Washington, DC 20201, or at such other address as shall have been provided to the contractor in writing.

[61 FR 32501, June 24, 1996, as amended at 72 FR 52791, Sept. 17, 2007]

§ 900.202 What should a self-determination contractor or a contractor's employee do on receiving such a claim?

They should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

§ 900.203 If the contractor or contractor's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the contractor do?

As part of the notification required by 28 U.S.C. 2679(c), the contractor should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Room 5362, Washington, DC 20201, and the contractor's tort claims liaison, and forward the following materials:

(a) Four copies of the claimant's medical records of treatment, inpatient and outpatient, and any related correspondence, as well as reports of consultants;

(b) A narrative summary of the care and treatment involved;

(c) The names and addresses of all personnel who were involved in the care and treatment of the claimant;

(d) Any comments or opinions that the employees who treated the claimant believe to be pertinent to the allegations contained in the claim; and

(e) Other materials identified in § 900.188(c).

NON-MEDICAL RELATED CLAIMS

§ 900.204 Is FTCA the exclusive remedy for a non-medical related tort claim arising out of the performance of a self-determination contract?

Yes. Except as explained in § 900.183(b), no claim may be filed against a self-determination contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type must be filed against the United States under FTCA.

§ 900.205 To what non-medical-related claims against self-determination contractors does FTCA apply?

It applies to:

(a) All tort claims arising from the performance of self-determination contracts under the authority of the Act on or after October 1, 1989; and

(b) Any tort claims first filed on or after October 24, 1989, regardless of when the incident which is the basis of the claim occurred.

§ 900.206 What employees are covered by FTCA for non-medical-related claims?

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and

(e) Federal employees assigned to the contract.

§ 900.207 How are non-medical related tort claims and lawsuits filed for IHS?

Non-medical-related tort claims and lawsuits arising out of the performance of self-determination contracts with the Indian Health Service should be filed in the manner described in § 900.201 (for both § 900.207 and § 900.208).

§ 900.208 How are non-medical related tort claims and lawsuits filed for DOI?

Non-medical-related claims arising out of the performance of self-determination contracts with the Secretary of the Interior should be filed in the manner described in § 900.201 with the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240.

§ 900.209 What should a self-determination contractor or contractor's employee do on receiving a non-medical related tort claim?

(a) If the contract is with DHHS, they should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

(b) If the contract is with DOI, they should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street N.W., Washington, DC 20240.

§ 900.210 If the contractor or contractor's employee receives a summons and/or complaint alleging a non-medical related tort covered by FTCA, what should an Indian tribe or tribal organization do?

(a) If the contract is with the DHHS, they should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue S.W., Room 5362, Washington, DC 20201 and the contractor's tort claims liaison.

(b) If the contract is with the Department of the Interior, they should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street N.W., Washington, DC 20240, and the contractor's tort claims liaison.

Subpart N—Post-Award Contract Disputes

§ 900.215 What does this subpart cover?

(a) This subpart covers:

(1) All HHS and DOI self-determination contracts, including construction contracts; and

(2) All disputes regarding an awarding official's decision relating to a self-determination contract.

(b) This subpart does not cover the decisions of an awarding official that are covered under subpart L.

§ 900.216 What other statutes and regulations apply to contract disputes?

(a) The Contract Disputes Act of 1978 (CDA), Public Law 95–563 (41 U.S.C. 601 as amended);

(b) If the matter is submitted to the Interior Board of Contract Appeals, 43 CFR 4.110–126; and

(c) The Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412 and regulations at 43 CFR 4.601 through 4.619 (DOI) and 45 CFR 13 (DHHS).

§ 900.217 Is filing a claim under the CDA our only option for resolving post-award contract disputes?

No. The Federal government attempts to resolve all contract disputes by agreement at the awarding official's level. These are alternatives to filing a claim under the CDA:

(a) Before issuing a decision on a claim, the awarding official should consider using informal discussions between the parties, assisted by individuals who have not substantially participated in the matter, to aid in resolving differences.

(b) In addition to filing a CDA claim, or instead of filing a CDA claim, the parties may choose to use an alternative dispute resolution mechanism, pursuant to the provisions of the Administrative Dispute Resolution Act, Public Law 101–552, as amended, 5 U.S.C. 581 et seq., or the options listed in section 108(1)(b)(12) of the Indian Self-Determination Act, as applicable.

§ 900.218 What is a claim under the CDA?

(a) A claim is a written demand by one of the contracting parties, asking for one or more of the following:

(1) Payment of a specific sum of money under the contract;

(2) Adjustment or interpretation of contract terms; or

(3) Any other claim relating to the contract.

(b) However, an undisputed voucher, invoice, or other routing request for payment is not a claim under the CDA. A voucher, invoice, or routing request for payment may be converted into a CDA claim if:

(1) It is disputed as to liability or amount; or

(2) It is not acted upon in a reasonable time and written notice of the claim is given to the awarding official by the senior official designated in the contract.

§ 900.219 How does an Indian tribe, tribal organization, or Federal agency submit a claim?

(a) An Indian tribe or tribal organization shall submit its claim in writing to the awarding official. The awarding official shall document the contract file with evidence of the date the claim was received.

(b) A Federal agency shall submit its claim in writing to the contractor's senior official, as designated in the contract.

§ 900.220 Does it make a difference whether the claim is large or small?

Yes. The Contract Disputes Act requires that an Indian tribe or tribal organization making a claim for more than $100,000 shall certify that:

(a) The claim is made in good faith,

(b) Supporting documents or data are accurate and complete to the best of the Indian tribe or tribal organization's knowledge and belief;

(c) The amount claimed accurately reflects the amount believed to be owed by the Federal government; and

(d) The person making the certification is authorized to do so on behalf of the Indian tribe or tribal organization.

§ 900.221 What happens next?

(a) If the parties do not agree on a settlement, the awarding official will issue a written decision on the claim.

(b) The awarding official shall always give a copy of the decision to the Indian tribe or tribal organization by certified mail, return receipt requested, or by any other method which provides a receipt.

§ 900.222 What goes into a decision?

A decision shall:

(a) Describe the claim or dispute;

(b) Refer to the relevant terms of the contract;

(c) Set out the factual areas of agreement and disagreement;

(d) Set out the actual decision, based on the facts, and outline the reasoning which supports the decision; and

(e) Contain the following language:

This is a final decision. You may appeal this decision to theCivilian Board of Contract Appeals (CBCA), U.S. Department of the Interior, 1800 M Street, NW., 6th Floor, Washington, DC 20036. If you decide to appeal, you shall, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the IBCA and provide a copy to the individual from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the IBCA, you may bring an action in the U.S. Court of Federal Claims or in the United States District Court within 12 months of the date you receive this notice.

[61 FR 32501, June 24, 1996, as amended at 71 FR 76601, Dec. 21, 2006]

§ 900.223 When does an Indian tribe or tribal organization get the decision?

(a) If the claim is for more than $100,000, the awarding official shall issue the decision within 60 days of the day he or she receives the claim. If the awarding official cannot issue a decision that quickly, he or she shall tell you when the decision will be issued.

(b) If the claim is for $100,000 or less, and you want a decision within 60 days, you shall advise the awarding official in writing that you want a decision within that period. If you advise the awarding official in writing that you do want a decision within 60 days, the awarding official shall issue the decision within 60 days of the day he or she receives your written notice.

(c) If your claim is for $100,000 or less and you do not advise the awarding official that you want a decision within 60 days, or if your claim exceeds $100,000 and the awarding official has notified you of the time within which a decision will be issued, the awarding official shall issue a decision within a reasonable time. What is ''reasonable'' depends upon the size and complexity of your claim, and upon the adequacy of the information you have given to the awarding official in support of your claim.

§ 900.224 What happens if the decision does not come within that time?

If the awarding official does not issue a decision within the time required under § 900.223, the Indian tribe or tribal organization may treat the delay as though the awarding official has denied the claim, and proceed according to § 900.222(e),

§ 900.225 Does an Indian tribe or tribal organization get paid immediately if the awarding official decides in its favor?

Yes. Once the awarding official decides that money should be paid under the contract, the amount due, minus any portion already paid, should be paid as promptly as possible, without waiting for either party to file an appeal. Any payment which is made under this subsection will not affect any other rights either party might have. In addition, it will not create a binding legal precedent as to any future payments.

§ 900.226 What rules govern appeals of cost disallowances?

In any appeal involving a disallowance of costs, the Board of Contract Appeals will give due consideration to the factual circumstances giving rise to the disallowed costs, and shall seek to determine a fair result without rigid adherence to strict accounting principles. The determination of allowability shall assure fair compensation for the work or service performed, using cost and accounting data as guides, but not rigid measures, for ascertaining fair compensation.

§ 900.227 Can the awarding official change the decision after it has been made?

(a) The decision of the awarding official is final and conclusive, and not subject to review by any forum, tribunal or government agency, unless an appeal or suit is timely commenced as authorized by the Contract Disputes Act. Once the decision has been made, the awarding official may not change it, except by agreement of the parties, or under the following limited circumstances:

(1) If evidence is discovered which could not have been discovered through due diligence before the awarding official issued the decision;

(2) If the awarding official learns that there has been fraud, misrepresentation, or other misconduct by a party;

(3) If the decision is beyond the scope of the awarding official's authority;

(4) If the claim has been satisfied, released or discharged; or

(5) For any other reason justifying relief from the decision.

(b) Nothing in this subpart shall be interpreted to discourage settlement discussions or prevent settlement of the dispute at any time.

(c) If a decision is withdrawn and a new decision is issued that is not acceptable to the contractor, the contractor may proceed with the appeal based on the new decision. If no new decision is issued, the contractor may proceed under § 900.224.

(d) If an appeal or suit is filed, the awarding official may modify or withdraw his or her final decision.

§ 900.228 Is an Indian tribe or tribal organization entitled to interest if it wins its claim?

Yes. If an Indian tribe or tribal organization wins the claim, it will be entitled to interest on the amount of the award. The interest will be calculated from the date the awarding official receives the claim until the day it is paid. The interest rate will be the rate which the Secretary of the Treasury sets for the Renegotiation Board under the Renegotiation Act of 1951, Public Law 92–41, 26 U.S.C. 1212 and 26 U.S.C. 7447.

§ 900.229 What role will the awarding official play during an appeal?

(a) The awarding official shall provide any data, documentation, information or support required by the CBCA for use in deciding a pending appeal.

(b) Within 30 days of receiving an appeal or learning that an appeal has been filed, the awarding official shall assemble a file which contains all the documents which are pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties which relates to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of the proceedings, and affidavits or statements of any witnesses on the matter in dispute, which were made before the filing of the notice of appeal with the CBCA; and

(5) Any additional information which may be relevant.

[61 FR 32501, June 24, 1996, as amended at 71 FR 76601, Dec. 21, 2006]

§ 900.230 What is the effect of a pending appeal?

(a) Indian tribes and tribal organizations shall continue performance of a contract during the appeal of any claims to the same extent they would had there been no dispute.

(b) A pending dispute will not affect or bar the negotiation or award of any subsequent contract or negotiation between the parties.

Subpart O—Conflicts of Interest

§ 900.231 What is an organizational conflict of interest?

An organizational conflict of interest arises when there is a direct conflict between the financial interests of the contracting Indian tribe or tribal organization and:

(a) The financial interests of beneficial owners of Indian trust resources;

(b) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act 43 U.S.C. 1601 *et seq.*; or

(c) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the contract was first negotiated. This section only applies where the financial interests of the Indian tribe or tribal organization are significant enough to impair the Indian tribe or tribal organization's objectivity in carrying out the contract, or a portion of the contract.

§ 900.232 What must an Indian tribe or tribal organization do if an organizational conflict of interest arises under a contract?

This section only applies if the conflict was not addressed when the contract was first negotiated. When an Indian tribe or tribal organization becomes aware of an organizational conflict of interest, the Indian tribe or tribal organization must immediately disclose the conflict to the Secretary.

§ 900.233 When must an Indian tribe or tribal organization regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe or tribal organization must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

§ 900.234 What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by an Indian tribe?

The Indian tribe or tribal organization would need a tribally-approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Indian tribe or tribal organization reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the tribe or an allottee. Interests arising from membership in, or employment by, an Indian tribe or rights to share in a tribal claim need not be regulated.

§ 900.235 What personal conflicts of interest must the standards of conduct regulate?

The standards must prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship. It must also prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Indian tribe) with an interest in the trust transactions under review. Such standards must also provide for sanctions or remedies for violation of the standards.

§ 900.236 May an Indian tribe elect to negotiate contract provisions on conflict of interest to take the place of this regulation?

Yes. An Indian tribe and the Secretary may agree to contract provisions, concerning either personal or organizational conflicts, that address the issues specific to the program and activities contracted in a manner that provides equivalent protection against conflicts of interest to these regulations. Agreed-upon contract provisions shall be followed, rather than the related provisions of this regulation. For example, the Indian tribe and the Secretary may agree that using the Indian tribe's own written code of ethics satisfies the objectives of the personal conflicts provisions of this regulation, in whole or in part.

Subpart P—Retrocession and Reassumption Procedures

§ 900.240 What does retrocession mean?

A retrocession means the return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

§ 900.241 Who may retrocede a contract, in whole or in part?

An Indian tribe or tribal organization authorized by an Indian tribe may retrocede a contract.

§ 900.242 What is the effective date of retrocession?

The retrocession is effective on the date which is the earliest date among:

(a) One year from the date of the Indian tribe or tribal organization's request;

(b) The date the contract expires; or

(c) A mutually agreed-upon date.

§ 900.243 What effect will an Indian tribe or tribal organization's retrocession have on its rights to contract?

An Indian tribe or tribal organization's retrocession shall not negatively affect:

(a) Any other contract to which it is a party;

(b) Any other contracts it may request; and

(c) Any future request by the Indian tribe or tribal organization to contract for the same program.

§ 900.244 Will an Indian tribe or tribal organization's retrocession adversely affect funding available for the retroceded program?

No. The Secretary shall provide not less than the same level of funding that would have been available if there had been no retrocession.

§ 900.245 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the retroceded program?

On the effective date of any retrocession, the Indian tribe or tribal organization shall, at the request of the Secretary, deliver to the Secretary all requested property and equipment provided under the contract which have a per item current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000 at the time of the retrocession.

§ 900.246 What does reassumption mean?

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization. There are two types of reassumption: emergency and non-emergency.

§ 900.247 Under what circumstances is a reassumption considered an emergency instead of non-emergency reassumption?

(a) A reassumption is considered an emergency reassumption if an Indian tribe or tribal organization fails to fulfill the requirements of the contract and this failure poses:

(1) An immediate threat of imminent harm to the safety of any person; or

(2) Imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands.

(b) A reassumption is considered a non-emergency reassumption if there has been:

(1) A violation of the rights or endangerment of the health, safety, or welfare of any person; or

(2) Gross negligence or mismanagement in the handling or use of:

(i) Contract funds;

(ii) Trust funds;

(iii) Trust lands; or

(iv) Interests in trust lands under the contract.

§ 900.248 In a non-emergency reassumption, what is the Secretary required to do?

The Secretary must:

(a) Notify the Indian tribes or tribal organizations served by the contract and the contractor in writing by certified mail of the details of the deficiencies in contract performance;

(b) Request specified corrective action to be taken within a reasonable period of time, which in no case may be less than 45 days; and

(c) Offer and provide, if requested, the necessary technical assistance and advice to assist the contractor to overcome the deficiencies in contract performance. The Secretary may also

make a grant for the purpose of obtaining such technical assistance as provided in section 103 of the Act.

§ 900.249 What happens if the contractor fails to take corrective action to remedy the contract deficiencies identified in the notice?

The Secretary shall provide a second written notice by certified mail to the Indian tribes or tribal organizations served by the contract and the contractor that the contract will be rescinded, in whole or in part.

§ 900.250 What shall the second written notice include?

The second written notice shall include:

(a) The intended effective date of the reassumption;

(b) The details and facts supporting the intended reassumption; and

(c) Instructions that explain the Indian tribe or tribal organization's right to a formal hearing within 30 days of receipt of the notice.

§ 900.251 What is the earliest date on which the contract will be rescinded in a non-emergency reassumption?

The contract will not be rescinded by the Secretary before the issuance of a final decision in any administrative hearing or appeal.

§ 900.252 In an emergency reassumption, what is the Secretary required to do?

(a) Immediately rescind, in whole or in part, the contract;

(b) Assume control or operation of all or part of the program; and

(c) Give written notice to the contractor and the Indian tribes or tribal organizations served.

§ 900.253 What shall the written notice include?

The written notice shall include the following:

(a) A detailed statement of the findings which support the Secretary's determination;

(b) A statement explaining the contractor's right to a hearing on the record under § 900.160 and § 900.161 within 10 days of the emergency reassumption or such later date as the contractor may approve;

(c) An explanation that the contractor may be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of the rescission; and

(d) A request for the return of property, if any.

§ 900.254 May the contractor be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of rescission?

Yes.

§ 900.255 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the rescinded contract?

On the effective date of any rescission, the Indian tribe or tribal organization shall, at the request of the Secretary, deliver to the Secretary all property and equipment provided under the contract which has a per item current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000 at the time of the retrocession.

§ 900.256 Will a reassumption adversely affect funding available for the reassumed program?

No. The Secretary shall provide at least the same level of funding that would have been provided if there had been no reassumption.

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PART 1000—ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL SELF-GOVERNMENT ACT AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ACT

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APPENDIX A TO PART 1000—MODEL COMPACT OF SELF-GOVERNANCE BETWEEN THE TRIBE AND THE DEPARTMENT OF THE INTERIOR

AUTHORITY: 25 U.S.C. 458aa–gg.

SOURCE: 65 FR 78703, Dec. 15, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 1000.1 Authority.

This part is prepared and issued by the Secretary of the Interior under the negotiated rulemaking procedures in 5 U.S.C. 565.

§ 1000.2 Definitions.

403(c) Program means a non-BIA program eligible under section 403(c) of the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. 450 *et seq.* and, specifically, a program, function, service, or activity that is of special geographic, historical or cultural significance to a self-governance Tribe/Consortium. These programs may be referred to, also, as ''nexus'' programs.

Act means the Tribal Self-Governance Act, Title IV of the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93–638, as added by Pub. L. 103–413, amended by Pub. L. 104–109, as amended.

Applicant pool means Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance in accordance with § 1000.16 of these regulations.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIA Program means any program, service, function, or activity, or portion thereof, that is performed or administered by the Department through the Bureau of Indian Affairs.

Bureau means a bureau or office of the Department of the Interior.

Compact means an executed document that affirms the government-to-government relationship between a self-governance Tribe and the United States. The compact differs from an annual funding agreement (AFA) in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

Consortium means an organization of Indian Tribes that is authorized by those Tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing annual funding agreements and compacts.

Construction management services (CMS) means activities limited to administrative support services, coordination, oversight of engineers and construction activities. CMS services include services that precede project design: all project design and actual construction activities are subject to Subpart K of these regulations whether performed by a Tribe subcontractor, or consultant.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period must carry over to the next business day unless otherwise prohibited by law.

Director means the Director of the Office of Self-Governance (OSG).

DOI or Department means the Department of the Interior.

Funding year means either fiscal or calendar year.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe or Tribe means any Indian Tribe, band, nation or other organized group or community, including pueblos, rancherias, colonies and any Alaska Native village, or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rates means the rate(s) arrived at through negotiation between an Indian Tribe/Consortium and the appropriate Federal agency.

Indirect costs means costs incurred for a common or joint purpose benefitting more than one program and that are not readily assignable to individual programs.

Nexus Program means a 403(c) Program as defined in this section.

Non-BIA Bureau means any bureau or office within the Department of the Interior other than the Bureau of Indian Affairs.

Non-BIA programs means those programs administered by bureaus or offices other than the Bureau of Indian Affairs within the Department of the Interior.

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary-Indian Affairs responsible for the implementation and development of the Tribal Self-Governance Program.

Program means any program, service, function, or activity, or portions of programs administered by a bureau within the Department of the Interior.

Pub. L. 93–638 means sections 1–9 and Title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Reassumption means that the Secretary reassumes control or operation of a program under § 1000.300 *et seq*.

Retained Tribal shares means those funds that were available as a Tribal share but under the AFA were left with BIA to administer.

Retrocession means the voluntary return by a Tribe/Consortium to a bureau of a program operated under an AFA before the agreement expires.

Secretary means the Secretary of the Interior (DOI) or his or her designee authorized to act on the behalf of the Secretary as to the matter at hand.

Self-governance Tribe/Consortium means a Tribe or Consortium that participates in permanent self-governance through application and selection from the applicant pool or has participated in the Tribal self-governance demonstration project. May also be referred to as ''participating Tribe/Consortium.''

Successor AFA means a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

Tribal share means the amount determined for that Tribe/Consortium for a particular program at BIA region, agency, and central office levels under sec. 403(g)(3) and 405(d) of the Act.

§ 1000.3 Purpose and scope.

(a) *General*. This part codifies uniform and consistent rules for the Department of the Interior (DOI) in implementing Title IV of the Indian Self-Determination and Education Assistance Act (ISDEA) Public Law 93–638, 25 U.S.C. 450 *et seq*., as amended by Title II of Pub. L. 103–413, the Tribal Self-Governance Act of 1994 (108 Stat. 4250, October 25, 1994).

(b) *Information Collection*. The information provided by the Tribes will be used by the Department for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, Tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to Tribes meeting basic eligibility (*i.e.* Tribal resolution indicating that the Tribe wants to plan for Self-Governance and has no material audit exceptions for the last three years of audits). There is no confidential information being solicited and confidentiality is not extended under the law. Other documentation is required to meet the reporting requirements as called for in section 405 of the Act. The information being provided by the Tribes is required to obtain a benefit, however, no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. Comments were solicited from the Tribes and the general public with respect to this collection. No adverse comments were received. The information collection has been cleared by OMB. The number is OMB control #1076–0143. The approval expires on April 30, 2003.

§ 1000.4 Policy statement.

(a) *Congressional findings*. In the Tribal Self-Governance Act of 1994, the Congress found that:

(1) The Tribal right of self-governance flows from the inherent sovereignty of Indian Tribes and nations;

(2) The United States recognizes a special government-to-government relationship with Indian Tribes, including the right of the Tribes to self-governance, as reflected in the Constitution, treaties, Federal statues, and the course of dealings of the United States with Indian Tribes;

(3) Although progress had been made, the Federal bureaucracy, with its centralized rules and regulations, had eroded Tribal self-governance and dominated Tribal affairs;

(4) The Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian Tribes and the United States and to strengthen Tribal control over Federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance demonstration project and finds that:

(i) Transferring control over funding and decision making to Tribal governments, upon Tribal request, for Federal programs is an effective way to implement the Federal policy of government-to-government relations with Indian Tribes; and

(ii) Transferring control over funding and decision making to Tribal governments, upon request, for Federal programs strengthens the Federal policy of Indian self-determination.

(b) *Congressional declaration of policy.* It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance:

(1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian Tribes;

(2) To permit each Tribe to choose the extent of its participation in self-governance;

(3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated Federal agencies;

(4) To ensure the continuation of the trust responsibility of the United States to Indian Tribes and Indian individuals;

(5) To permit an orderly transition from Federal domination of programs and services to provide Indian Tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual Tribal communities; and

(6) To provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.

(c) *Secretarial self-governance policies.* (1) It is the policy of the Secretary to fully support and implement the foregoing policies to the full extent of the Secretary's authority.

(2) It is the policy of the Secretary to recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.

(3) It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with Tribes and Tribal Consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.

(4) It is the policy of the Secretary to have all bureaus of the Department actively share information with Tribes and Tribal Consortia to encourage Tribes and Tribal Consortia to become knowledgeable about the Department's programs and the opportunities to include them in an annual funding agreement.

(5) It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable Federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.

(6) It is the policy of the Secretary to afford Tribes and Tribal Consortia the maximum flexibility and discretion necessary to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage Tribes and Tribal Consortia to participate in the planning, conduct, and administration of those Federal programs, included, or eligible for inclusion in an annual funding agreement.

(7) It is the policy of the Secretary, to the extent of the Secretary's authority, to maintain active communication with Tribal governments regarding

budgetary matters applicable to programs subject to the Act, and that are included in an individual self-governance annual funding agreement.

(8) It is the policy of the Secretary to implement policies, procedures, and practices at the Department to ensure that the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented.

(9) Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments and any subsequent Executive Orders regarding consultation will apply to the implementation of these regulations.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

PURPOSE AND DEFINITIONS

§ 1000.10 What is the purpose of this subpart?

This subpart describes the selection process and eligibility criteria that the Secretary uses to decide that Indian Tribes may participate in Tribal self-governance as authorized by section 402 of the Tribal Self-Governance Act of 1994.

§ 1000.11 What is the "applicant pool"?

The applicant pool is the pool of Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance.

§ 1000.12 What is a "signatory"?

A signatory is a Tribe or Consortium that meets the eligibility criteria in § 1000.16 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and annual funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.

§ 1000.13 What is a "nonsignatory Tribe"?

(a) A nonsignatory Tribe is a Tribe that either:

(1) Does not meet the eligibility criteria in § 1000.16 and, by resolution of its governing body, authorizes a Consortium to participate in self-governance on its behalf.

(2) Meets the eligibility criteria in § 1000.16 but chooses to be a member of a Consortium and have a representative of the Consortium sign the compact and AFA on its behalf.

(b) A non-signatory tribe under paragraph (a)(1) of this section:

(1) May not sign the compact and AFA. A representative of the Consortium must sign both documents on behalf of the Tribe.

(2) May only become a ''signatory Tribe'' if it independently meets the eligibility criteria in § 1000.16.

ELIGIBILITY

§ 1000.14 Who is eligible to participate in Tribal self-governance?

Two types of entities are eligible to participate in Tribal self-governance:

(a) Indian Tribes; and

(b) Consortia of Indian Tribes.

§ 1000.15 How many additional Tribes/Consortia may participate in self-governance per year?

(a) Sections 402(b) and (c) of the Act authorize the Director to select up to 50 additional Indian Tribes per year from an ''applicant pool''. A Consortium of Indian Tribes counts as one Tribe for purposes of calculating the 50 additional Tribes per year.

(b) Any signatory Tribe that signed a compact and AFA under the Tribal Self-Governance Demonstration project may negotiate its own compact and AFA in accordance with this subpart without being counted against the 50-Tribe limitation in any given year.

§ 1000.16 What criteria must a Tribe/Consortium satisfy to be eligible for admission to the "applicant pool"?

To be admitted into the applicant pool, a Tribe/Consortium must either be an Indian Tribe or a Consortium of Indian Tribes and comply with § 1000.17.

§ 1000.17 What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?

In addition to the application required by § 1000.23, the Tribe/Consortium must submit to OSG documentation that shows all of the following:

(a) *Successful completion of a planning phase and a planning report.* The requirements for both of these are described in § 1000.19 and § 1000.20. A Consortium's planning activities satisfy this requirement for all its member Tribes for the purpose of the Consortium meeting this requirement;

(b) *A request for participation in self-governance by a Tribal resolution and/or a final official action by the Tribal governing body.* For a Consortium, the governing body of each Tribe must authorize its participation by a Tribal resolution and/or a final official action by the Tribal governing body that specifies the scope of the Consortium's authority to act on behalf of the Tribe.

(c) *A demonstration of financial stability and financial management capability for the previous 3 fiscal years.* This will be done by providing, as part of the application, an audit report prepared in accordance with procedures promulgated under the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, *et seq.*, for the previous 3 years of the self-determination contracts. These audits must not contain material audit exceptions as defined in § 1000.21.

§ 1000.18 May a Consortium member Tribe withdraw from the Consortium and become a member of the applicant pool?

In accordance with the expressed terms of the compact or written agreement of the Consortium, a Consortium member Tribe (either a signatory or nonsignatory Tribe) may withdraw from the Consortium to directly negotiate a compact and AFA. The withdrawing Tribe must do the following.

(a) Independently meet all of the eligibility criteria in §§ 1000.14 through 1000.20. If a Consortium's planning activities and report specifically consider self-governance activities for a member Tribe, that planning activity and report may be used to satisfy the planning requirements for the member Tribe if it applies for self-governance status on its own.

(b) Submit a notice of withdrawal to OSG and the Consortium as evidenced by a resolution of the Tribal governing body.

§ 1000.19 What is done during the "planning phase"?

The Act requires that all Tribes/Consortia seeking to participate in Tribal self-governance complete a planning phase. During the planning phase, the Tribe/Consortium must conduct legal and budgetary research and internal Tribal government and organizational planning. The availability of BIA grant funds for planning activities will be in accordance with subpart C. The planning phase may be completed without a planning grant.

§ 1000.20 What is required in a planning report?

As evidence that the Tribe/Consortium has completed the planning phase, the Tribe/Consortium must prepare and submit to the Secretary a final planning report.

(a) The planning report must:

(1) Identify BIA and non-BIA programs that the Tribe/Consortium may wish to subsequently negotiate for inclusion in a compact and AFA;

(2) Describe the Tribe's/Consortium's planning activities for both BIA and non-BIA programs that may be negotiated;

(3) Identify the major benefits derived from the planning activities;

(4) Identify the process that the Tribe/Consortium will use to resolve any complaints by service recipients;

(5) Identify any organizational planning that the Tribe/Consortium has completed in anticipation of implementing Tribal self-governance; and

(6) Indicate if the Tribe's/Consortium's planning efforts have revealed that its current organization is adequate to assume programs under Tribal self-governance.

(b) In supplying the information required by paragraph (a)(5) of this section:

(1) For BIA programs, a Tribe/Consortium should describe the process that it will use to debate and decide the setting of priorities for the funds it will receive from its AFA.

(2) For non-BIA programs that the Tribe/Consortium may wish to negotiate, the report should describe how the Tribe/Consortium proposes to perform the programs.

§ 1000.21 When does a Tribe/Consortium have a "material audit exception"?

A Tribe/Consortium has a material audit exception if any of the audits that it submitted under § 1000.17(c) identifies:

(a) A material weakness, that is a condition in which the design or operation of one or more of the internal control components does reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions;

(b) a single finding of known questioned costs subsequently disallowed by a contracting officer or awarding official that exceeds $10,000. If the audits submitted under § 1000.17(c) identify any of the conditions described in this section, the Tribe/Consortium must also submit copies of the contracting officer's findings and determinations.

§ 1000.22 What are the consequences of having a material audit exception?

If a Tribe/Consortium has a material audit exception, the Tribe/Consortium is ineligible to participate in self-governance until the Tribe/Consortium meets the eligibility criteria in § 1000.16.

ADMISSION INTO THE APPLICANT POOL

§ 1000.23 How is a Tribe/Consortium admitted to the applicant pool?

To be considered for admission in the applicant pool, a Tribe/Consortium must submit an application to the Director, Office of Self-Governance, 1849 C Street NW; MS 2542–MIB; Department of the Interior; Washington, DC 20240. The application must contain the documentation required in § 1000.17.

§ 1000.24 When does OSG accept applications to become a member of the applicant pool?

OSG accepts applications to become a member of the applicant pool at any time.

§ 1000.25 What are the deadlines for a Tribe/Consortium in the applicant pool to negotiate a compact and annual funding agreement (AFA)?

(a) To be considered for negotiations in any year, a Tribe/Consortium must be a member of the applicant pool on March 1 of the year in which the negotiations are to take place.

(b) An applicant may be admitted into the applicant pool during one year and selected to negotiate a compact and AFA in a subsequent year. In this case, the applicant must, before March 1 of the negotiation year, submit to OSG updated documentation that permits OSG to evaluate whether the Tribe/Consortium still satisfies the application criteria in 1000.17.

§ 1000.26 Under what circumstances will a Tribe/Consortium be removed from the applicant pool?

Once admitted into the applicant pool, a Tribe/Consortium will only be removed if it:

(a) Fails to satisfy the audit criteria in § 1000.17(c); or

(b) Submits to OSG a Tribal resolution and/or official action by the Tribal governing body requesting removal.

§ 1000.27 How does the Director select which Tribes in the applicant pool become self-governance Tribes?

The Director selects up to the first 50 Tribes from the applicant pool in any given year ranked according to the earliest postmark date of complete applications. If multiple complete applications have the same postmark date and there are insufficient slots available for that year, the Director will determine priority through random selection. A representative of each Tribe/Consortium that has submitted an application subject to random selection may, at the option of the Tribe/Consortium, be present when the selection is made.

§ 1000.28 What happens if an application is not complete?

(a) If OSG determines that a Tribe's/Consortium's application is deficient, OSG will immediately notify the Tribe/Consortium of the deficiency by letter, certified mail, return receipt requested. The letter will explain what

the Tribe/Consortium must do to correct the deficiency.

(b) The Tribe/Consortium will have 20 working days from the date of receiving the letter to mail or telefax the corrected material and retain the applicant's original postmark.

(c) If the corrected material is deficient, the date of entry into the applicant pool will be the date the complete application is postmarked.

(d) If the postmark or date on the applicant's response letter or telefax is more than 20 working days after the date the applicant received the notice-of-deficiency letter, the date of entry into the applicant pool will be the date of full receipt of a completed application.

§ 1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?

(a) The Tribe/Consortium remains eligible to negotiate a compact and annual funding agreement at any time unless:

(1) It notifies the Director in writing that it no longer wishes to be eligible to participate in the Tribal Self-Governance Program;

(2) Fails to satisfy the audit requirements of § 1000.17(c); or

(3) Submits documentation evidencing a Tribal resolution requesting removal from the application pool.

(b) The failure of the Tribe/Consortium to execute an agreement has no effect on the selection of up to 50 additional Tribes/Consortia in a subsequent year.

§ 1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?

Yes, a Tribe/Consortium may be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1).

§ 1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?

No, section 403(c) of the Act states that any programs of special geographic, cultural, or historical significance to the Tribe/Consortium must be included in AFAs negotiated under section 403(a) and/or section 403(b). A Tribe may be selected to negotiate an AFA under section 403(c) at the same time that it negotiates an AFA under section 403(b)(1) and/or section 403(b)(2).

WITHDRAWAL FROM A CONSORTIUM ANNUAL FUNDING AGREEMENT

§ 1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?

(a) A Tribe wishing to withdraw from a Consortium's AFA must notify the Consortium, bureau, and OSG of the intent to withdraw. The notice must be:

(1) In the form of a Tribal resolution or other official action by the Tribal governing body; and

(2) Received no later than 180 days before the effective date of the next AFA.

(b) The resolution referred to in paragraph (a)(1) of this section must indicate whether the Tribe wishes the withdrawn programs to be administered under a Title IV AFA, Title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date on which the current agreement expires, unless the Consortium, the Tribe, OSG, and the appropriate bureau agree otherwise.

§ 1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?

When a Tribe withdraws from a Consortium, the Consortium's AFA must be reduced by the portion of funds attributable to the withdrawing Tribe. The Consortium must reduce the AFA on the same basis or methodology upon which the funds were included in the Consortium's AFA.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the

Consortium, Tribe, OSG, and the bureau must negotiate an appropriate amount on a case-by-case basis.

(b) If a Tribe withdraws in the middle of a funding year, the Consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the Tribe, or already spent or obligated by the Consortium on behalf of the Tribe; and

(2) That the Consortium is no longer providing those programs associated with the withdrawn funds.

(c) Carryover funds from a previous fiscal year may be factored into the amount by which the Consortium agreement is reduced if:

(1) The Consortium, Tribe, OSG, and bureau agree it is appropriate; and

(2) The funds are clearly identifiable.

§ 1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?

(a) At least 15 days before the 90-day Congressional review period of the next AFA, the Consortium, OSG, bureau, and the withdrawing Tribe must reach an agreement on the amount of funding and other issues associated with the program or programs involved.

(b) If agreement is not reached:

(1) For BIA and OIEP programs, at least 5 days before the 90-day Congressional review, the Director must make a decision on the funding or other issues involved.

(2) For non-BIA programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table.

If the program is . . .	then a copy of the decision must be sent to . . .
(1) A BIA program ..	BIA regional director, the Deputy Commissioner of Indian Affairs, the withdrawing Tribe, and the Consortium.
(2) An OIEP program.	the OIEP line officer, the Director of OIEP, the withdrawing Tribe, and the Consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

§ 1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.32 of this part, a Tribe may withdraw from a Consortium and request that the Secretary award the Tribe its portion of a construction project's funds. The Secretary may decide not to award these funds if the Secretary determines that the award of the withdrawing Tribe's portion of funds would affect the ability of the remaining members of the Consortium to complete a severable or non-severable phase of the project within available funding.

(a) An example of a non-severable phase of a project would be the construction of a single building to serve all members of a Consortium.

(b) An example of a severable phase of a project would be the funding of a road in one village where the Consortium would be able to complete the roads in other villages that were part of the project approved initially in the AFA.

(c) The Secretary's decision under this section may be appealed under § 1000.428 of these regulations.

Subpart C—Section 402(d) Planning and Negotiation Grants

PURPOSE AND TYPES OF GRANTS

§ 1000.40 What is the purpose of this subpart?

This subpart describes the availability and process of applying for planning and negotiation grants authorized by section 402(d) of the Act to help Tribes meet costs incurred in:

(a) Meeting the planning phase requirement of the Act, including planning to negotiate for non-BIA programs; and

(b) Conducting negotiations.

§ 1000.41 What types of grants are available?

Three categories of grants may be available:

(a) Negotiation grants may be awarded to the Tribes/Consortia that have

been selected from the applicant pool as described in subpart B of this part;

(b) Planning grants may be available to Tribes/Consortia requiring advance funding to meet the planning phase requirement of the Act; and

(c) Financial assistance may be available to Tribes/Consortia to plan for negotiating for non-BIA programs, as described in subpart D and §§ 1000.42–1000.45 of this subpart.

AVAILABILITY, AMOUNT, AND NUMBER OF GRANTS

§ 1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?

No, grants to cover some or all of the planning costs that a Tribe/Consortium may incur, depend upon the availability of funds appropriated by Congress. Notice of availability of grants will be published in the FEDERAL REGISTER as described in § 1000.45.

§ 1000.43 May a Tribe/Consortium use its own resources to meet its self-governance planning and negotiation expenses?

Yes, a Tribe/Consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and an AFA.

§ 1000.44 What happens if there are insufficient funds to meet the Tribal requests for planning/negotiation grants in any given year?

If appropriated funds are available but insufficient to meet the total requests from Tribes/Consortia:

(a) First priority will be given to Tribes/Consortia that have been selected from the applicant pool to negotiate an AFA; and

(b) Second priority will be given to Tribes/Consortia that require advance funds to meet the planning requirement for entry into the self-governance program.

§ 1000.45 How many grants will the Department make each year and what funding will be available?

The number and size of grants awarded each year will depend on Congressional appropriations and Tribal interest. By no later than January 1 of each year, the Director will publish a notice in the FEDERAL REGISTER that provides relevant details about the application process, including the funds available, timeframes, and requirements for negotiation grants, advance planning grants, and financial assistance as described in subpart D of this part.

SELECTION CRITERIA

§ 1000.46 Which Tribes/Consortia may be selected to receive a negotiation grant?

Any Tribe/Consortium that has been accepted into the applicant pool and has been accepted to negotiate a self-governance AFA may apply for a negotiation grant. By March 15 of each year, the Director will publish a list of additional Tribes/Consortia that have been selected for negotiation along with information on how to apply for negotiation grants.

§ 1000.47 What must a Tribe/Consortium do to receive a negotiation grant?

If funds are available, a grant will be awarded to help cover the costs of preparing for and negotiating a compact and an AFA. These grants are not competitive. To receive a negotiation grant, a Tribe/Consortium must:

(a) Be selected from the applicant pool to negotiate an AFA;

(b) Be qualified as eligible to receive a negotiation grant in the FEDERAL REGISTER notice discussed in § 1000.45;

(c) Not have received a negotiation grant within the 3 years preceding the date of the latest FEDERAL REGISTER announcement;

(d) Submit a letter affirming its readiness to negotiate; and

(e) Formally request a negotiation grant to prepare for and negotiate an AFA.

§ 1000.48 What must a Tribe do if it does not wish to receive a negotiation grant?

A selected Tribe/Consortium may elect to negotiate without applying for a negotiation grant. In such a case, the Tribe/Consortium should notify OSG in writing so that funds can be reallocated for other grants.

ADVANCE PLANNING GRANT FUNDING

§ 1000.49 Who can apply for an advance planning grant?

Any Tribe/Consortium that is not a self-governance Tribe and needs advance funding to complete the planning phase requirement may apply. Tribes/Consortia that have received a planning grant within 3 years preceding the date of the latest FEDERAL REGISTER announcement are not eligible.

§ 1000.50 What must a Tribe/Consortium seeking a planning grant submit in order to meet the planning phase requirements?

A Tribe/Consortium must submit the following material:

(a) A Tribal resolution or other final action of the Tribal governing body indicating a desire to plan for Tribal self-governance.

(b) Audits from the last 3 years that document that the Tribe/Consortium is free from material audit exceptions. In order to meet this requirement, a Tribe/Consortium may use the audit currently being conducted on its operations if this audit is submitted before the Tribe/Consortium completes the planning activity.

(c) A proposal that includes:

(1) The Tribe's/Consortium's plans for conducting legal and budgetary research;

(2) The Tribe's/Consortium's plans for conducting internal Tribal government and organizational planning;

(3) A timeline indicating when planning will start and end, and;

(4) Evidence that the Tribe/Consortium can perform the tasks associated with its proposal (i.e., resumes and position descriptions of key staff or consultants to be used).

§ 1000.51 How will Tribes/Consortia know when and how to apply for planning grants?

The number and size of grants awarded each year will depend on Congressional appropriations. By no later than January 1 of each year, the Director will publish in the FEDERAL REGISTER a notice concerning the availability of planning grants for additional Tribes. This notice must identify the specific details for applying.

§ 1000.52 What criteria will the Director use to award advance planning grants?

Advance planning grants are discretionary and based on need. The Director will use the following criteria to determine whether or not to award a planning grant to a Tribe/Consortium before the Tribe/Consortium is selected into the applicant pool.

(a) Completeness of application as described in § 1000.50.

(b) Financial need. The Director will rank applications according to the percent of Tribal resources that comprise total resources covered by the latest A–133 audit. Priority will be given to applications that have a lower level of Tribal resources as a percent of total resources.

(c) Other factors that the Tribe may identify as documenting its previous efforts to participate in self-governance and demonstrating its readiness to enter into a self-governance agreement.

§ 1000.53 Can Tribes/Consortia that receive advance planning grants also apply for a negotiation grant?

Yes, Tribes/Consortia that successfully complete the planning activity and are selected may apply to be included in the applicant pool. Once approved for inclusion in the applicant pool, the Tribe/Consortium may apply for a negotiation grant according to the process in §§ 1000.46–1000.48.

§ 1000.54 How will a Tribe/Consortium know whether or not it has been selected to receive an advance planning grant?

No later than June 1, the Director will notify the Tribe/Consortium by letter whether it has been selected to receive an advance planning grant.

§ 1000.55 Can a Tribe/Consortium appeal within DOI the Director's decision not to award a grant under this subpart?

No, the Director's decision to award or not to award a grant under this subpart is final for the Department.

Subpart D—Other Financial Assistance for Planning and Negotiation Grants for Non-BIA Programs

PURPOSE AND ELIGIBILITY

§ 1000.60 What is the purpose of this subpart?

This subpart describes the availability and process of applying for other financial assistance that may be available for planning and negotiating for a non-BIA program.

§ 1000.61 Are other funds available to self-governance Tribes/Consortia for planning and negotiating with non-BIA bureaus?

Yes, Tribes/Consortia may contact OSG to determine if OSG has funds available for the purpose of planning and negotiating with non-BIA bureaus under this subpart. A Tribe/Consortium may also ask a non-BIA bureau for information on any funds that may be available from that bureau.

ELIGIBILITY AND APPLICATION PROCESS

§ 1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?

Any Tribe/Consortium that is in the applicant pool, or has been selected from the applicant pool or that has an existing AFA.

§ 1000.63 Under what circumstances may planning and negotiation grants be awarded to Tribes/Consortia?

At the discretion of the Director, grants may be awarded when requested by the Tribe. Tribes/Consortia may submit only one application per year for a grant under this section.

§ 1000.64 How does the Tribe/Consortium know when and how to apply to OSG for a planning and negotiation grant?

When funds are available, the Director will publish a notice in the FEDERAL REGISTER announcing their availability and a deadline for submitting an application.

§ 1000.65 What kinds of activities do planning and negotiation grants support?

The planning and negotiation grants support activities such as, but not limited to, the following:

(a) Information gathering and analysis;

(b) Planning activities, that may include notification and consultation with the appropriate non-BIA bureau and identification and/or analysis of activities, resources, and capabilities that may be needed for the Tribe/Consortium to assume non-BIA programs; and

(c) Negotiation activities.

§ 1000.66 What must be included in the application?

The application for a planning and negotiation grant must include:

(a) Written notification by the governing body or its authorized representative of the Tribe's/Consortium's intent to engage in planning/negotiation activities like those described in § 1000.65;

(b) Written description of the planning and/or negotiation activities that the Tribe/Consortium intends to undertake, including, if appropriate, documentation of the relationship between the proposed activities and the Tribe/Consortium;

(c) The proposed timeline for completion of the planning and/or negotiation activities to be undertaken; and

(d) The amount requested from OSG.

§ 1000.67 How will the Director award planning and negotiation grants?

The Director must review all grant applications received by the date specified in the announcement to determine whether or not the applications include the required elements outlined in the announcement. OSG must rank the complete applications submitted by the deadline using the criteria in § 1000.70.

§ 1000.68 May non-BIA bureaus provide technical assistance to a Tribe/Consortium in drafting its planning grant application?

Yes, upon request from the Tribe/Consortium, a non-BIA bureau may provide technical assistance to the

Tribe/Consortium in the drafting of its planning grant application.

§ 1000.69 How can a Tribe/Consortium obtain comments or selection documents received or utilized after OSG has made a decision on a planning grant application?

A Tribe/Consortium may request comments or selection documents under the Freedom of Information Act.

§ 1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?

The Director will use the following criteria and point system to rank the applications:

(a) The application contains a clear statement of objectives and timelines to complete the proposed planning or negotiation activity and demonstrates that the objectives are legally authorized and achievable. (20 points)

(b) The proposed budget expenses are reasonable. (10 points)

(c) The proposed project demonstrates a new or unique approach to Tribal self-governance or broadens self-governance to include new activities within the Department. (5 points)

§ 1000.71 Can an applicant appeal a decision not to award a grant?

No, all decisions made by the Director to award or not to award a grant under this subpart are final for the Department.

§ 1000.72 Will OSG notify Tribes/Consortia and affected non-BIA bureaus of the results of the selection process?

Yes, OSG will notify all applicant Tribes/Consortia and affected non-BIA bureaus in writing as soon as possible after completing the selection process.

§ 1000.73 Once a Tribe/Consortium has been awarded a grant, may the Tribe/Consortium obtain information from a non-BIA bureau?

Yes, see § 1000.169.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

§ 1000.80 What is the purpose of this subpart?

This subpart describes the components of annual funding agreements for BIA programs.

§ 1000.81 What is an annual funding agreement (AFA)?

Annual funding agreements are legally binding and mutually enforceable written agreements negotiated and entered into annually between a self-governance Tribe/Consortium and BIA.

Contents and Scope of Annual Funding Agreements

§ 1000.82 What types of provisions must be included in a BIA AFA?

Each AFA must specify the programs and it must also specify the applicable funding:

(a) Retained by BIA for ''inherently Federal functions'' identified as ''residuals'' (See § 1000.94);

(b) Transferred or to be transferred to the Tribe/Consortium (See § 1000.91); and

(c) Retained by BIA to carry out functions that the Tribe/Consortium could have assumed but elected to leave with BIA. (See § 1000.101).

§ 1000.83 Can additional provisions be included in an AFA?

Yes, any provision that the parties mutually agreed upon may be included in an AFA.

§ 1000.84 Does a Tribe/Consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?

Yes, under Pub. L. 104–109, a Tribe/Consortium has the right to include any provision of Title I of Pub. L. 93–638 in an AFA.

§ 1000.85 Can a Tribe/Consortium negotiate an AFA with a term that exceeds one year?

Yes, at the option of the Tribe/Consortium, and subject to the availability of Congressional appropriations, a Tribe/Consortium may negotiate an

AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93–638.

DETERMINING WHAT PROGRAMS MAY BE INCLUDED IN AN AFA

§ 1000.86 What types of programs may be included in an AFA?

A Tribe/Consortium may include in its AFA programs administered by BIA, without regard to the BIA agency or office that administers the program, including any program identified in section 403(b)(1) of the Act.

§ 1000.87 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary?

(a) The AFA must specify in writing the services, functions, and responsibilities to be assumed by the Tribe/Consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the Tribe/Consortium and BIA should be clearly stated in writing as part of the AFA. Similarly, when there is a relationship between the program and BIA's residual responsibility, the relationship should be in writing.

§ 1000.88 Do Tribes/Consortia need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under an AFA?

No, the Secretary does not have to approve a redesign of a program under the AFA, except when the redesign involves a waiver of a regulation.

(a) The Secretary must approve any waiver, in accordance with subpart J of this part, before redesign takes place.

(b) This section does not authorize redesign of programs where other prohibitions exist.

(c) Redesign shall not result in the Tribe/Consortium being entitled to receive more or less funding for the program from BIA.

(d) Redesign of construction project(s) included in an AFA must be done in accordance with subpart K of this part.

§ 1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect?

Yes, terms and conditions in an AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.90 What happens if an AFA expires before the effective date of the successor AFA?

If the effective date of the successor AFA is not on or before the expiration of the current AFA, subject to terms mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent adequate resources are available. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671–2680 (1994), and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities or portions thereof (PFSAs) for the full period it was or will be performed.

DETERMINING AFA AMOUNTS

§ 1000.91 What funds must be transferred to a Tribe/Consortium under an AFA?

(a) At the option of the Tribe/Consortium, the Secretary must provide the following program funds to the Tribe/Consortium through an AFA:

(1) An amount equal to the amount that the Tribe/Consortium would have been eligible to receive under contracts and grants for direct programs and

contract support under Title I of Pub. L. 93–638, as amended;

(2) Any funds that are specifically or functionally related to providing services and benefits to the Tribe/Consortium or its members by the Secretary without regard to the organizational level within BIA where such functions are carried out; and

(3) Any funds otherwise available to Indian Tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(b) Examples of the funds referred to in paragraphs (a)(1) and (a)(2) of this section are:

(1) A Tribe's/Consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated amounts of agency, regional and central office funds, including previously undistributed funds or new programs on the same basis as they are made available to other Tribes;

(3) Other recurring funding;

(4) Non-recurring funding;

(5) Special projects, if applicable;

(6) Construction;

(7) Wildland firefighting accounts;

(8) Competitive grants; and

(9) Congressional earmarked funding.

(c) An example of the funds referred to in paragraph (a)(3) of this section is Federal Highway Administration funds.

§ 1000.92 What funds may not be included in an AFA?

Funds associated with programs prohibited from inclusion under section 403(b)(4) of the Act may not be included in an AFA.

§ 1000.93 May the Secretary place any requirements on programs and funds that are otherwise available to Tribes/Consortia or Indians for which appropriations are made to agencies other than DOI?

No, unless the Secretary is required to develop terms and conditions that are required by law or that are required by the agency to which the appropriation is made.

§ 1000.94 What are BIA residual funds?

BIA residual funds are the funds necessary to carry out BIA residual functions. BIA residual functions are those functions that only BIA employees could perform if all Tribes were to assume responsibilities for all BIA programs that the Act permits.

§ 1000.95 How is BIA's residual determined?

(a) Generally, residual information will be determined through a process that is consistent with the overall process used by the BIA. Residual information will consist of residual functions performed by the BIA, brief justification why the function is not compactible, and the estimated funding level for each residual function. Each regional office and the central office will compile a single document for distribution each year that contains all the residual information of that respective office. The development of the residual information will be based on the following principles. The BIA will:

(1) Develop uniform residual information to be used to negotiate residuals;

(2) Ensure functional consistency throughout BIA in the determination of residuals;

(3) Make the determination of residuals based upon the functions actually being performed by BIA at the respective office;

(4) Annually consult with Tribes on a region-by-region basis as requested by Tribes/Consortia; and

(5) Notify Tribal leaders each year by March 1 of the availability of residual information.

(b) BIA shall use the residual information determined under subparagraph (a) as the basis for negotiating with individual Tribes.

(c) In accordance with the appeals procedures in subpart R of this part, if BIA and a participating Tribe/Consortium disagree over the content of residual functions or amounts, Tribe/Consortium can appeal as shown in the following table.

If a Tribe/Consortium . . .	the Tribe/Consortium may . . .	and . . .
(1) Disagrees with BIA's determination	appeal to the Deputy Commissioner	the Deputy Commissioner must make a written determination within 30 days of receiving the request.

If a Tribe/Consortium . . .	the Tribe/Consortium may . . .	and . . .
(2) Disagrees with the Deputy Commissioner's determination.	appeal to the Assistant Secretary—Indian Affairs.	the Assistant Secretary's determination is final for the Department.

(d) Information on residual functions may be amended if programs are added or deleted, if statutory or final judicial determinations mandate or if the Deputy Commissioner makes a determination that would alter the residual information or funding amounts. The decision may be appealed to the Assistant Secretary in accordance with subpart R of this part. The Assistant Secretary shall make a written determination within 30 days.

§ 1000.96 May a Tribe/Consortium continue to negotiate an AFA pending an appeal of residual functions or amounts?

Yes, pending appeal of a residual function or amount, any Tribe/Consortium may continue to negotiate an AFA using the residual information that is being appealed. The residual information will be subject to later adjustment based on the final determination of a Tribe's/Consortium's appeal.

§ 1000.97 What is a Tribal share?

A Tribal share is the amount determined for a particular Tribe/Consortium for a particular program at BIA regional, agency and central office levels under section 403(g)(3) and 405(d) of the Act.

§ 1000.98 How does BIA determine a Tribe's/Consortium's share of funds to be included in an AFA?

There are typically two methods for determining the amount of funds to be included in the AFA:

(a) *Formula-driven.* For formula-driven programs, a Tribe's/Consortium's amount is determined by first identifying the residual funds to be retained by BIA and second, by applying the distribution formula to the remaining eligible funding for each program involved.

(1) Distribution formulas must be reasonably related to the function or service performed by an office, and must be consistently applied to all Tribes within each regional and agency office.

(2) The process in paragraph (a) of this section for calculating a Tribe's funding under self-governance must be consistent with the process used for calculating funds available to non-self-governance Tribes.

(b) *Tribal-specific.* For programs whose funds are not distributed on a formula basis as described in paragraph (a) of this section, a Tribe's funding amount will be determined on a Tribe-by-Tribe basis and may differ between Tribes. Examples of these funds may include special project funding, awarded competitive grants, earmarked funding, and construction or other one-time or non-recurring funding for which a Tribe is eligible.

§ 1000.99 Can a Tribe/Consortium negotiate a Tribal share for programs outside its region/agency?

Yes, where BIA services for a particular Tribe/Consortium are provided from a location outside its immediate agency or region, the Tribe may negotiate its share from BIA location where the service is actually provided.

§ 1000.100 May a Tribe/Consortium obtain discretionary or competitive funding that is distributed on a discretionary or competitive basis?

Funds provided for Indian services/programs that have not been mandated by Congress to be distributed on a competitive/discretionary basis may be distributed to a Tribe/Consortium under a formula-driven method. In order to receive such funds, a Tribe/Consortium must be eligible and qualified to receive such funds. A Tribe/Consortium that receives such funds under a formula-driven methodology would no longer be eligible to compete for these funds.

§ 1000.101 Are all funds identified as Tribal shares always paid to the Tribe/Consortium under an AFA?

No, at the discretion of the Tribe/Consortium, Tribal shares may be left,

in whole or in part, with BIA for certain programs. This is referred to as a ''retained Tribal share''.

§ 1000.102 How are savings that result from downsizing allocated?

Funds that are saved as a result of downsizing in BIA are allocated to Tribes/Consortia in the same manner as Tribal shares as provided for in § 1000.98.

§ 1000.103 Do Tribes/Consortia need Secretarial approval to reallocate funds between programs that the Tribe/Consortium administers under the AFA?

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds between programs that a Tribe/Consortium administers under an AFA.

§ 1000.104 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

Yes, funding amounts negotiated in an AFA may be adjusted under the following circumstances:

(a) *Congressional action*. (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortia, and Tribes/Consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes*. If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate the amounts and make every effort to correct such errors.

(c) *Mutual Agreement*. Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

ESTABLISHING SELF-GOVERNANCE BASE BUDGETS

§ 1000.105 What are self-governance base budgets?

(a) A Tribe/Consortium self-governance base budget is the amount of recurring funding identified in the President's annual budget request to Congress. This amount must be adjusted to reflect subsequent Congressional action. It includes amounts that are eligible to be base transferred or have been base transferred from BIA budget accounts to self-governance budget accounts. As allowed by Congress, self-governance base budgets are derived from:

(1) A Tribe's/Consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated agency, regional, and central office amounts;

(3) Other recurring funding;

(4) Special projects, if applicable;

(5) Programmatic shortfall;

(6) Tribal priority allocation increases and decreases;

(7) Pay costs and retirement cost adjustments; and

(8) Any other inflationary cost adjustments.

(b) Self-governance base budgets must not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds specifically excluded by Congress. These funds are negotiated annually and may be included in the AFA but must not be included in the self-governance base budget.

(c) Self-governance base budgets may not include other recurring type programs that are currently in Tribal priority allocations (TPA) such as general assistance, housing improvement program (HIP), road maintenance and contract support. Should these later four programs ever become base transferred to Tribes, then they may be included in a self-governance Tribe's base budget.

§ 1000.106 Once a Tribe/Consortium establishes a base budget, are funding amounts renegotiated each year?

No, unless otherwise requested by the Tribe/Consortium, these amounts are not renegotiated each year. If a Tribe/

Consortium renegotiates funding levels:

(a) It must negotiate all funding levels in the AFA using the process for determining residuals and funding amounts on the same basis as other Tribes; and

(b) It is eligible for funding amounts of new programs or available programs not previously included in the AFA on the same basis as other Tribes.

§ 1000.107 Must a Tribe/Consortium with a base budget or base budget-eligible program amounts negotiated before January 16, 2001 negotiate new Tribal shares and residual amounts?

No, if a Tribe/Consortium negotiated amounts before January 16, 2001, it does not need to renegotiate new Tribal shares and residual amounts.

(a) At Tribal option, a Tribe/Consortium may retain funding amounts that:

(1) Were either base eligible or in the Tribe's base; and

(2) Were negotiated before this part is promulgated.

(b) If a Tribe/Consortium desires to renegotiate the amounts referred to in paragraph (a) of this section, the Tribe/Consortium must:

(1) Negotiate all funding included in the AFA; and

(2) Use the process for determining residuals and funding amounts on the same basis as other Tribes.

(c) Self-governance Tribes/Consortia are eligible for funding amounts for new or available programs not previously included in the AFA on the same basis as other Tribes/Consortia.

§ 1000.108 How are self-governance base budgets established?

At the request of the Tribe/Consortium, a self-governance base budget identifying each Tribe's funding amount is included in BIA's budget justification for the following year, subject to Congressional appropriation.

§ 1000.109 How are self-governance base budgets adjusted?

Self-governance base budgets must be adjusted as follows:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to BIA, self-governance Tribes/Consortia, and Tribes/Consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution among regions and Tribes.

(4) A Tribe/Consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the Tribe/Consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate such amounts and make every effort to correct the errors.

(c) *Mutual agreement.* Both the Tribe/Consortium and the Secretary may agree to renegotiate amounts at any time.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

PURPOSE

§ 1000.120 What is the purpose of this subpart?

This subpart describes program eligibility, funding, terms, and conditions of AFAs for non-BIA programs.

§ 1000.121 What is an annual funding agreement for a non-BIA program?

Annual funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a Tribe/Consortium participating in the self-governance program that contain:

(a) A description of that portion or portions of a bureau program that are to be performed by the Tribe/Consortium; and

(b) Associated funding, terms and conditions under which the Tribe/Consortium will assume a program, or portion of a program.

ELIGIBILITY

§ 1000.122 What non-BIA programs are eligible for inclusion in an annual funding agreement?

Programs authorized by sections 403(b)(2) and 403(c) of the Act are eligible for inclusion in AFAs. The Secretary will publish annually a list of these programs in accordance with section 405(c)(4).

§ 1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate?

Yes, those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

§ 1000.124 What programs are included under Section 403(b)(2) of the Act?

Those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

§ 1000.125 What programs are included under Section 403(c)?

Department of the Interior programs of special geographic, historical, or cultural significance to participating Tribes, individually or as members of a Consortium, are eligible for inclusion in AFAs under section 403(c).

§ 1000.126 What does "special geographic, historical or cultural" mean?

(a) *Geographic* generally refers to all lands presently ''on or near'' an Indian reservation, and all other lands within ''Indian country,'' as defined by 18 U.S.C. 1151. In addition, ''geographic'' includes:

(1) Lands of former reservations;

(2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);

(3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and

(4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering of medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

§ 1000.127 Under Section 403(b)(2), when must programs be awarded non-competitively?

Programs eligible for contracts under Pub. L. 93–638 must be awarded non-competitively.

§ 1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?

Yes, if there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

§ 1000.129 Are there any programs that may not be included in an AFA?

Yes, section 403(k) of the Act excludes from the program:

(a) Inherently Federal functions; and

(b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the Tribe/Consortium, except as provided in § 1000.134.

§ 1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?

No, the Act favors the inclusion of a wide range of programs.

§ 1000.131 Will Tribes/Consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?

Yes, the Secretary must consult each year with Tribes/Consortia participating in self-governance programs regarding which bureau programs are eligible for inclusion in AFAs.

§ 1000.132 How will the Secretary consult with Tribes/Consortia in developing the list of available programs?

(a) On, or as near as possible to, October 1 of each year, the Secretary must distribute to each participating self-governance Tribe/Consortium the previous year's list of available programs in accordance with section 405(c)(4) of the Act. The list must include:

(1) All of the Secretary's proposed additions and revisions for the coming year with an explanation; and

(2) Programmatic targets and an initial point of contact for each bureau.

(b) The Tribes/Consortia receiving the proposed list will have 30 days from receipt to comment in writing on the Secretary's proposed revisions and to provide additions and revisions of their own for the Secretary to consider.

(c) The Secretary will carefully consider these comments before publishing the list as required by section 405(c)(4) of the Act.

(d) If the Secretary does not plan to include a Tribal suggestion or revision in the final published list, he/she must provide an explanation of his/her reasons if requested by a Tribe.

§ 1000.133 What else is on the list in addition to eligible programs?

The list will also include programmatic targets and an initial point of contact for each bureau. Programmatic targets will be established as part of the consultation process described in § 1000.132.

§ 1000.134 May a bureau negotiate with a Tribe/Consortium for programs not specifically included on the annual section 405(c) list?

Yes, the annual list will specify that bureaus will negotiate for other programs eligible under section 403(b)(2) when requested by a Tribe/Consortium. Bureaus may negotiate for section 403(c) programs whether or not they are on the list.

§ 1000.135 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one Tribe?

(a) If a program is of special geographic, historical, or cultural significance to more than one Tribe, the bureau may allocate the program among the several Tribes/Consortia or select one Tribe/Consortium with whom to negotiate an AFA.

(b) In making a determination under paragraph (a) of this section, the bureau will, in consultation with the affected Tribes, consider:

(1) The special significance of each Tribe's or Consortium member's interest; and

(2) The statutory objectives being served by the bureau program.

(c) The bureau's decision will be final for the Department.

§ 1000.136 When will this determination be made?

It will occur during the pre-negotiation process, subject to the timeframes in § 1000.171 and § 1000.172.

FUNDING

§ 1000.137 What funds are included in an AFA?

Bureaus determine the amount of funding to be included in the AFA using the following principles:

(a) *403(b)(2) programs.* In general, funds are provided in an AFA to the Tribe/Consortium in an amount equal to the amount that it is eligible to receive under section 106 of Pub. L. 93–638.

(b) *403(c) programs.* (1) The AFA will include:

(i) Amounts equal to the direct costs the bureau would have incurred were it to operate that program at the level of work mutually agreed to in the AFA; and

(ii) Allowable indirect costs.

(2) A bureau is not required to include management and support funds from the regional or central office level in an AFA, unless:

(i) The Tribe/Consortium will perform work previously performed at the regional or central office level;

(ii) The work is not compensated in the indirect cost rate; and

(iii) Including management and support costs in the AFA does not result in the Tribe/Consortium being paid twice for the same work when negotiated indirect cost rate is applied.

(c) *Funding Limitations*. The amount of funding must be subject to the availability and level of Congressional appropriations to the bureau for that program or activity. As the various bureaus use somewhat differing budgeting practices, determining the amount of funds available for inclusion in the AFA for a particular program or activity is likely to vary among bureaus or programs.

(1) The AFA may not exceed the amount of funding the bureau would have spent for direct operations and indirect support and management of that program in that year.

(2) The AFA must not include funding for programs still performed by the bureau.

§ 1000.138 How are indirect cost rates determined?

The Department's Office of the Inspector General (OIG) or other cognizant Federal agency and the Tribe/Consortium negotiate indirect cost rates. These rates are based on the provisions of the Office of Management and Budget (OMB) Circular A–87 or other applicable OMB cost circular and the provisions of Title I of Pub. L. 93–638 (See § 1000.142). These rates are used generally by all Federal agencies for contracts and grants with the Tribe/Consortium, including self-governance agreements.

§ 1000.139 Will the established indirect cost rates always apply to new AFAs?

No, the established indirect cost rates will not always apply to new AFAs.

(a) A Tribe's/Consortium's existing indirect cost rate should be reviewed and renegotiated with the inspector general or other cognizant agency if:

(1) Using the previously negotiated rate would include the recovery of indirect costs that are not reasonable, allocable, or allowable to the relevant program; or

(2) The previously negotiated rate would result in an under-recovery by the Tribe/Consortium.

(b) If a Tribe/Consortium has a fixed amount indirect cost agreement under OMB Circular A–87, then:

(1) Renegotiation is not required and the duration of the fixed amount agreement will be that provided for in the fixed amount agreement; or

(2) The Tribe/Consortium and bureau may negotiate an indirect cost amount or rate for use only in that AFA without the involvement of the inspector general or other cognizant agency.

§ 1000.140 How does the Secretary determine the amount of indirect contract support costs?

The Secretary determines the amount of indirect contract support costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base;

(b) Using the provisional rate; or

(c) Negotiating the amount of indirect contract support.

§ 1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?

No, indirect cost rates vary from Tribe to Tribe. The Secretary should refer to the appropriate negotiated indirect cost rates for individual Tribes, that apply government-wide. Although this cost rate is not capped, the amount of funds available for inclusion is capped at the level available under the relevant appropriation.

§ 1000.142 Instead of the negotiated indirect cost rate, is it possible to establish a fixed amount or another negotiated rate for indirect costs where funds are limited?

Yes, OMB Circular A–87 encourages agencies to test fee-for-service alternatives. If the parties agree to a fixed price, fee-for-service agreement, then they must use OMB Circular A–87 as a guide in determining the appropriate price (OMB circulars are available at *http://www.whitehouse.gov/omb/* or see 5 CFR 1310.3).Where limited appropriated

funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that Tribe/Consortium.

OTHER TERMS AND CONDITIONS

§ 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

REALLOCATION, DURATION, AND AMENDMENTS

§ 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program?

Yes, section 403(b) permits such reallocation upon joint agreement of the Secretary and the Tribe/Consortium.

§ 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA?

No, unless otherwise required by law, the Secretary does not have to approve the reallocation of funds with the exception of construction projects.

§ 1000.146 Can a Tribe/Consortium negotiate an AFA with a non-BIA bureau for which the performance period exceeds one year?

Yes, subject to the terms of the AFA, a Tribe/Consortium and a non-BIA bureau may agree to provide for the performance under the AFA to extend beyond the fiscal year. However, the Department may not obligate funds in excess and advance of available appropriations.

§ 1000.147 Can the terms and conditions in a non-BIA AFA be amended during the year it is in effect?

Yes, terms and conditions in a non-BIA AFA may be amended during the year it is in effect as agreed to by both the Tribe/Consortium and the Secretary.

§ 1000.148 What happens if an AFA expires before the effective date of the successor AFA?

If the effective date of a successor AFA is not on or before the expiration of the current AFA, subject to terms mutually agreed upon by the Tribe/Consortium and the Department at the time the current AFA was negotiated or in a subsequent amendment, the Tribe/Consortium may continue to carry out the program authorized under the AFA to the extent resources permit. During this extension period, the current AFA shall remain in effect, including coverage of the Tribe/Consortium under the Federal Tort Claims Act (FTCA) 28 U.S.C. 2671–2680 (1994); and the Tribe/Consortium may use any funds remaining under the AFA, savings from other programs or Tribal funds to carry out the program. Nothing in this section authorizes an AFA to be continued beyond the completion of the program authorized under the AFA or the amended AFA. This section also does not entitle a Tribe/Consortium to receive, nor does it prevent a Tribe from receiving, additional funding under any successor AFA. The successor AFA must provide funding to the Tribe/Consortium at a level necessary for the Tribe/Consortium to perform the programs, functions, services, and activities (PFSA) or portions thereof for the full period they were or will be performed.

Subpart G—Negotiation Process for Annual Funding Agreements

PURPOSE

§ 1000.160 What is the purpose of this subpart?

This subpart provides the process and timelines for negotiating a self-governance compact with the Department and an AFA with any bureau.

(a) For a newly selected or currently participating Tribe/Consortium negotiating an initial AFA with any bureau, see §§ 1000.173 through 1000.179.

(b) For a participating Tribe/Consortium negotiating a successor AFA with any bureau, see §§ 1000.180 through 1000.182.

NEGOTIATING A SELF-GOVERNANCE COMPACT

§ 1000.161 What is a self-governance compact?

A self-governance compact is an executed document that affirms the government-to-government relationship between a self-governance Tribe and the United States. The compact differs from an AFA in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

§ 1000.162 What is included in a self-governance compact?

A model format for self-governance compacts appears in appendix A. A self-governance compact should generally include the following:

(a) The authority and purpose;

(b) Terms, provisions, and conditions of the compact;

(c) Obligations of the Tribe and the United States; and

(d) Other provisions.

§ 1000.163 Can a Tribe/Consortium negotiate other terms and conditions not contained in the model compact?

Yes, the Secretary and a self-governance Tribe/Consortium may negotiate into the model compact contained in appendix A additional terms relating to the government-to-government relationship between the Tribe(s) and the United States. For BIA programs, a Tribe/Consortium and the Secretary may agree to include any term in a contract and funding agreement under Title I in the model compact contained in appendix A to this part.

§ 1000.164 Can a Tribe/Consortium have an AFA without entering into a compact?

Yes, at the Tribe's/Consortium's option.

§ 1000.165 Are provisions in compacts negotiated before January 16, 2001, effective after implementation?

(a) Yes, all provisions in compacts that were negotiated with BIA before January 16, 2001, shall remain in effect for BIA programs only after January 16, 2001, provided that each compact contains provisions:

(1) That are authorized by the Tribal Self-Governance Act of 1994;

(2) Are in compliance with other applicable Federal laws; and,

(3) Are consistent with this part.

(b) BIA will notify the Tribe/Consortium in writing when BIA asserts that a provision or provisions of that Tribe's/Consortium's previously negotiated compact is not in compliance with the terms and conditions of this part. BIA and the Tribe/Consortium will renegotiate the provision within 60 days of the Tribe's/Consortium's receipt of the notification.

(c) If renegotiation is not successful within 60 days of the notice being provided, BIA's determination is final for the bureau and enforceability of the provisions shall be subject to the appeals process described in subpart R of this part. Pending a final appeal through the appeals process, BIA's determination shall be stayed.

NEGOTIATION OF INITIAL ANNUAL FUNDING AGREEMENTS

§ 1000.166 What are the phases of the negotiation process?

There are two phases of the negotiation process:

(a) The information phase; and

(b) The negotiation phase.

§ 1000.167 Who may initiate the information phase?

Any Tribe/Consortium that has been admitted to the program or to the applicant pool may initiate the information phase.

§ 1000.168 Is it mandatory to go through the information phase before initiating the negotiation phase?

No, a Tribe/Consortium may go directly to the negotiation phase.

§ 1000.169 How does a Tribe/Consortium initiate the information phase?

A Tribe/Consortium initiates the information phase by submitting a letter of interest to the bureau administering a program that the Tribe/Consortium may want to include in its AFA. A letter of interest may be mailed, telefaxed, or hand-delivered to:

(a) The Director, OSG, if the request is for information about BIA programs;

(b) The non-BIA bureau's self-governance representative identified in the Secretary's annual section 405(c) listing in the FEDERAL REGISTER, if the request is for information concerning programs of non-BIA bureaus.

§ 1000.170 What is the letter of interest?

A letter of interest is the initial indication of interest submitted by the Tribe/Consortium informing the bureau of the Tribe's/Consortium's interest in seeking information for the possible negotiation of one or more bureau programs. For non-BIA bureaus, the program and budget information request should relate to the program and activities identified in the Secretary's section 405(c) list in the FEDERAL REGISTER or a section 403(c) request. A letter of interest should identify the following:

(a) As specifically as possible, the program a Tribe/Consortium is interested in negotiating under an AFA;

(b) A preliminary brief explanation of the cultural, historical, or geographic significance to the Tribe/Consortium of the program, if applicable;

(c) The scope of activity that a Tribe/Consortium is interested in including in an AFA;

(d) Other information that may assist the bureau in identifying the programs that are included or related to the Tribe's/Consortium's request;

(e) A request for information that indicates the type and/or description of information that will assist the Tribe/Consortium in pursuing the negotiation process;

(f) A designated Tribal contact;

(g) A request for information on any funds that may be available within the bureau or other known possible sources of funding for planning and negotiating an AFA;

(h) A request for information on any funds available within the bureau or from other sources of funding that the Tribe/Consortium may include in the AFA for planning or performing programs or activities; and

(i) Any requests for technical assistance to be provided by the bureau in preparing documents of materials that may be required for the Tribe/Consortium in the negotiation process.

§ 1000.171 When should a Tribe/Consortium submit a letter of interest?

A letter of interest may be submitted at any time. To meet the negotiation deadlines below, letters should be submitted to the appropriate non-BIA bureaus by March 1; letters should be submitted to BIA by April 1 for fiscal year Tribes/Consortia or May 1 for calendar year Tribes/Consortia.

§ 1000.172 What steps does the bureau take after a letter of interest is submitted by a Tribe/Consortium?

(a) Within 15 calendar days of receipt of a Tribe's/Consortium's letter of interest, the bureau will notify the Tribe/Consortium about who will be designated as the bureau's representative to be responsible for responding to the Tribal requests for information. The bureau representative shall act in good faith in fulfilling the following responsibilities:

(1) Providing all budget and program information identified in paragraph (b) of this section, from each organizational level of the bureau(s); and

(2) Notifying any other bureau requiring notification and participation under this part.

(b) Within 30 calendar days of receipt of the Tribe's/Consortium's letter of interest:

(1) To the extent that such reasonably related information is available, the bureau representative is to provide the information listed in paragraph (c) of this section, if available and consistent with the bureau's budgetary process;

(2) A written explanation of why the information is not available or not being provided to the Tribe's/Consortium's contact and the date by which other available information will be provided; or

(3) If applicable, a written explanation of why the program is unavailable for negotiation.

(c) Information to be made available to the Tribe's/Consortium's contact, subject to the conditions of paragraph (b) of this section, includes:

(1) Information regarding program, budget, staffing, and locations of the

offices administering the program and related administrative support program identified by the Tribe/Consortium,

(2) Information contained in the previous year, present year, and next year's budget proposed by the President at the national program level and the regional/local level.

(3) When appropriate, the bureau will be available to meet the Tribal representatives to explain the budget information provided.

(4) Information used to support budget allocations for the programs identified (e.g., full time equivalents and other relevant factors).

(5) Information used to operate and/or evaluate a program, such as statutory and regulatory requirements and program standards.

(6) If applicable, information regarding how a program is administered by more than one bureau, including a point of contact for information for the other bureau(s); and

(7) Other information requested by the Tribe/Consortium in its letter of interest.

(d) If a bureau fails to provide reasonably related information requested by a Tribe/Consortium, the Tribe/Consortium may appeal the failure in accordance with subpart R of this part. These requests shall be considered for a fee waiver under the Freedom of Information Act.

§ 1000.173 How does a newly selected Tribe/Consortium initiate the negotiation phase?

(a) To initiate the negotiation phase, an authorized official of the newly selected Tribe/Consortium submits a written request to negotiate an AFA as indicated in the following table:

For a . . .	the Tribe/Consortium should submit the request to . . .	and the request should identify . . .
(1) BIA program	the Director, OSG.	the lead negotiator(s) for the Tribe/Consortium.
(2) Non-BIA program	the bureau representative designated to respond to the Tribe's/Consortium's request for information.	the lead negotiator(s) for the Tribe/Consortium and the specific program(s) that the Tribe/Consortium seeks to negotiate.

(b) The Tribal/Consortium official must submit the information required by paragraph (a) of this section by the deadline shown in the following table:

Type of program	Type of tribe/consortium	Submission deadline
(1) BIA	Fiscal year	April 1.
(2) BIA	Calendar year	May 1.
(3) Non-BIA	Fiscal year or calendar year	May 1*.

* The request may be submitted later than this date where the bureau and the Tribe/Consortium agree that administration for a partial year funding agreement is feasible.

§ 1000.174 How and when does the bureau respond to a request to negotiate?

(a) Within 15 days of receiving a Tribe's/Consortium's request to negotiate, the bureau will take the steps in this section. If more than one bureau is involved, a lead bureau must be designated to conduct negotiations.

(b) If the program is contained on the section 405(c) list, the bureau will identify the lead negotiator(s) and awarding official(s) for executing the AFA.

(c) If the program is potentially of a special geographic, cultural, or historic significance to a Tribe/Consortium, the bureau will schedule a pre-negotiation meeting with the Tribe/Consortium as soon as possible. The purpose of the meeting is to assist the bureau in determining if the program is available for negotiation.

(d) Within 10 days after convening a meeting under paragraph (c) of this section:

(1) If the program is available for negotiation, the bureau will identify the lead negotiator(s) and awarding official(s); or

(2) If the program is unavailable for negotiation, the bureau will give to the Tribe/Consortium a written explanation of why the program is unavailable for negotiation.

§ 1000.175 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written request to negotiate, the bureau and the Tribe/Consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/Consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been successfully completed, the bureau and Tribe/Consortium will prepare and either execute or disapprove an AFA within 30 days or by a mutually agreed upon date.

§ 1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?

The negotiation meetings referred to in § 1000.175 must address at a minimum the following:

(a) The specific Tribe/Consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the Tribe/Consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the Tribe/Consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the AFA.

§ 1000.177 What happens when the AFA is signed?

(a) After all parties have signed the AFA, a copy is sent to the Tribe/Consortium.

(b) The Secretary forwards copies of the AFA to:

(1) The House Subcommittee on Native Americans and Insular Affairs; and

(2) The Senate Committee on Indian Affairs;

(c) For BIA programs, the AFA is also forwarded to each Indian Tribe/Consortium served by the BIA Agency that serves any Tribe/Consortium that is a party to the AFA.

§ 1000.178 When does the AFA become effective?

The effective date is not earlier than 90 days after the AFA is submitted to the Congressional committees under § 1000.177(b).

§ 1000.179 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement?

(a) If the Tribe/Consortium and bureau representatives do not reach agreement during the negotiation phase by the mutually agreed to date for completing negotiations, the Tribe/Consortium and the bureau may each make a last and best offer to the other party.

(b) If a last and best offer is not accepted within 15 days, the bureau will provide a written explanation to the Tribe/Consortium explaining its reasons for not entering into an AFA for the requested program, together with the applicable statement prescribed in subpart R of this part, concerning appeal or review rights.

(c) The Tribe/Consortium has 30 days from receipt of the bureau's written explanation to file an appeal. Appeals are handled in accordance with subpart R of this part.

NEGOTIATION PROCESS FOR SUCCESSOR ANNUAL FUNDING AGREEMENTS

§ 1000.180 What is a successor AFA?

A successor AFA is a funding agreement negotiated after a Tribe's/Consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

§ 1000.181 How does the Tribe/Consortium initiate the negotiation of a successor AFA?

Although a written request is desirable to document the precise request

and date of the request, a written request is not mandatory. If either party anticipates a significant change in an existing program in the AFA, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.

§ 1000.182 What is the process for negotiating a successor AFA?

The Tribe/Consortium and the bureau use the procedures in §§ 1000.173–1000.179.

Subpart H—Limitation and/or Reduction of BIA Services, Contracts, and Funds

§ 1000.190 What is the purpose of this subpart?

This subpart prescribes the process that the Secretary uses to determine whether a BIA self-governance funding agreement causes a limitation or reduction in the services, contracts, or funds that any other Tribe/Consortium or Tribal organization is eligible to receive under self-determination contracts, other self-governance compacts, or direct services from BIA. This type of limitation is prohibited by section 406(a) of Pub. L. 93–638. For the purposes of this subpart, Tribal organization means an organization eligible to receive services, contracts, or funds under section 102 of Pub. L. 93–638.

§ 1000.191 To whom does this subpart apply?

Participating and non-participating Tribes/Consortia and Tribal organizations are subject to this subpart. It does not apply to the general public and non-Indians.

§ 1000.192 What services, contracts, or funds are protected under section 406(a)?

Section 406(a) protects against the actual reduction or limitations of services, contracts, or funds.

§ 1000.193 Who may raise the issue of limitation or reduction of services, contracts, or funding?

BIA or any affected Tribe/Consortium or Tribal organization may raise the issue that a BIA self-governance AFA limits or reduces particular services, contracts, or funding for which it is eligible.

§ 1000.194 When must BIA raise the issue of limitation or reduction of services, contracts, or funding?

(a) From the beginning of the negotiation period until the end of the first year of implementation of an AFA, BIA may raise the issue of limitation or reduction of services, contracts, or funding. If BIA and a participating Tribe/Consortium disagree over the residual information, a participating Tribe/Consortium may ask the Deputy Commissioner—Indian Affairs to reconsider residual levels for particular programs. [See § 1000.95(d)]

(b) After the AFA is signed, BIA must raise the issue of any undetermined funding amounts within 30 days after the final funding level is determined. BIA may not raise this issue after this period has elapsed.

§ 1000.195 When must an affected Tribe/Consortium or Tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?

(a) A Tribe/Consortium or Tribal organization may raise the issue of limitation or reduction of services, contracts, or funding for which it is eligible during:

(1) Region-wide Tribal shares meetings occurring before the first year of implementation of an AFA;

(2) Within the 90-day review period before the effective date of the AFA; and

(3) The first year of implementation of an AFA.

(b) Any Tribe/Consortium or Tribal organization claiming a limitation or reduction of contracts, services, or funding for which it is eligible must notify, in writing, both the Department and negotiating Tribe/Consortium. Claims may only be filed within the periods specified in paragraph (a) of this section.

§ 1000.196 What must be included in a finding by BIA or in a claim by an affected Tribe/Consortium or Tribal organization regarding the issue of a limitation or reduction of services?

An affected Tribe/Consortium must include in its claim a written explanation identifying the alleged limitation or reduction of services, contracts, or funding for which it is eligible. A finding by BIA must likewise identify the limitation or reduction.

§ 1000.197 How will BIA resolve a claim?

All findings and claims timely made in accordance with §§ 1000.194 through 1000.195 will be resolved in accordance with 25 CFR part 2.

§ 1000.198 How must a limitation or reduction in services, contracts, or funds be remedied?

(a) If funding a participating Tribe/Consortium will limit or reduce services, contracts, or funds for which another Tribe/Consortium or Tribal organization is eligible, BIA must remedy the reduction as follows:

(1) In the current AFA year BIA must use shortfall funding, supplemental funding, or other available BIA resources; and

(2) In a subsequent AFA year, BIA may adjust the AFA funding in an AFA to correct a finding of actual reduction in services, contracts, or funds for that subsequent year.

(b) All adjustments under this section must be mutually agreed between BIA and the participating Tribe/Consortium.

Subpart I—Public Consultation Process

§ 1000.210 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?

When required by law or when appropriate under bureau discretion, a bureau may use a public consultation process in negotiating an AFA.

§ 1000.211 Will the bureau contact the Tribe/Consortium before initiating public consultation process for a non-BIA AFA under negotiation?

Yes, the bureau and the Tribe/Consortium will discuss the consultation process to be used in negotiating a non-BIA AFA.

(a) When public consultation is required by law, the bureau will follow the required process and will involve the Tribe/Consortium in that process to the maximum extent possible.

(b) When public consultation is a matter of bureau discretion, at Tribal request the Tribe/Consortium and the bureau, unless prohibited by law, will jointly develop guidelines for that process, including the conduct of any future public meetings. The bureau and the Tribe/Consortium will jointly identify a list of potential project beneficiaries, third-party stakeholders, or third-party users (affected parties) for use in the public consultation process.

§ 1000.212 What is the role of the Tribe/Consortium when a bureau initiates a public meeting?

When a bureau initiates a public meeting with affected parties it will take the following actions:

(a) The bureau will notify the Tribe/Consortium of the meeting time, place, and invited parties:

(1) Ten days in advance, if possible; or

(2) If less than 10 days in advance, at the earliest practical time.

(b) When the bureau notifies the Tribe/Consortium, the bureau will invite the Tribe/Consortium to participate in and, unless prohibited by law, to co-sponsor or co-facilitate the meeting.

(c) When possible, the bureau and the Tribe/Consortium should meet to plan and discuss the conduct of the meeting, meeting protocols, and general participation in the proposed consultation meeting.

(d) The bureau and the Tribe/Consortium will conduct the meeting in a manner that facilitates and does not undermine the government-to-government relationship and self-governance;

(e) The Tribe/Consortium may provide technical support to the bureau to

enhance the consultation process, as mutually agreed.

§ 1000.213 What should the bureau do if it is invited to attend a meeting with respect to the Tribe's/Consortium's proposed AFA?

If the bureau is invited to participate in meetings, hearings, etc., held or conducted by other parties, where the subject matter of the AFA under negotiation is expected to be raised, the bureau:

(a) Shall notify the Tribe/Consortium at the earliest practical time; and

(b) Should encourage the meeting sponsor to invite the Tribe/Consortium to participate.

§ 1000.214 Will the bureau and the Tribe/Consortium share information concerning inquiries about the Tribes/Consortia and the AFA?

Yes, the bureau and the Tribe/Consortium will exchange information about inquiries from affected or interested parties relating to the AFA under negotiation.

Subpart J—Waiver of Regulations

§ 1000.220 What regulations apply to self-governance Tribes?

All regulations that govern the operation of programs included in an AFA apply unless waived under this subpart. To the maximum extent practical, the parties should identify these regulations in the AFA.

§ 1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?

Yes, a Tribe/Consortium may ask the Secretary to grant a waiver of some or all Department of the Interior regulation(s) applicable to a program, in whole or in part, operated by a Tribe/Consortium under an AFA.

§ 1000.222 How does a Tribe/Consortium obtain a waiver?

To obtain a waiver, the Tribe/Consortium must:

(a) Submit a written request from the designated Tribal official to the Director for BIA programs or the appropriate bureau/office director for non-BIA programs;

(b) Identify the regulation to be waived and the reasons for the request;

(c) Identify the programs to which the waiver would apply;

(d) Identify what provisions, if any, would be substituted in the AFA for the regulation to be waived; and

(e) When applicable, identify the effect of the waiver on any trust programs or resources.

§ 1000.223 When can a Tribe/Consortium request a waiver of a regulation?

A Tribe/Consortium may request a waiver of a regulation:

(a) As part of the negotiation process; or

(b) After an AFA has been executed.

§ 1000.224 How can a Tribe/Consortium expedite the review of a regulation waiver request?

A Tribe/Consortium may request a meeting or other informal discussion with the appropriate bureau officials before submitting a waiver request.

(a) To set up a meeting, the Tribe/Consortium should contact:

(1) For BIA programs, the Director, OSG; or

(2) For non-BIA programs, the designated representative of the bureau.

(b) The meeting or discussion is intended to provide:

(1) A clear understanding of the nature of the request;

(2) Necessary background and information; and

(3) An opportunity for the bureau to offer appropriate technical assistance.

§ 1000.225 Are meetings or discussions mandatory?

No, a meeting with the bureau officials is not necessary to submit a waiver request.

§ 1000.226 On what basis may the Secretary deny a waiver request?

The Secretary may deny a waiver request if:

(a) For a Title-I-eligible program, the requested waiver is prohibited by Federal law; or

(b) For a non-Title-I-eligible program, the requested waiver is:

(1) Prohibited by Federal law; or

(2) Inconsistent with the express provisions of the AFA.

§ 1000.227 What happens if the Secretary denies the waiver request?

If the Secretary denies a waiver request, the Secretary issues a written decision stating:

(a) The basis for the decision;

(b) The decision is final for the Department; and

(c) The Tribe/Consortium may request reconsideration of the denial.

§ 1000.228 What are examples of waivers prohibited by law?

Examples of when a waiver is prohibited by Federal law include:

(a) When the effect would be to waive or eliminate express statutory requirements;

(b) When a statute authorizes civil and criminal penalties;

(c) When it would result in a failure to ensure that proper health and safety standards are included in an AFA (section 403(e)(2));

(d) When it would result in a reduction of the level of trust services that would have been provided by the Secretary to individual Indians (section 403(g)(4));

(e) When it would limit or reduce the services, contracts, or funds to any other Indian Tribe or Tribal organization (section 406(a));

(f) When it would diminish the Federal trust responsibility to Tribes, individual Indians or Indians with trust allotments (Section 406(b)); or

(g) When it would violate Federal case law.

§ 1000.229 May a Tribe/Consortium propose a substitute for a regulation it wishes to be waived?

Yes, where a Tribe/Consortium wishes to replace the waived regulation with a substitute that otherwise maintains the requirements of the applicable Federal law, the Secretary may be able to approve the waiver request. The Tribe/Consortium and bureau officials must negotiate to develop a suggested substitution.

§ 1000.230 How is a waiver approval documented for the record?

The waiver decision is made part of the AFA by attaching a copy of it to the AFA and by mutually executing any necessary conforming amendments to the AFA. The decisions announcing the waiver also will be posted on the Office of Self-Governance web site and all such decisions shall be made available on request.

§ 1000.231 How does a Tribe/Consortium request reconsideration of the Secretary's denial of a waiver?

(a) The Tribe/Consortium may request reconsideration of a waiver denial. To do so, the Tribe/Consortium must submit a request to:

(1) The Director, OSG, for BIA programs; or

(2) The appropriate bureau head, for non-BIA programs.

(b) The request must be filed within 30 days of the day the decision is received by certified mail (return receipt requested) or by hand delivery. A request submitted by mail will be considered filed on the postmark date.

(c) The request must identify the issues to be addressed, including a statement of reasons supporting the request.

§ 1000.232 When must DOI respond to a request for reconsideration?

The Secretary must issue a written decision within 30 days of the Department's receipt of a request for reconsideration. This decision is final for the Department and no administrative appeal may be made.

Subpart K—Construction

§ 1000.240 What construction programs included in an AFA are subject to this subpart?

(a) All BIA and non-BIA construction programs included in an AFA are subject to this subpart. This includes design, construction, repair, improvement, expansion, replacement or demolition of buildings or facilities, and other related work for Federal, or Federally funded Tribal, facilities and projects.

(b) The following programs and activities are not construction programs and activities:

(1) Activities limited to providing planning services, administrative support services, coordination, responsibility for the construction project, day-to-day on-site management on site-

management and administration of the project, which may include cost management, project budgeting, project scheduling and procurement except that all project design and actual construction activities are subject to all the requirements of subpart K, whether performed by a Tribe/Consortium, subcontractor, or consultant.

(2) Housing Improvement Program or road maintenance program activities of BIA;

(3) Operation and maintenance programs; and

(4) Non-403(c) programs that are less than $100,000, subject to section 403(e)(2) of the Act, other applicable Federal law, and § 1000.256 of this subpart.

§ 1000.241 Does this subpart create an agency relationship?

No, a BIA or non-BIA construction program does not automatically create an agency relationship. However, Federal law, provisions of an AFA, or Federal actions may create an agency relationship.

§ 1000.242 What provisions relating to a construction program may be included in an AFA?

The Secretary and the Tribe/Consortium may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction part of an AFA. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

§ 1000.243 What special provisions must be included in an AFA that contains a construction program?

An AFA that contains a construction program must address the requirements listed in this section.

(a) The AFA must specify how the Secretary and the Tribe/Consortium must ensure that proper health and safety standards are provided for in the implementation of the AFA, including but not limited to:

(1) The use of architects and engineers licensed to perform the type of construction involved in the AFA;

(2) Applicable Federal, state, local or Tribal building codes and applicable engineering standards, appropriate for the particular project; and

(3) Necessary inspections and testing by the Tribe.

(b) The AFA must comply with applicable Federal laws, program statutes and regulations.

(c) The AFA must specify the services to be provided, the work to be performed, and the responsibilities of the Tribe/Consortium and the Secretary under the AFA.

(d) The Secretary may require the Tribe/Consortium to provide brief progress reports and financial status reports. The parties may negotiate in the AFA the frequency, format and content of the reporting requirement. As negotiated, these reports may include:

(1) A narrative of the work accomplished;

(2) The percentage of the work completed;

(3) A report of funds expended during the reporting period; and

(4) The total funds expended for the project.

§ 1000.244 May the Secretary suspend construction activities under an AFA?

(a) The Secretary may require a Tribe/Consortium to suspend certain work under a construction portion of an AFA for up to 30 days only if:

(1) Site conditions adversely affect health and safety; or

(2) Work in progress or completed fails to substantially carry out the terms of the AFA without good cause.

(b) The Secretary may suspend only work directly related to the criteria specified in paragraph (a) of this section unless other reasons for suspension are specifically negotiated in the AFA.

(c) Unless the Secretary determines that a health and safety emergency requiring immediate action exists, before suspending work the Secretary must provide:

(1) A 5 working days written notice; and

(2) An opportunity for the Tribe/Consortium to correct the problem.

(d) The Tribe/Consortium must be compensated for reasonable costs due

to any suspension of work that occurred through no fault of the Tribe/Consortium. Project funds will not be used for this purpose. However, if suspension occurs due to the action or inaction of the Tribe/Consortium, then project funds will be used to cover suspension related activities.

§ 1000.245 May a Tribe/Consortium continue work with construction funds remaining in an AFA at the end of the funding year?

Yes, any funds remaining in an AFA at the end of the funding year may be spent for construction under the terms of the AFA.

§ 1000.246 Must an AFA that contains a construction project or activity incorporate provisions of Federal construction standards?

No, the Secretary may provide information about Federal standards as early as possible in the construction process. If Tribal construction standards are consistent with or exceed applicable Federal standards, then the Secretary must accept the Indian Tribe/Consortium's proposed standards. The Secretary may accept commonly accepted industry construction standards.

§ 1000.247 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?

Yes, the relevant bureau may provide to the Tribe/Consortium project design criteria and other terms and conditions that are required for such a project. The project must be completed in accordance with the terms and conditions set forth in the AFA.

§ 1000.248 What is the Tribe's/Consortium's role in a construction program included in an AFA?

The Tribe/Consortium has the following role regarding a construction portion of an AFA:

(a) Under the Act, the Indian Tribe/Consortium must successfully complete the project in accordance with the terms and conditions in the AFA.

(b) The Tribe/Consortium must give the Secretary timely notice of any proposed changes to the project that require an increase to the negotiated funding amount or an increase in the negotiated performance period or any other significant departure from the scope or objective of the project. The Tribe/Consortium and Secretary may negotiate to include timely notice requirements in the AFA.

§ 1000.249 What is the Secretary's role in a construction program in an AFA?

The Secretary has the following role regarding a construction program contained in an AFA:

(a) Except as provided in § 1000.256, the Secretary may review and approve planning and design documents in accordance with terms negotiated in the AFA to ensure health and safety standards and compliance with Federal law and other program mandates;

(b) Unless otherwise agreed to in an AFA, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal Government purposes, designs produced in the construction program that are funded by AFA monies, including:

(1) The copyright to any work developed under a contract or subcontract; and

(2) Any rights of copyright that an Indian Tribe/Consortium or a Tribal contractor purchases through the AFA;

(c) The Secretary may conduct onsite monitoring visits as negotiated in the AFA;

(d) The Secretary must approve any proposed changes in the construction program or activity that require an increase in the negotiated AFA funding amount or an increase in the negotiated performance period or are a significant departure from the scope or objective of the construction program as agreed to in the AFA;

(e) The Secretary may conduct final project inspection jointly with the Indian Tribe/Consortium and may accept the construction project or activity as negotiated in the AFA;

(f) Where the Secretary and the Tribe/Consortium share construction program activities, the AFA may provide for the exchange of information;

(g) The Secretary may reassume the construction portion of an AFA if there is a finding of:

(1) A significant failure to substantially carry out the terms of the AFA without good cause; or

(2) Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of this part.

§ 1000.250 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?

If there is a reassumption for substantial failure to carry out an AFA, property and funding will be returned as provided in subparts M and N of this part.

§ 1000.251 What happens when a Tribe/Consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?

(a) Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety as provided in subpart M of these regulations a finding of substantial failure to carry out the terms of the AFA without good cause must be processed under the suspension of work provision of § 1000.244.

(b) If the substantial failure to carry out the terms of the AFA without good cause is not corrected or resolved during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601, *et seq*.

§ 1000.252 Do all provisions of other subparts apply to construction portions of AFAs?

Yes, all provisions of other subparts apply to construction portions of AFAs unless those provisions are inconsistent with this subpart.

§ 1000.253 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

Under § 1000.35 of this part, a Tribe may withdraw from a Consortium and request its portion of a construction project's funds. The Secretary may decide not to award these funds if the award will affect the Consortium's ability to complete a non-severable phase of the project within available funding. An example of a non-severable phase of a project would be the construction of a single building serving all members of the Consortium. An example of a severable phase of a project would be the funding for a road in one village where the Consortium would be able to complete the roads in the other villages that were part of the project approved initially in the AFA. The Secretary's decision under this section may be appealed under subpart R of this part.

§ 1000.254 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?

No, a Tribe/Consortium may not reallocate funds from a construction program to a non-construction program unless otherwise provided under the relevant appropriation acts.

§ 1000.255 May a Tribe/Consortium reallocate funds among construction programs?

Yes, a Tribe/Consortium may reallocate funds among construction programs if permitted by appropriation law or if approved in advance by the Secretary.

§ 1000.256 Must the Secretary retain project funds to ensure proper health and safety standards in construction projects?

Yes, the Secretary must retain project funds to ensure proper health and safety standards in construction projects. Examples of purposes for which bureaus may retain funds include:

(a) Determining or approving appropriate construction standards to be used in AFAs;

(b) Verifying that there is an adequate Tribal inspection system utilizing licensed professionals;

(c) Providing for sufficient monitoring of design and construction by the Secretary; and

(d) Requiring corrective action during performance when appropriate.

Subpart L—Federal Tort Claims

§ 1000.270 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance of functions under Self-Governance AFA's; and

(b) Procedures for filing claims under FTCA.

§ 1000.271 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations in 28 CFR part 14.

§ 1000.272 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?

Yes, there are claims against Self-Governance Tribes/Consortia which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. The following general guidance is not intended as a definitive description of coverage, which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) What claims are expressly barred by FTCA and therefore may not be made against the United States, a Tribe or Consortium? Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) What claims may not be pursued under FTCA?

(1) Claims against subcontractors arising out of the performance of subcontracts with a Self-Governance Tribe/Consortium;

(2) Claims for on-the-job injuries which are covered by workmen's compensation;

(3) Claims for breach of contract rather than tort claims; or

(4) Claims resulting from activities performed by an employee which are outside the scope of employment.

(c) What remedies are expressly excluded by FTCA and therefore are barred?

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) Other remedies not permitted under applicable state law.

§ 1000.273 Is there a deadline for filing FTCA claims?

Yes, claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 1000.274 How long does the Federal government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

The Federal government has 6 months to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed.

§ 1000.275 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?

No, clauses about FTCA coverage are optional. At the request of Tribes/Consortia, self-governance AFA's shall include the following clause to clarify the scope of FTCA coverage:

> For purposes of Federal Tort Claims Act coverage, the Tribe/Consortium and its employees (including individuals performing personal services contracts with the tribe/consortium) are deemed to be employees of the Federal government while performing work under this AFA. This status is not changed by the source of the funds used by the Tribe/Consortium to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Tribe/Consortium.

§ 1000.276 Does FTCA apply to a self-governance AFA if FTCA is not referenced in the AFA?

Yes, FTCA applies even if the AFA does not mention it.

§ 1000.277 To what extent shall the Tribe/Consortium cooperate with the Federal government in connection with tort claims arising out of the Tribe's/Consortium's performance?

(a) The Tribe/Consortium shall designate an individual to serve as tort claims liaison with the Federal government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the Tribe/Consortium shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the Tribe/Consortium or any of its employees that relates to performance of a self-governance AFA or subcontract.

(c) The Tribe/Consortium, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of Tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) The Tribe's/Consortium's determination as to whether any of its employees (including Federal employees assigned to the Tribe/Consortium) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The Tribe/Consortium shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the Tribe/Consortium shall make an assignment and subrogation of all the Tribe's/Consortium's rights and claims (except those against the Federal government) arising out of a tort claim against the Tribe/Consortium.

(f) If requested by the Secretary, the Tribe/Consortium shall authorize representatives of the Secretary to settle or defend any claim and to represent the Tribe/Consortium in or take charge of any action.

(g) If the Federal government undertakes the settlement or defense of any claim or action, the Tribe/Consortium shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 1000.278 Does this coverage extend to subcontractors of self-governance AFAs?

No, subcontractors or subgrantees providing services to a Pub. L. 93–638 Tribe/Consortium are generally not covered.

§ 1000.279 Is FTCA the exclusive remedy for a tort claim, including a claim concerning personal injury or death, resulting from the performance of a self-governance AFA?

Yes, except as explained in § 1000.272(b). No claim may be filed against a self-governance Tribe/Consortium or employee based upon performance of functions under a self-governance AFA. All claims shall be filed

against the United States and are subject to the limitations and restrictions of FTCA.

§ 1000.280 What employees are covered by FTCA for medical-related claims?

The following employees are covered by FTCA for medical-related claims:

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-governance Tribe/Consortium to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the Tribe/Consortium; and,

(e) Federal employees assigned to the AFA.

§ 1000.281 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the self-governance AFA?

Yes, FTCA covers employees of the Tribe/Consortium who are not paid from AFA funds as long as the services out of which the claim arose were performed in carrying out the self-governance AFA.

§ 1000.282 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes, non-Indian individuals served under the self-governance AFA, may assert claims under this Subpart.

§ 1000.283 If the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the Tribe/Consortium do?

As part of the notification required by 28 U.S.C. 2679(c), if the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or complaint alleging a tort covered by FTCA, the Tribe/Consortium should immediately:

(a) Inform the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240,

(b) Inform the Tribe's/Consortium's tort claims liaison, and

(c) Forward all of the materials identified in § 1000.277(c) to the contacts given in § 1000.283 (a) and (b).

Subpart M—Reassumption

§ 1000.300 What is the purpose of this subpart?

This subpart explains when the Secretary can reassume a program without the consent of a Tribe/Consortium.

§ 1000.301 When may the Secretary reassume a Federal program operated by a Tribe/Consortium under an AFA?

The Secretary may reassume any Federal program operated by a Tribe/Consortium upon a finding of imminent jeopardy to:

(a) A physical trust asset;

(b) A natural resource; or

(c) Public health and safety.

§ 1000.302 "What is imminent jeopardy" to a trust asset?

Imminent jeopardy means an immediate threat and likelihood of significant devaluation, degradation, damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of a Tribe/Consortium in performing trust functions. This includes disregarding Federal trust standards and/or Federal law while performing trust functions if the disregard creates such an immediate threat.

§ 1000.303 What is imminent jeopardy to natural resources?

The standard for natural resources is the same as for a physical trust asset, except that a review for compliance with the specific mandatory statutory provisions related to the program as reflected in the funding agreement must also be considered.

§ 1000.304 What is imminent jeopardy to public health and safety?

Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or

death, caused by Tribal action or inaction or as otherwise provided in an AFA.

§ 1000.305 In an imminent jeopardy situation, what must the Secretary do?

In an imminent jeopardy situation, the Secretary must:

(a) The Secretary must immediately notify the Tribe/Consortium in writing following discovery of imminent jeopardy; or

(b) If there is an immediate threat to human health, safety, or welfare, the Secretary may immediately reassume operation of the program regardless of the timeframes specified in this subpart.

§ 1000.306 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?

Yes, the Secretary must reassume a program within 60 days of a finding of imminent jeopardy, unless the Secretary's designated representative determines that the Tribe/Consortium is able to mitigate the conditions.

§ 1000.307 What happens if the Secretary's designated representative determines that the Tribe/Consortium cannot mitigate the conditions within 60 days?

The Secretary will proceed with the reassumption in accordance with this subpart by sending the Tribe/Consortium a written notice of the Secretary's intent to reassume.

§ 1000.308 What will the notice of reassumption include?

The notice of reassumption under § 1000.307 will include all of the following items. In addition, if resources are available, the Secretary may offer technical assistance to mitigate the imminent jeopardy.

(a) A statement of the reasons supporting the Secretary's finding.

(b) To the extent practical, a description of specific measures that must be taken by the Tribe/Consortium to eliminate imminent jeopardy.

(c) A notice that funds for the management of the trust asset, natural resource, or public health and safety found to be in imminent jeopardy may not be reallocated or otherwise transferred without the Secretary's written consent.

(d) A notice of intent to invoke the return of property provision of the AFA.

(e) The effective date of the reassumption if the Tribe/Consortium does not eliminate the imminent jeopardy. If the deadline is less than 60 days after the date of receipt, the Secretary must include a justification.

(f) The amount of funds, if any, that the Secretary believes the Tribe/Consortium should refund to the Department for operation of the reassumed program. This amount cannot exceed the amount provided for that program under the AFA and must be based on such factors as the time or functions remaining in the funding cycle.

§ 1000.309 How much time will a Tribe/Consortium have to respond to a notice of imminent jeopardy?

The Tribe/Consortium will have 5 days to respond to a notice of imminent jeopardy. The response must be written and may be mailed, telefaxed, or sent by electronic mail. If sent by mail, it must be sent by certified mail, return receipt requested; the postmark date will be considered the date of response.

§ 1000.310 What information must the Tribe's/Consortium's response contain?

(a) The Tribe's/Consortium's response must indicate the specific measures that the Tribe/Consortium will take to eliminate the finding of imminent jeopardy.

(b) If the Tribe/Consortium proposes mitigating actions different from those prescribed in the Secretary's notice of imminent jeopardy, the response must explain the reasons for deviating from the Secretary's recommendations and how the proposed actions will eliminate imminent jeopardy.

§ 1000.311 How will the Secretary reply to the Tribe's/Consortium's response?

The Secretary will make a written determination within 10 days of the Tribe's/Consortium's written response as to whether the proposed measures will eliminate the finding of imminent jeopardy.

§ 1000.312 What happens if the Secretary accepts the Tribe's/Consortium's proposed measures?

The Secretary must notify the Tribe/Consortium in writing of the acceptance and suspend the reassumption process.

§ 1000.313 What happens if the Secretary does not accept the Tribe's/Consortium's proposed measures?

(a) If the Secretary finds that the Tribes/Consortia proposed measures will not mitigate imminent jeopardy, he/she will notify the Tribe/Consortium in writing of this determination and of the Tribe's/Consortium's right to appeal

(b) After the reassumption, the Secretary is responsible for the reassumed program, and will take appropriate corrective action to eliminate the imminent jeopardy which may include sending Department employees to the site.

§ 1000.314 What must a Tribe/Consortium do when a program is reassumed?

On the effective date of reassumption, the Tribe/Consortium must, at the request of the Secretary, deliver all property and equipment, and title thereto:

(a) That the Tribe/Consortium received for the program under the AFA; and

(b) That has a per item value in excess of $5,000, or as otherwise provided in the AFA.

§ 1000.315 When must the Tribe/Consortium return funds to the Department?

The Tribe/Consortium must repay funds to the Department as soon as practical after the effective date of the reassumption.

§ 1000.316 May the Tribe/Consortium be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of retrocession?

Yes, the Tribe/Consortium may be reimbursed for actual and reasonable ''wind up costs'' to the extent that funds are available.

§ 1000.317 Is a Tribe's/Consortium's general right to negotiate an AFA adversely affected by a reassumption action?

A reassumption action taken by the Secretary does not affect the Tribe's/Consortium's ability to negotiate an AFA for programs not affected by the reassumption.

§ 1000.318 When will the Secretary return management of a reassumed program?

A reassumed program may be included in future AFAs, but the Secretary may include conditions in the terms of the AFA to ensure that the circumstances that caused jeopardy to attach do not reoccur.

Subpart N—Retrocession

§ 1000.330 What is the purpose of this subpart?

This subpart explains what happens when a Tribe/Consortium voluntarily returns a program to a bureau.

§ 1000.331 Is a decision by a Tribe/Consortium not to include a program in a successor agreement considered a retrocession?

No, a decision by a Tribe/Consortium not to include a program in a successor agreement is not a retrocession because the Tribe/Consortium is under no obligation beyond an existing AFA.

§ 1000.332 Who may retrocede a program in an AFA?

A Tribe/Consortium may retrocede a program. However, the right of a Consortium member to retrocede may be subject to the terms of the agreement among the members of the Consortium.

§ 1000.333 How does a Tribe/Consortium retrocede a program?

The Tribe/Consortium must submit:

(a) A written notice to:

(1) The Office of Self-Governance for BIA programs; or

(2) The appropriate bureau for non-BIA programs; and

(b) A Tribal resolution or other official action of its governing body.

§ 1000.334 When will the retrocession become effective?

Unless subsequently rescinded by the Tribe/Consortium, a retrocession is only effective on a date mutually agreed upon by the Tribe/Consortium and the Secretary, or as provided in the AFA.

§ 1000.335 How will retrocession affect the Tribe's/Consortium's existing and future AFAs?

Retrocession does not affect other parts of the AFA or funding agreements with other bureaus. A Tribe/Consortium may request to negotiate for and include retroceded programs in future AFAs or through a self-determination contract.

§ 1000.336 Does the Tribe/Consortium have to return funds used in the operation of a retroceded program?

The Tribe/Consortium and the Secretary must negotiate the amount of funding to be returned to the Secretary for the operation of the retroceded program. This amount must be based on such factors as the time remaining or functions remaining in the funding cycle or as provided in the AFA.

§ 1000.337 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?

On the effective date of any retrocession, the Tribe/Consortium must return all property and equipment, and title thereto:

(a) That was acquired under the AFA for the program being retroceded; and

(b) That has a per item value in excess of $5,000 at the time of the retrocession, or as otherwise provided in the AFA.

§ 1000.338 What happens to a Tribe's/Consortium's mature contract status if it has retroceded a program that is also available for self-determination contracting?

Retrocession has no effect on mature contract status, provided that the 3 most recent audits covering activities administered by the Tribe have no unresolved material audit exceptions.

§ 1000.339 How does retrocession affect a bureau's operation of the retroceded program?

The level of operation of the program will depend upon the amount of funding that is returned with the retrocession.

Subpart O—Trust Evaluation Review

§ 1000.350 What is the purpose of this subpart?

This subpart describes how the trust responsibility of the United States is legally maintained through a system of trust evaluations when Tribes/Consortia perform trust functions through AFAs under the Tribal Self-Governance Act of 1994. It describes the principles and processes upon which trust evaluations will be based.

§ 1000.351 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian Tribes and individuals under self-governance?

No, the Act does, however, permit a Tribe/Consortium to assume management responsibilities for trust assets and resources on its own behalf and on behalf of individual Indians. Under the Act, the Secretary has a trust responsibility to conduct annual trust evaluations of Tribal performance of trust functions to ensure that Tribal and individual trust assets and resources are managed in accordance with the legal principles and standards governing the performance of trust functions if trust assets or resources are found to be in imminent jeopardy.

§ 1000.352 What are "trust resources" for the purposes of the trust evaluation process?

(a) Trust resources include property and interests in property:

(1) That are held in trust by the United States for the benefit of a Tribe or individual Indians; or

(2) That are subject to restrictions upon alienation.

(b) Trust assets include:

(1) Other assets, trust revenue, royalties, or rental, including natural resources, land, water, minerals, funds,

property, assets, or claims, and any intangible right or interest in any of the foregoing;

(2) Any other property, asset, or interest therein, or treaty right for which the United States is charged with a trust responsibility. For example, water rights and off-reservation treaty rights.

(c) This definition defines trust resources for purposes of the trust evaluation process only.

§ 1000.353 What are "trust functions" for the purposes of the trust evaluation process?

Trust functions are those programs necessary to the management of assets held in trust by the United States for an Indian Tribe or individual Indian.

ANNUAL TRUST EVALUATIONS

§ 1000.354 What is a trust evaluation?

A trust evaluation is an annual review and evaluation of trust functions performed by a Tribe/Consortium to ensure that the functions are performed in accordance with trust standards as defined by Federal law. Trust evaluations address trust functions performed by the Tribe/Consortium on its own behalf as well as trust functions performed by the Tribe/Consortium for the benefit of individual Indians or Alaska Natives.

§ 1000.355 How are trust evaluations conducted?

(a) Each year the Secretary's designated representative(s) will conduct trust evaluations for each self-governance AFA. The Secretary's designated representative(s) will coordinate with the designated Tribe's/Consortium's representative(s) throughout the review process, including the written report required by § 1000.365.

(b) This section describes the general framework for trust reviews. However, each Tribe/Consortium may develop, with the appropriate bureau, an individualized trust evaluation process to allow for the Tribe's/Consortium's unique history and circumstances and the terms and conditions of its AFA. An individualized trust evaluation process must, at a minimum, contain the measures in paragraph (d) of this section.

(c) To facilitate the review process so as to mitigate costs and maximize efficiency, each Tribe/Consortium must provide access to all records, plans, and other pertinent documents relevant to the program(s) under review not otherwise available to the Department.

(d) The Secretary's designated representative(s) will:

(1) Review trust transactions;

(2) Conduct on-site inspections of trust resources, as appropriate;

(3) Review compliance with applicable statutory and regulatory requirements;

(4) Review compliance with the trust provisions of the AFA;

(5) Ensure that the same level of trust services is provided to individual Indians as would have been provided by the Secretary;

(6) Document deficiencies in the performance of trust functions discovered during the review process; and

(7) Ensure the fulfillment of the Secretary's trust responsibility to Tribes and individual Indians by documenting the existence of:

(i) Systems of internal controls;

(ii) Trust standards; and

(iii) Safeguards against conflicts of interest in the performance of trust functions.

(e) At the request of a Tribe/Consortium, at the time the AFA is negotiated, the standards will be negotiated, except where standards are otherwise provided for by law.

§ 1000.356 May the trust evaluation process be used for additional reviews?

Yes, if the parties agree.

§ 1000.357 May the parties negotiate standards of review for purposes of the trust evaluation?

Yes, unless standards are otherwise provided by Federal treaties, statutes, case law or regulations not waived, the Secretary's designated representative will negotiate standards of review at the request of the Tribe/Consortium.

§ 1000.358 Can an initial review of the status of the trust asset be conducted?

If the parties agree and it is practical, the Secretary may determine the status of the trust resource at the time of the transfer of the function or at a later time.

§ 1000.359 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?

The Secretary's representative(s) must prepare a written report documenting the results of the trust evaluation.

(a) Upon Tribal/Consortium request, the representative(s) will provide the Tribal/Consortium representative(s) with a copy of the report for review and comment before finalization.

(b) The representative(s) will attach to the report any Tribal/Consortium comments that the representative does not accept.

§ 1000.360 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?

No, Tribes/Consortia are under the same obligation as the Secretary to perform trust functions and related activities in accordance with trust protection standards and principles whether managing Tribally or individually owned trust assets. The process for conducting annual trust evaluations of Tribal performance of trust functions on behalf of individual Indians is the same as that used in evaluating performance of Tribal trust functions.

§ 1000.361 Will the annual review include a review of the Secretary's residual trust functions?

Yes, if the annual evaluation reveals that deficient performance of a trust function is due to the action or inaction of a bureau, the evaluation report will note the deficiency and the appropriate Department official will be notified of the need for corrective action. The review of the Secretary's trust functions shall be based on the standards in this subpart, other applicable law, and other Federal law.

§ 1000.362 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?

(a) A finding of imminent jeopardy triggers the Federal reassumption process (see subpart M of this part), unless the conditions in paragraph (b) of this section are met.

(b) The reassumption process will not be triggered if the Secretary's designated representative determines that the Tribe/Consortium:

(1) Can cure the conditions causing jeopardy within 60 days; and

(2) Will not cause significant loss, harm, or devaluation of a trust asset, natural resources, or the public health and safety.

§ 1000.363 What if the trust evaluation reveals problems that do not rise to the level of imminent jeopardy?

Where problems not rising to the level of imminent jeopardy are caused by Tribal action or inaction, the conditions must be:

(a) Documented in the annual trust evaluation report;

(b) Reported to the Secretary; and

(c) Reported in writing to:

(1) The governing body of the Tribe; and

(2) In the case of a Consortium, to the governing body of each Tribe on whose behalf the Consortium is performing the trust functions.

§ 1000.364 Who is responsible for corrective action?

The Tribe/Consortium is primarily responsible for identifying and implementing corrective actions for matters contained in the AFA, but the Department may also suggest possible corrective measures for Tribal consideration.

§ 1000.365 What are the requirements of the review team report?

A report summarizing the results of the trust evaluation will be prepared and copies provided to the Tribe/Consortium. The report must:

(a) Be written objectively, concisely, and clearly; and

(b) Present information accurately and fairly, including only relevant and adequately supported information, findings, and conclusions.

§ 1000.366 Can the Department conduct more than one trust evaluation per Tribe per year?

Trust evaluations are normally conducted annually. When the Department receives information of a threat of imminent jeopardy to a trust asset, natural resource, or the public health and safety, the Secretary, as trustee, may conduct a preliminary investigation. If the preliminary investigation shows that appropriate, sufficient data are present to indicate there may be imminent jeopardy, the Secretary's designated representative:

(a) Will notify the Tribe/Consortium in writing; and

(b) May conduct an on-site inspection upon 2 days' advance written notice to the Tribe/Consortium.

§ 1000.367 Will the Department evaluate a Tribe's/Consortium's performance of non-trust related programs?

This depends on the terms contained in the AFA.

Subpart P—Reports

§ 1000.380 What is the purpose of this subpart?

This subpart describes what reports are developed under self-governance.

§ 1000.381 How is information about self-governance developed and reported?

Annually, the Secretary will compile a report on self-governance for submission to the Congress. The report will be based on:

(a) Audit reports routinely submitted by Tribes/Consortia;

(b) The number of retrocessions requested by Tribes/Consortia in the reporting year;

(c) The number of reassumptions that occurred in the reporting year;

(d) Federal reductions-in-force and reorganizations resulting from self-governance activity;

(e) The type of residual functions and amount of residual funding retained by BIA; and

(f) An annual report submitted to the Secretary by each Tribe/Consortium as described in

§ 1000.382 What may the Tribe's/Consortium's annual report on self-governance address?

(a) The Tribe's/Consortium's annual self-governance report may address:

(1) A list of unmet Tribal needs in order of priority;

(2) The approved, year-end Tribal budget for the programs and services funded under self-governance, summarized and annotated as the Tribe may deem appropriate;

(3) Identification of any reallocation of trust programs;

(4) Program and service delivery highlights, which may include a narrative of specific program redesign or other accomplishments or benefits attributed to self-governance; and

(5) At the Tribe's/Consortium's option, a summary of the highlights of the report referred to in paragraph (a)(2) of this section and other pertinent information the Tribes may wish to report.

(b) The report submitted under this section is intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and to fulfill its responsibility as an advocate for self-governance. The Tribal reporting requirement is not intended to be burdensome, and Tribes are encouraged to design and present the report in a brief and concise manner.

Subpart Q—Miscellaneous Provisions

§ 1000.390 How can a Tribe/Consortium hire a Federal employee to help implement an AFA?

If a Tribe/Consortium chooses to hire a Federal employee, it can use one of the arrangements listed in this section:

(a) The Tribe can use its own Tribal personnel hiring procedures. Federal employees hired by the Tribe/Consortium are separated from Federal service.

(b) The Tribe can ''direct hire'' a Federal employee as a Tribal employee. The employee will be separated from Federal service and work for the Tribe/Consortium, but maintain a negotiated Federal benefit package that is paid for by the Tribe/Consortium out of AFA program funds; or

(c) The Tribe can negotiate an agreement under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable Federal law. The employee will remain a Federal employee during the term of the agreement.

§ 1000.391 Can a Tribe/Consortium employee be detailed to a Federal service position?

Yes, under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable law, when permitted by the Secretary.

§ 1000.392 How does the Freedom of Information Act apply?

(a) Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law.

(b) At the option of the Tribe/Consortium under section 108 of the Pub. L. 93–638, except for previously provided copies of Tribe/Consortium records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping system of the Department of the Interior, records of the Tribe/Consortium shall not be considered Federal records for the purpose of the Freedom of Information Act.

(c) The Freedom of Information Act does not apply to records maintained solely by Tribes/Consortia.

§ 1000.393 How does the Privacy Act apply?

At the option of the Tribe/Consortium, section 108(b) of Pub. L. 93–638, as amended, provides that records of the Tribe/Consortium must not be considered Federal records for the purposes of the Privacy Act.

§ 1000.394 What audit requirements must a self-governance Tribe/Consortium follow?

The Tribe/Consortium must provide to the designated official an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, 31 U.S.C. 7501, *et seq*.

§ 1000.395 Do OMB circulars and revisions apply to self-governance funding agreements?

Yes, OMB circulars and revisions apply, except for:

(a) Listed exceptions for Tribes and Tribal Consortia;

(b) Exceptions in 25 U.S.C. 450j–1(k); and

(c) Additional exceptions that OMB may grant.

§ 1000.396 Does a Tribe/Consortium have additional ongoing requirements to maintain minimum standards for Tribe/Consortium management systems?

Yes, the Tribe/Consortium must maintain management systems that are determined to be adequate by an independent audit through the annual single agency audit report that is required by the Act and OMB Circular A–133.

§ 1000.397 Are there any restrictions on how AFA funds may be spent?

Yes, funds may be spent only for costs associated with programs, services, functions, and activities contained in self-governance AFAs.

§ 1000.398 May a Tribe/Consortium invest funds received under a self-governance agreement?

Yes, self-governance funds may be invested if such investment is in:

(a) Obligations of the United States;

(b) Obligations or securities that are within the limits guaranteed or insured by the United States or mutual (or other) funds registered with the Securities and Exchange Commission and that only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(c) Deposits insured by an agency or instrumentality of the United States or are fully collateralized to ensure protection of the funds even in the event of a bank failure.

§ 1000.399 How may interest or investment income that accrues on AFAs be used?

Unless restricted by the AFA, interest or income earned on investments or deposits of self-governance awards may be:

(a) Placed in the Tribe's general fund and used for any purpose approved by the Tribe; or

(b) Used to provide expanded services under the self-governance AFA and to

support some or all of the costs of investment services.

§ 1000.400 Can a Tribe/Consortium retain savings from programs?

Yes, for BIA programs, the Tribe/Consortium may retain savings for each fiscal year during which an AFA is in effect. A Tribe/Consortium must use any savings that it realizes under an AFA, including a construction contract:

(a) To provide additional services or benefits under the AFA; or

(b) As carryover; and

(c) For purposes of this subpart only, programs administered by BIA using appropriations made to other Federal agencies, such as the Department of Transportation, will be treated in accordance with paragraph (b) of this section.

§ 1000.401 Can a Tribe/Consortium carry over funds not spent during the term of the AFA?

This section applies to BIA programs, services, functions, or activities, notwithstanding any other provision of law. Any funds appropriated under the Snyder Act of 1921 (42 Stat. 208), for any fiscal year that are not obligated or spent by the end of the fiscal year for which they were appropriated shall remain available for obligation or expenditure during the following fiscal year. In the case of amounts made available to a Tribe/Consortium under an AFA, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are authorized to be used under the provisions of § 106(a)(3) of the Act, no additional justification or documentation of such purposes need be provided by the Tribe/Consortium to the Secretary as a condition of receiving or expending such funds.

§ 1000.402 After a non-BIA AFA has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of funds?

The bureau may request the return of funds already transferred to a Tribe/Consortium only under the following circumstances:

(a) Retrocession;

(b) Reassumption;

(c) Construction, when there are special legal requirements; or

(d) As otherwise provided for in the AFA.

§ 1000.403 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under an AFA?

(a) *BIA programs.* A person or group who is aggrieved by an action of a Tribe/Consortium with respect to programs that are provided by the Tribe/Consortium under an AFA must follow Tribal administrative procedures.

(b) *Non-BIA programs.* Procedures will vary depending on the program. Aggrieved parties should initially contact the local program administrator (the Indian program contact). Thereafter, appeals will follow the relevant bureau's appeal procedures.

§ 1000.404 Must self-governance Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81; 82a; and 476 regarding professional and attorney contracts?

No, for the period that an agreement entered into under this part is in effect, the provisions of 25 U.S.C. 81, 82a, and 476, do not apply to attorney and other professional contracts by participating Tribes/Consortia.

§ 1000.405 Are AFA funds non-Federal funds for the purpose of meeting matching requirements?

Yes, self-governance AFA funds can be treated as non-Federal funding for the purpose of meeting matching requirements under Federal law.

§ 1000.406 Does Indian preference apply to services, activities, programs, and functions performed under a self-governance AFA?

Tribal law must govern Indian preference in employment, where permissible, in contracting and subcontracting in performance of an AFA.

§ 1000.407 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?

No, wage and labor standards of the Davis-Bacon Act do not apply to employees of Tribes and Tribal Consortia.

They do apply to all other laborers and mechanics employed by contractors and subcontractors in the construction, alteration, and repair (including painting or redecorating of buildings or other facilities) in connection with an AFA.

SUPPLY SOURCES

§ 1000.408 Can a Tribe/Consortium use Federal supply sources in the performance of an AFA?

A Tribe/Consortium and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) that must be available to the Tribe/Consortium and to its employees to the same extent as if the Tribe/Consortium were a Federal agency. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribe/Consortium to resolve any barriers to full implementation that may arise. While implementation of this provision is the responsibility of the General Services Administration, the Department shall assist the Tribes/Consortia to resolve any barriers to full implementation that may arise to the fullest extent possible.

PROMPT PAYMENT ACT

§ 1000.409 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA, non-Indian program AFA?

Yes, upon mutual agreement of the parties, an AFA may incorporate the Prompt Payment Act.

Subpart R—Appeals

§ 1000.420 What does "Title-I eligible programs" mean in this subpart?

Throughout this subpart, the phrase ''Title I-eligible programs'' is used to refer to all programs, functions, services, and activities that the Secretary provides for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department within which the programs, functions, services, and activities have been performed.

§ 1000.421 What is the purpose of this subpart?

This subpart prescribes the process Tribes/Consortia may use to resolve disputes with the Department arising before or after execution of an AFA or compact and certain other disputes related to self-governance. It also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

(a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes;

(b) The Interior Board of Contract Appeals (IBCA) for certain post-AFA disputes;

(c) The Assistant Secretary for the bureau responsible for certain disputed decisions;

(d) The Secretary for reconsideration of decisions involving self-governance compacts; and

(e) The agency head for certain pre-award AFA disputes.

§ 1000.422 How must disputes be handled?

(a) The Department encourages its Bureaus to seek all means of dispute resolution before the Tribe/Consortium files a formal appeal(s).

(b) Disputes shall be addressed through government-to-government discourse. This discourse must be respectful of government-to-government relationships and relevant Federal-Tribal agreements, treaties, judicial decisions, and policies pertaining to Indian Tribes.

(c) Title I-eligible program disputes may use an informal conference as set forth in 25 CFR 900.153–157.

(d) All disputes arising under this rule, including but not limited to Title I-eligible program disputes may use non-binding informal alternative dispute resolution at the option of the Tribe/Consortium, as prescribed in § 402 of this subpart. The Tribe/Consortium may ask for this alternative dispute resolution any time before the issuance of an initial decision of a formal appeal(s). The appeals timetable will be suspended while alternative dispute resolution is pending.

§ 1000.423 Are there any decisions that are not administratively appealable under this subpart?

Yes, the following types of decisions are not administratively appealable under this subpart but may be appealable under other substantive provisions of the Code of Federal Regulations:

(a) Decisions relating to planning and negotiation grants (subparts C and D of this part) and certain discretionary grants not awarded under Title IV (25 CFR part 2);

(b) Decisions involving a limitation and/or reduction of services for BIA programs (subpart H of this part)(25 CFR part 2);

(c) Decisions regarding requests for waivers of regulations (subpart J of this part);

(d) Decisions regarding construction (subpart K of this part) addressed in § 1000.251(b); and

(e) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act (see 43 CFR part 2).

§ 1000.424 Does a Tribe/Consortium have a right to an informal conference to resolve any disputes?

Yes, the Tribe/Consortium may request an informal conference (a nonbinding alternative dispute resolution process). An informal conference is a way to resolve both Title I-eligible program and other disputes as quickly as possible, without the need for a formal appeal.

§ 1000.425 How does a Tribe/Consortium request an informal conference?

The Tribe/Consortium shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision.

(a) The Tribe/Consortium may either hand-deliver the request for an informal conference to that person's office, fax the request with confirmation or mail it by certified mail, return receipt requested.

(b) If the Tribe/Consortium mails the request, it will be considered filed on the date the Tribe/Consortium mailed it by certified mail.

§ 1000.426 How is an informal conference held?

For all purposes relating to these informal conference procedures, the parties are the designated representatives of the Tribe/Consortium and the bureau.

(a) The informal conference shall be held within 30 days of the date the request was received, unless the parties agree on another date.

(b) Where practicable, at the option of the Tribe/Consortium, the informal conference will be held at the Tribe's/Consortium's office. If the meeting cannot be held at the Tribe's/Consortium's office, the parties must agree on an alternative meeting place.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only the parties may make presentations at the informal conference.

(e) The informal conference is not a hearing on the record. Nothing said during an informal conference may be used by either party in litigation.

§ 1000.427 What happens after the informal conference?

(a) Within 10 business days of the informal conference, the person who conducted the informal conference shall mail to the Tribe/Consortium a brief summary of the informal conference. The summary must include any agreements reached or changes from the initial position of the bureau or the Tribe/Consortium.

(b) If in its judgment no agreement was reached, the Tribe/Consortium may choose to appeal the initial decision, as modified by any changes made as a result of the informal conference, under § 1000.421 of this subpart to the IBIA, bureau head/Assistant Secretary, or IBCA.

§ 1000.428 How may a Tribe/Consortium appeal a decision made after the AFA or compact or amendment to an AFA or compact has been signed?

With the exception of certain decisions concerning reassumption for imminent jeopardy (see § 1000.408 of this subpart), the Tribe/Consortium may appeal post-award administrative decisions to the IBCA.

§ 1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to IBCA?

Section 110 of Pub. L. 93–638 (25 U.S.C. 450 m–1) and the regulations at 25 CFR 900.216–900.230 apply to disputes concerning signed AFAs and compacts that are appealed to the IBCA, except that any references to the Department of Health and Human Services are inapplicable. For the purposes of such appeals:

(a) The terms ''contract'' and ''self-determination contract'' mean compacts and AFAs under the Tribal Self-Governance Act; and

(b) The term ''Tribe'' means ''Tribe/Consortium'.

§ 1000.430 To whom are appeals directed regarding reassumption for imminent jeopardy?

Appeals regarding reassumption of Title I-eligible PFSAs are handled by the IBIA under those procedures set out in 25 CFR 900.171 through 900.176. Appeals regarding reassumption of PFSAs that are not Title I-eligible are handled by the IBCA under those procedures set out in 43 CFR part 4.

§ 1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes, EAJA claims against the DOI will be heard by IBIA or IBCA, as appropriate, under 43 CFR 4.601 through 4.619, Equal Access to Justice Act (Pub. L. No. 96–481, 92 Stat. 2325, as amended), section 504 of Title 5 U.S.C. and Section 2412 of Title 28 U.S.C.

§ 1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?

(a) *Title I-eligible PFSA pre-award disputes.* For Title I—eligible PFSA disputes, appeal may only be filed with IBIA under the provisions set forth in 25 CFR 900.150(a) through (h), 900.152 through 900.169.

(b) *Other pre-award disputes.* For all other pre-award disputes, including those involving PFSAs that are not Title I-eligible, appeals may be filed with the bureau head/Assistant Secretary or IBIA as noted below. However, the Tribe/Consortium may not avail itself of both paths for the same dispute.

(1) *Bureau head/Assistant Secretary appeal.* Unless the initial decision being appealed is one that was made by the bureau head (those appeals are forwarded to the appropriate Assistant Secretary—see § 1000.433(c) of this subpart), the bureau head will decide appeals relating to these pre-award matters, that include but are not limited to disputes regarding:

(i) PFSAs that are not Title 1-eligible;

(ii) Eligibility for the applicant pool of self-governance Tribes;

(iii) BIA residual functions;

(iv) Decisions declining to provide requested information as addressed in § 1000.172 of this part;

(v) Allocations of program funds when a dispute arises between a Consortium and a withdrawing Tribe; and

(vi) Inherently Federal functions.

(2) *IBIA appeal.* The Tribe/Consortium may choose to forego the administrative appeal through the bureau or the Assistant Secretary, as described in the paragraph (b)(1) of this section, and instead appeal directly to IBIA. The standard of review for such IBIA appeals will be an ''abuse of discretion'' standard.

§ 1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?

(a) If a Tribe/Consortium wishes to exercise its appeal rights under § 1000.432(b)(1), it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision. In addition, the Tribe/Consortium may request the opportunity to have a meeting with appropriate bureau personnel in an effort to clarify the matter under dispute before a formal decision by the bureau head.

(b) The written request for review should include a statement describing its reasons for a review, with any supporting documentation, or indicate that such a statement or documentation will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

(c) If the initial decision was made by the bureau head, any appeal shall be directed to the appropriate Assistant Secretary. If a Tribe does not request a review within 30 days of receipt of the decision, the initial decision will be final for the Department.

§ 1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?

Within 30 days of receiving the request for review and the statement of reasons described in § 1000.433, the bureau head or, where applicable, the appropriate Assistant Secretary must:

(a) Issue a written final decision stating the reasons for the decision; and

(b) Send the decision to the Tribe/Consortium.

§ 1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?

The appropriate Assistant Secretary will decide an appeal of any initial decision made by a bureau head (see § 1000.433). If the Tribe/Consortium has appealed the bureau's initial adverse decision of the bureau to the bureau head and the bureau head's decision on initial appeal is contrary to the Tribe's/Consortium's request for relief, or the bureau head fails to make a decision within 30 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation, the Tribe's/Consortium's appeal will be sent automatically to the appropriate Assistant Secretary for decision. The Assistant Secretary must either concur with the bureau head's decision or issue a separate decision within 60 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation. The decision of the Assistant Secretary is final for the Department.

§ 1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A Tribe/Consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration to the Secretary within 30 days of receipt of the decision. A copy of this request must also be sent to the Director of the Office of Self-Governance.

§ 1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary must respond in writing to the Tribe/Consortium within 30 days of receipt of the Tribe's/Consortium's request for reconsideration.

§ 1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?

Yes, Tribes/Consortia may appeal decisions of Department officials relating to the self-governance program to an appropriate Federal court, as authorized by section 110 of Pub. L. 93–638 (25 U.S.C. 405m-1), or any other applicable law.

Subpart S—Conflicts of Interest

§ 1000.460 What is an organizational conflict of interest?

(a) An organizational conflict of interest arises when there is a direct conflict between the financial interests of the self-governance Tribe/Consortium and:

(1) The financial interests of beneficial owners of Indian trust resources;

(2) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed under the Alaska Native Claims Settlement Act 43 U.S. C. 1601 *et seq.*; or

(3) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the AFA was first negotiated.

(b) This section only applies where the financial interests of the Tribe/Consortium are significant enough to impair the Tribe's/Consortium's objectivity in carrying out the AFA, or a portion of the AFA.

§ 1000.461 What must a Tribe/Consortium do if an organizational conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When a Tribe/Consortium becomes aware of an organizational conflict of interest, the Tribe/Consortium must immediately disclose the conflict to the Secretary.

§ 1000.462 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

A Tribe/Consortium must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

§ 1000.463 What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by a Tribe/Consortium?

The Tribe/Consortium would need a tribally-approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Tribe/Consortium reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the tribe/consortium or an allottee. Interests arising from membership in, or employment by, a Tribe/Consortium or rights to share in a tribal claim need not be regulated.

§ 1000.464 What personal conflicts of interest must the standards of conduct regulate?

The personal conflicts of interest standards must:

(a) Prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship;

(b) Prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Tribe/Consortium) with an in the trust transactions under review; and

(c) Provide for sanctions or remedies for violation of the standards.

§ 1000.465 May a Tribe/Consortium negotiate AFA provisions on conflicts of interest to take the place of this subpart?

(a) A Tribe/Consortium and the Secretary may agree to AFA provisions, concerning either personal or organizational conflicts, that:

(1) Address the issues specific to the program and activities contracted; and

(2) Provide equivalent protection against conflicts of interest to these regulations.

(b) Agreed-upon AFA provisions shall be followed, rather than the related provisions of this subpart. For example, the Tribe/Consortium and the Secretary may agree that using the Tribe's/Consortium's own written code of ethics satisfies the objectives of the personal conflicts provisions of subpart, in whole or in part.

APPENDIX A TO PART 1000—MODEL COMPACT OF SELF-GOVERNANCE BETWEEN THE TRIBE AND THE DEPARTMENT OF THE INTERIOR

ARTICLE I—AUTHORITY AND PURPOSE

Section 1—Authority

This agreement, denoted a compact of Self-Governance (hereinafter referred to as the ''compact''), is entered into by the Secretary of the Interior (hereinafter referred to as the ''Secretary''), for and on behalf of the United States of America under the authority granted by Title IV of the Indian Self Determination and Education Assistance Act, Pub. L. 93–638, as amended, and by the Tribe, under the authority of the Constitution and By-Laws of the Tribe (hereinafter referred to as the ''Tribe'').

Section 2—Purpose

This compact shall be liberally construed to achieve its purposes:

(a) This compact is to carry out Self-Governance as authorized by Title IV of Pub. L. 93–638, as amended, that built upon the Self Governance Demonstration Project, and transfer control to Tribal governments, upon Tribal request and through negotiation with the United States government, over funding and decision-making of certain Federal programs as an effective way to implement the Federal policy of government-to-government relations with Indian Tribes.

(b) This compact is to enable the United States to maintain and improve its unique

and continuing relationship with and responsibility to the Tribe through Tribal self-governance, so that the Tribe may take its rightful place in the family of governments; remove Federal obstacles to effective self-governance; reorganize Tribal government programs and services; achieve efficiencies in service delivery; and provide a documented example for the development of future Federal Indian policy. This policy of Tribal self-governance shall permit an orderly transition from Federal domination of Indian programs and services to allow Indian Tribes meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. In implementing Self-Governance, the Bureau of Indian Affairs is expected to provide the same level of service to other Tribal governments and to demonstrate new policies and methods to improve service delivery and address Tribal needs. In fulfilling its responsibilities under the compact, the Secretary hereby pledges that the Department will conduct all relations with the Tribe on a government-to-government basis.

ARTICLE II—TERMS, PROVISIONS AND CONDITIONS

Section 1—Term

This compact shall be effective when signed by the Secretary or an authorized representative and the authorized representative of the Tribe. The term of this compact shall commence [negotiated effective date] and must remain in effect as provided by Federal law or agreement of the parties.

Section 2—Funding Amount

In accordance with Section 403(g) of Title IV of Pub. L. 93–638, as amended, and subject to the availability of appropriations, the Secretary shall provide to the Tribe the total amount specified in each annual funding agreement.

Section 3—Reports to Congress

To implement Section 405 of Pub. L. 93–638, as amended, on each January 1 throughout the period of the compact, the Secretary shall make a written report to the Congress that shall include the views of the Tribe concerning the matters encompassed by Section 405(b) and (d).

Section 4—Regulatory Authority

The Tribe shall abide by all Federal regulations as published in the FEDERAL REGISTER unless waived in accordance with Section 403(i)(2) of Pub. L. 93–638, as amended.

Section 5—Tribal Administrative Procedure

The Tribe shall provide administrative due process right under the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, *et seq.*, to protect all rights and interests that Indians, or groups of Indians, may have with respect to services, activities, programs, and functions that are provided under the compact.

ARTICLE III—OBLIGATIONS OF THE TRIBE

Section 1—AFA Programs

The Tribe will perform the programs as provided in the specific AFA negotiated under the Act. The Tribe pledges to practice utmost good faith in upholding its responsibility to provide such programs, under the Act.

Section 2—Trust Services for Individual Indians

To the extent that the AFAs have provisions for trust services to individual Indians that were formerly provided by the Secretary, the Tribe will maintain at least the same level of service as was previously provided by the Secretary. The Tribe pledges to practice utmost good faith in upholding their responsibility to provide such service.

ARTICLE IV—OBLIGATIONS OF THE UNITED STATES

Section 1—Trust Responsibility

The United States reaffirms the trust responsibility of the United States to the _____ Tribe(s) to protect and conserve the trust resources of the Tribe(s) and the trust resources of individual Indians associated with this compact and any annual funding agreement negotiated under the Tribal Self-Governance Act.

Section 2—Trust Evaluations

Under Section 403(d) of Pub. L. 93–638, as amended, annual funding agreements negotiated between the Secretary and an Indian Tribe shall include provisions to monitor the performance of trust functions by the Tribe through the annual trust evaluation.

ARTICLE V—OTHER PROVISIONS

Section 1—Facilitation

Nothing in this compact may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the Tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

Section 2—Officials Not To Benefit

No Member of Congress, or resident commissioner, shall be admitted to any share or part of any annual funding agreement or contract thereunder executed under this compact, or to any benefit that may arise from such compact. This paragraph may not be construed to apply to any contract with a third party entered into under an annual funding agreement under this compact if

such contract is made with a corporation for the general benefit of the corporation.

Section 3—Covenant Against Contingent Fees

The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed under this compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Section 4—Sovereign Immunity

Nothing in this compact or any AFA shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

In witness whereof, the parties have executed, delivered and formed this compact, effective the _____ day of _____, 20____.

THE _____ Tribe

The Department of the Interior.

By: _____

By: _____

PART 1001—SELF-GOVERNANCE PROGRAM

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1001.5 Application review and selection process for negotiations for funding agreements.
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1001.8 Selection criteria for tribes/consortia to receive a negotiation grant.
1001.9 Selection criteria for tribes/consortia seeking advance planning grant funding.
1001.10 Selection criteria for other planning and negotiating financial assistance.

AUTHORITY: 25 U.S.C. 450 note, 458aa–458gg.

SOURCE: 60 FR 8554, Feb. 15, 1995, unless otherwise noted.

§ 1001.1 Purpose.

The purpose of this rule is to establish the process for tribes to apply for entry into the Self-Governance program and to establish the selection criteria by which the Department will identify eligible tribes and select tribes to begin the negotiations process.

§ 1001.2 Applicant eligibility.

Any tribe or consortium of tribes seeking inclusion in the applicant pool must meet the following eligibility criteria:

(a) Be a federally recognized tribe or a consortium of federally recognized tribes as defined in Public Law 93–638.

(b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body.

(c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96–502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement.

(d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—

(1) Legal and budgetary research; and

(2) Internal tribal government and organizational planning.

(e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

§ 1001.3 Priority ranking for negotiations.

In addition to the eligibility criteria identified above, a tribe or consortium of tribes seeking priority ranking for negotiations must submit a description of the efforts of the tribe or consortium to seek to enter negotiations and/or prepare for operations under the self-

governance option. This narrative should identify any activities that the tribe has pursued, carefully identifying and documenting the dates involved, including, but not limited to, the following:

(a) Prior planning activities related to self-governance, noting the source of funding for the planning activity and whether or not it was sanctioned by the Office of Self-Governance (OSG), including documentation as applicable.

(b) Prior efforts to secure planning and/or negotiation grants.

(c) Meetings with the OSG or other Departmental offices in which the tribe expressed an interest in participating in the Self-Governance Project.

(d) Correspondence between the tribe and the Department in which the tribe has expressed an interest in participating in the Self-Governance Project.

(e) All actions of the tribal governing body related to participating in the self-governance option.

§ 1001.4 Application review and approval.

Upon receipt of an application, the OSG will review the package and determine whether or not it is complete. Upon determination that it is complete, the name of the tribe or consortium will be included in the official applicant pool. Incomplete submissions will be returned with the deficiencies identified. Revised applications may be resubmitted for consideration at any time.

§ 1001.5 Application review and selection process for negotiations for funding agreements.

Upon acceptance into the applicant pool, the OSG will assign to each tribe or consortium a ranking relative to other applicants based upon the date the OSG receives the complete application package. This ranking will constitute a master list that will be maintained and updated on a continuous basis from year to year. When receipt dates are the same for two or more applications, several other factors will be considered in determining the placement of the tribe or consortium on the list. These factors are identified in priority order as follows:

(a) Designation by the Congress through report language that a tribe should be considered for participation. These designations will be considered based upon the actual language of the report.

(b) Documentation of OSG sanctioning of the tribe's self-governance planning and subsequent evidence of actual planning by the tribe.

(c) Submission of a completed planning or negotiation grant application in the previous year.

(d) A signed agreement pursuant to the Indian Health Service (IHS) self-governance project.

(e) Receipt of a planning grant awarded by the IHS.

§ 1001.6 Submitting applications.

(a) Applications for inclusion in the applicant pool will be accepted on an on-going basis.

(b) Applications may be mailed or hand-delivered.

(c) Applications for negotiations in 1996 that are mailed must be postmarked no later than May 16, 1995.

(d) Applications must be sent to: Director, Office of Self Governance, Department of the Interior, 1849 C Street, NW., MIB RM/MS–2548, Washington, DC 20240.

§ 1001.7 Availability, amount, and number of planning and negotiation grants.

(a) What is the purpose of this section? This section describes how to apply for planning and negotiation grants authorized by section 402(d) of the Act to help meet tribal costs incurred:

(1) In meeting the planning phase requirement of Pub. L. 103–413, including planning to negotiate non-BIA programs, services, functions and activities; and

(2) In conducting negotiations.

(b) What types of grants are available? Three categories of grants may be available:

(1) Negotiation grants for tribes/consortia selected from the applicant pool as described in § 1001.5 of these regulations;

(2) Planning grants for tribes/consortia requiring advance funding to

meet the planning phase requirement of Pub. L. 103–413; and

(3) Financial assistance for tribes/consortia to plan for negotiating for non-BIA programs, services, functions and activities, as described in § 1001.10.

(c) Will grants always be made available to meet the planning phase requirement as described in section 402(d) of Pub. L. 103–413? No. Grants to cover some or all of the planning costs that a tribe/consortium may incur may be made available depending upon the availability of funds appropriated by Congress. We will publish notice of availability of grants in the FEDERAL REGISTER as described in this section.

(d) May a tribe use its own resources to meet its planning and negotiation expenses in preparation for entering into self-governance? Yes. A tribe/consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and annual funding agreement.

(e) What happens if there are insufficient funds to meet the anticipated tribal requests for planning and negotiation grants in any given year? If appropriated funds are available but insufficient to meet the total requests from tribes/consortia, we will give first priority to those that have been selected from the applicant pool to negotiate an annual funding agreement. We will give second priority to tribes/consortia that require advance funds to meet the planning requirement for entry into the self-governance program. We will give third priority to tribes/consortia that require negotiation/planning funds to negotiate for DOI non-BIA programs.

(f) How many grants will the Department make each year and what funding will be available? The number and size of grants awarded each year will depend on Congressional appropriations and tribal interest. Each year, we will publish a notice in the FEDERAL REGISTER which provides relevant details about the application process, including: The funds available, timeframes, and requirements for negotiation and advance planning specified in this part.

[61 FR 17831, Apr. 23, 1996]

§ 1001.8 Selection criteria for tribes/consortia to receive a negotiation grant.

(a) Who may be selected to receive a negotiation grant? Any tribe/consortium that has been accepted into the applicant pool in accordance with § 1001.5 and has been selected to negotiate a self-governance annual funding agreement is eligible to apply for a negotiation grant. Each year, we will publish a notice in the FEDERAL REGISTER with all relevant details as to how tribes/consortia which have been selected can apply for negotiation grants.

(b) What must a tribe/consortium do to receive a negotiation grant?

(1) To receive a negotiation grant, a tribe/consortium must:

(i) Be selected from the applicant pool to negotiate an annual funding agreement;

(ii) Be identified as eligible to receive a negotiation grant; and

(iii) Not have received a negotiation grant within the 3 years preceding the date of the latest FEDERAL REGISTER announcement described in § 1001.7.

(2) The tribe/consortium must submit a letter affirming its readiness to negotiate and formally request a negotiation grant to prepare for and negotiate a self-governance agreement. These grants are not competitive.

(c) May a selected tribe negotiate without applying for a negotiation grant? Yes. In this case, the tribe should notify us in writing so that funds can be reallocated for other grants.

[61 FR 17832, Apr. 23, 1996]

§ 1001.9 Selection criteria for tribes/consortia seeking advance planning grant funding.

(a) Who is eligible to apply for a planning grant that will be awarded before a tribe/consortium is admitted into the applicant pool? Any tribe/consortium that is not a self-governance tribe and needs advance funding in order to complete the planning phase requirement may apply. Tribes/consortia that have received a planning grant within 3 years preceding the date of the latest FEDERAL REGISTER announcement described in § 1001.7 are not eligible.

(b) What must a tribe/consortium seeking a planning grant submit in order to meet the planning phase requirements? A tribe/consortium must submit the following material:

(1) A tribal resolution or other final action of the tribal governing body indicating a desire to plan for tribal self-governance;

(2) Audits from the last 3 years which document that the tribe meets the requirement of being free from any material audit exception;

(3) A proposal that describes the tribe's/consortium's plans to conduct:

(i) Legal and budgetary research, and

(ii) Internal tribal government and organization planning;

(4) A timeline indicating when planning will start and end; and

(5) Evidence that the tribe/consortium can perform the tasks associated with its proposal (i.e., submit resumes and position descriptions of key staff or consultants to be used).

(c) How will tribes/consortia know when and how to apply for planning grants? Each year, we will publish in the FEDERAL REGISTER a notice of the availability of planning grants for additional tribes as described in § 1001.7. This notice will identify the specific details for applying.

(d) What criteria will be used to award planning grants to those tribes/consortia requiring advance funding to meet the planning phase requirement of Public Law 103–413? Advance planning grants are discretionary and based on need. The following criteria will be used to determine whether to award a planning grant to a tribe/consortium before the tribe is being selected into the applicant pool:

(1) A complete application as described in §§ 1001.9(b) and 1001.9(c);

(2) A demonstration of financial need. We will rank applications according to the percentage of tribal resources to total resources as indicated in the latest A–128 audit. We will give priority to applications that demonstrate financial need by having a lower level of tribal resources as a percent of total resources; and

(3) Other factors that demonstrate the readiness of the tribe/consortium to enter into a self-governance agreement, including previous efforts of the tribe/consortium to participate in self-governance.

(e) Can tribes/consortia that receive advance planning grants also apply for a negotiation grant? Yes. Tribes/consortia that receive advance planning grants may submit a completed application to be included in the applicant pool. Once approved for inclusion in the applicant pool, the tribe/consortium may apply for a negotiation grant according to the process identified in § 1001.7 above.

(f) When and how will a tribe/consortium know whether it has been selected to receive an advance planning grant? Within 30 days of the deadline for submitting applications we will notify the tribe/consortium by letter whether it has been selected to receive an advance planning grant.

[61 FR 17832, Apr. 23, 1996]

§ 1001.10 Selection criteria for other planning and negotiating financial assistance.

(a) What is the purpose of this section? This section describes how to apply for other financial assistance for planning and negotiating of a DOI non-BIA program, service, function or activity that may be available, as well as the selection process.

(b) Are there other funds that may be available to self-governance tribes/consortia for planning and negotiating with DOI non-BIA bureaus? Yes. Tribes/consortia may contact the Director, Office of Self-Governance to determine if funds are available for the purpose of planning and negotiating with DOI non-BIA bureaus under this section. A tribe/consortium may also request information from a DOI non-BIA bureau on any funds which may be available from that bureau.

(c) Who is eligible to apply for financial assistance to plan and negotiate for a DOI non-BIA program? Any existing self-governance tribe/consortium is eligible.

(d) Under what circumstances may planning and negotiation financial assistance be made available to tribes/consortia? At the discretion of the Director, grants may be awarded when requested by the tribe and coordinated with the DOI non-BIA agency involved.

(e) How does the tribe/consortium apply for a grant to plan and negotiate for a DOI non-BIA program? When such funds are available, we will publish a notice of their availability and a deadline for submitting applications for such grants in the FEDERAL REGISTER as indicated in § 1001.7.

(f) What must be included in the application? The application must include the following:

(1) The tribal resolution or other final action of the tribal governing body indicating that the tribe/consortium intends to negotiate for a DOI non-BIA program;

(2) A copy of the proposal or summary that was submitted to the DOI non-BIA bureau;

(3) A time line indicating when planning will begin and end;

(4) The planning resources from all other sources that are approved and/or anticipated for the planning activity; and

(5) The amount requested and a justification of why it is needed by the tribe/consortium.

(g) What criteria will we use to award grants to those tribes/consortia requesting financial assistance to plan and negotiate for a DOI non-BIA program? The award of such grants is discretionary. After consulting with the requesting tribe/consortium and the appropriate DOI non-BIA bureau, the Director will determine whether to award a grant to plan and negotiate for a DOI non-BIA program. The determination will be based upon the complexity of the project, the availability of resources from all other sources, and the relative need of the tribe/consortium to receive such funds for the successful completion of the planning and negotiating activity, as determined by the percentage of tribal resources to total resources as indicated in the latest A–128 audit. All decisions to award or not to award grants as described in paragraphs (e) and (f) of this section are final for the Department.

[61 FR 17832, Apr. 23, 1996]

CHAPTER VII—OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR

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PART 1200—AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT

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AUTHORITY: 25 U.S.C. 4001.

SOURCE: 61 FR 67932, Dec. 26, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 1200.1 Purpose of this regulation.

This part describes the processes by which Indian tribes can manage tribal funds currently held in trust by the United States. It defines how tribes may withdraw their funds from trust status; how they may return funds to trust; and how they may request technical assistance or grants to help prepare plans to manage funds or to ensure the capability to manage those funds.

§ 1200.2 Definitions.

As used in this part:

Act means the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103–412, 108 Stat. 4239, 25 U.S.C. 4001).

Agency Superintendent means the official in charge of a Bureau of Indian Affairs Agency.

Bureau or *BIA* means the Bureau of Indian Affairs, Department of the Interior.

Department or *DOI* means the Department of the Interior.

Fiduciary Trust Officer means the designated OST official at the agency or regional office.

General Counsel means the attorney for the tribe.

OST means the Office of the Special Trustee for American Indians, Department of the Interior.

Regional Director means the Bureau of Indian Affairs official in charge of a Regional Office.

Resolution means the formal manner in which a tribal government expresses its legislative will.

Secretary means the Secretary of the Interior or his/her designee.

Solicitor means the Office of the Solicitor, Department of the Interior.

Special Trustee means the Special Trustee for American Indians appointed under title III of the Act.

Tribal council means the elected or appointed governing officials of any tribe which is recognized by the Secretary.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act which is federally recognized by the U.S. Government for special programs and services provided by the Secretary to Indians because of their status as Indians. For this purpose, it also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary. An example of this would be the KCA (consisting of the Kiowa, Comanche and Apache Tribes).

Us means the Department of the Interior, i.e., the Secretary of the Interior or his/her designee.

We means the Department of the Interior, i.e., the Secretary of the Interior or his/her designee.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

§ 1200.3 What is the Department's policy on tribal management of trust funds?

(a) We will give tribes as much responsibility as they desire for the management of their tribal funds that we currently hold in trust.

(b) Title II of the American Indian Trust Fund Management Reform Act, implemented by these regulations, offers tribes one approach for assuming increased management of their funds that we now hold in trust and administer. Under title II, a tribe may completely remove its funds from Federal trust status and manage them as it wishes, subject to the requirements and conditions in this part. When a tribe withdraws its funds under this part, it may invest those funds in equities or other investment vehicles that are statutorily unavailable to us.

§ 1200.4 May tribes exercise increased direction over their trust funds and retain the protections of Federal trust status?

Yes. The Tribal Self-Governance Act (25 U.S.C. 458) and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) provide other options for trust funds management. A tribe may choose to manage its trust funds under the provisions of these Acts if it wishes. These options are covered by 25 CFR part 900 (the ''Indian Self-Determination and Education Assistance Act Program'') and 25 CFR part 1000 (the ''Self-Governance Program'').

§ 1200.5 What are the advantages and disadvantages of managing trust funds under the options in § 1200.4?

Under these other options, the funds remain in Federal trust status and the tribe can exercise a range of control over their management. However, the tribe has fewer investment options than it has when it withdraws its funds completely from trust status. If a tribe chooses to keep its funds in trust status, the tribe is subject to the same statutory investment restrictions that bind us. That means that the tribe's investments are limited to bank deposits and securities guaranteed by the United States. (See 25 U.S.C. 162a for specific statutory investment restrictions.)

§ 1200.6 How could a tribe receive future income directly rather than have the government continue to collect it?

If a tribe wishes to receive future income directly, the tribe may contact a Fiduciary Trust Officer located at the agency or regional office.

[71 FR 15339, Mar. 28, 2006]

§ 1200.7 Information collection.

(a) The information collection requirements contained in subpart B of this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*, and assigned OMB Control Number 1035–0003. Information is also collected in subpart D through the use of the following standard forms:

(1) SF 424, Application for Federal Assistance, OMB Control Number 0348–0043; and

(2) SF 424A, Budget Information, OMB Control Number 0348–0044.

(b) Information collected in § 1200.13 (How does a tribe apply to withdraw funds?) will be used to determine the eligibility of applicants, and the capability of tribes or their contractors to manage and invest large blocks of funds.

(c) Information collected in § 1200.43, (How can a tribe apply for technical assistance?) will be used to determine the eligibility of applicants, as well as the level of need for technical assistance, in order for tribes to develop Management Plans and to complete the application for withdrawal process.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

Subpart B—Withdrawing Tribal Funds From Trust

§ 1200.10 Who is eligible to withdraw their tribal funds from trust?

Any tribe for whom we manage funds in trust.

§ 1200.11 What funds may be withdrawn?

A tribe may withdraw some or all funds that we hold in trust if we approve a plan that it submits under this part.

§ 1200.12 What limitations and restrictions apply to withdrawn funds?

(a) A tribe may withdraw funds appropriated to satisfy judgments of the Indian Claims Commission (ICC) and the Court of Federal Claims and that we hold under the Indian Judgment Funds Use and Distributions Act (25 U.S.C. 1401) or another act of Congress if:

(1) The tribe uses the funds as specified in the previously approved judgment fund plan, and;

(2) The tribe withdraws only funds held for Indian tribes and does not include any funds held for individual tribal members.

(b) A tribe may withdraw funds appropriated to satisfy settlement agreements relating to certain tribal claims and that we hold and manage for the tribe pursuant to an act of Congress if:

(1) The tribe uses the funds as specified in the previously approved settlement act plan;

(2) The tribe withdraws only funds held for Indian tribes and does not include any funds held for individual tribal members; and

(3) It is determined that there is no provision in the act or settlement agreement requiring that the funds remain in trust to implement the act or agreement that cannot be waived.

(c) Tribal funds commonly known as ''Proceeds of Labor'' funds, usually income to trust resources, are generally withdrawn under normal tribal budgeting procedures, but may also be withdrawn from trust under this part. These funds may be returned to trust under the provisions of subpart C of this part.

§ 1200.13 How does a tribe apply to withdraw funds?

To withdraw funds, a tribe must submit four copies of its application and the attachments listed in this section to: Director, Office of External Affairs, Office of the Special Trustee for American Indians, Department of the Interior, MS–5140, 1849 C Street NW., Washington, DC 20240. We will notify the tribe if the application is incomplete and will help the tribe complete the application if requested. When we determine that the application is complete, we will send copies to the appropriate agency superintendent and regional director, and to the Special Trustee and the Solicitor. Each application package must contain the items listed below.

(a) Proof that the tribe has notified its members of its intent to remove funds from trust and that, when the request is approved, the tribe and not the United States Government will be liable for funds management. Notification must be by the method(s) that the tribe customarily uses to notify its members of significant tribal actions. The notification must identify the specific funds to be withdrawn.

(b) A tribal resolution that:

(1) Expressly authorizes the withdrawal of the funds and indicates the

(approximate) dollar amount of the funds to be withdrawn;

(2) Expressly acknowledges that the funds, once withdrawn in accordance with the Act, will no longer be held in trust status by the United States, and that we have no further liability or responsibility for the funds; and

(3) Acknowledges that:

(i) Neither we nor the tribe necessarily accept the account balances at the time of withdrawal as accurate; and

(ii) Neither we nor the tribe have waived any rights regarding the balances, including the right to seek compensation for incorrect balances.

(c) A copy of a formal agreement between the tribe and the manager of the funds to be withdrawn, in which the manager agrees to:

(1) Comply with the terms of the plan we approve under § 1200.15 and make only those changes that conform to revision procedures in the approved plan and the requirements of § 1200.19; and

(2) Transfer funds to the tribe or another manager only after receiving a valid tribal resolution calling for this transfer and proof that the tribe has notified its members of intent to transfer the funds. The resolution must clearly state that:

(i) The funds are being withdrawn to be reinvested by the tribe in a manner consistent with the goals and strategies of the approved plan; and

(ii) The fund managers will continue to follow any previously approved distribution plan conditions.

(d) A legal opinion by the tribe's attorney or its general counsel that:

(1) The resolution referred to in paragraph (b) of this section was enacted under procedures established by the tribe's organic documents or oral tradition;

(2) The tribal governing body has the legal authority to withdraw funds from trust status and that the withdrawal does not require a referendum vote or other procedure beyond a tribal council resolution; and

(3) If the funds to be withdrawn are judgment or settlement funds, that the tribe's plan for managing the funds meets the requirements of any applicable judgment fund use and distribution plan or settlement act.

(e) The results of a tribal referendum, if one was held.

(f) If the funds to be withdrawn are judgment or settlement funds, a copy of the act and/or plan that sets out the conditions for the uses of the funds or income from them.

(g) A management plan as provided for in § 1200.14.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

§ 1200.14 What must the Tribal Management Plan contain?

The Tribal Management Plan required by § 1200.13 must include each of the following:

(a) Tribal investment goals and the strategy for achieving them.

(b) A description of the protection against the substantial loss of principal, as set forth in § 1200.16.

(c) A copy of the tribe's ordinances and procedures for managing or overseeing the management of the funds to be withdrawn. These must include adequate protections against fraud, abuse, and violations of the management plan.

(d) A description of the tribe's previous experience managing or overseeing the management of invested funds. This should include factual data of past performance of tribally-managed funds (i.e., audited reports) and the identity and qualifications of the tribe's investment officer.

(e) A description of the capability of all of the individuals or investment institutions that will be involved in managing and investing the funds for the tribe. Provide copies of State or Federal security applications for account executive(s).

(1) Investment entities named must submit:

(i) Ownership information (including Central Registry Depository (CRD) numbers);

(ii) Asset size and capitalization;

(iii) Assets under management;

(iv) Performance statistics on managed accounts for the past 5 years; and

(v) Any adverse actions by licensing and/or regulatory bodies within the past 5 years.

(2) In addition, we may ask about:

(i) Soft dollar arrangements;

(ii) Affiliation with broker dealers, banks, insurance and/or investment companies;

(iii) Research done in house;

(iv) Recent changes in active portfolio managers; and

(v) Any other information necessary to make an adequate evaluation of the proposed plan.

(f) A description of how the plan will ensure that the fund manager will comply with any conditions established in judgment fund plans or settlement acts.

(g) Proof of liability insurance of the investment firm.

(h) Proof of liability insurance that protects against fraud for those Tribal Council members with authority to disburse funds. In many tribes the chairperson, and the comptroller and/or the tribal treasurer, for example, would be the positions having this authority.

(i) A plan for custodianship of investment securities that includes:

(1) Name of persons in the tribe who can direct the custodian;

(2) Name of the custodian;

(3) Copy of intended custodian agreement;

(4) Size of custodian operation;

(5) Disclosure of any security lending provisions; and

(6) Insurance coverage.

(j) A tribal council agreement to provide an annual audit and report on performance of withdrawn funds to the tribal membership. The agreement must include a description of the steps (including audit performance and reporting) the tribe will take to ensure its membership that the tribe is continuing to comply with the terms of the plan submitted and approved pursuant to judgment fund limitations (if any) and/or the terms of the Act.

(k) The proposed date for transfer of funds.

(l) A statement as to whether the tribe chooses to receive the withdrawal as a cash balance transfer, as a transfer of marketable investments that we own for the tribe, or as a combination of the two.

(1) A cash balance transfer may require us to sell bonds, notes, or other investments that we purchased when investing the tribe's monies.

(2) We cannot transfer non-marketable securities to a tribe. We can only purchase and hold them and must sell them back to the U.S. Treasury.

(3) If we sell a tribe's security at a loss (i.e., when market value is less than book value or carrying value) we will first notify the tribe. The tribe must instruct us to proceed with the sale and must agree not to hold us responsible for the loss before we will make the sale.

(4) If the tribe asks us to transfer marketable securities, upon proper instructions from the new tribal custodian, we will order our custodian to physically transfer the proper security to the new custodian on the agreed upon date.

(m) Agreement that judgment award funds will have segregated accounts.

(n) A description of the procedures for amending or revising the plan.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

§ 1200.15 What is the approval process for management plans?

The Secretary will approve or disapprove each management plan, based in part upon our recommendation.

(a) We will determine the completeness of the application, provide for adequate professional review of the application and the management plan, and provide technical assistance as necessary to make an application complete.

(b) We will coordinate with regional directors in confirming authority of tribal governments to make requests.

(c) We will approve or disapprove a request within 90 calendar days of receiving a completed application. This 90-day period does not include time that we spend awaiting a response from the tribe for additional information that we have requested. All determinations will be in writing, and all responses will be by certified mail.

(d) If we find that a plan does not meet the criteria in § 1200.16, we will notify the tribe of shortcomings of the request, and allow the tribe to respond before recommending formal disapproval.

(e) Before final approval, we will reach agreement with the tribe on how many days after final approval we will

transfer the funds. We will transfer the funds as soon after final approval as the tribe or manager is ready to receive them, unless we need additional time to sell existing instruments.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

§ 1200.16 What criteria will be used in evaluating the management plan?

Each plan must be approved by the appropriate tribal governing body, and must be accompanied by a resolution approving the plan. The plan must be reasonable in light of the trust responsibility and the principles of Indian self-determination, and other appropriate factors, including, but not limited to, the factors listed below:

(a) We will evaluate the individuals or entities that will manage the funds to be withdrawn, or that will advise the tribe on investing the funds to be withdrawn in order to determine if they have the capability and experience to manage the funds. Among the elements we will evaluate are: the number of years in business, the performance record for funds management, and the ability to compensate the tribe if the entity is found liable for failing to comply with the tribe's management plan (i.e., its assets, bonding, and insurance).

(b) We will review the tribe's experience in managing investments. We will compare this experience to the complexity of the proposed management plan to determine whether the tribe has the experience to manage its proposed plan or whether it should begin with a less complex approach.

(c) We will evaluate the tribe's internal audit and control systems for overseeing or monitoring its investment activity.

(d) We will evaluate the adequacy of protection against substantial loss of principal. Our determination will include a thorough evaluation of the tribe's investment plan including:

(1) The goals and objectives;

(2) The proposed uses of the fund in order to meet business objectives;

(3) The size and diversity of the investment portfolio (for example, the class of stocks and the mixture of types of investments);

(4) The financial condition of the tribe;

(5) The inherent riskiness of the proposed investments; and

(6) The tribe's projected need and proposed timeframes to draw down the funds being invested or the income from them.

(e) We will determine the likelihood that the plan will be followed. We will base this determination on the contents of the agreement between the tribe and the fund manager and other appropriate factors.

§ 1200.17 What special criteria will be used to evaluate management plans for judgment or settlement funds?

For judgment or settlement funds, in addition to the criteria in § 1200.16, we will determine if the plan adequately provides for compliance with any conditions, uses of funds, or other requirements established by the appropriate judgment fund plan or settlement act.

§ 1200.18 When does the Department's trust responsibility end?

Our trust responsibility for funds withdrawn under this part ends on the date that the funds are withdrawn. However at the time of withdrawal neither we nor the tribe may be deemed to have accepted the account balance at the time of withdrawal as accurate; or waived any rights regarding the balance and our ability to seek compensation.

§ 1200.19 How can the plan be revised?

Once a tribe has withdrawn its funds, the tribe may revise its plan without our approval. All revisions should conform to the procedures outlined in the approved management plan. The tribe should inform its members of all revisions to a plan through normal tribal procedures before the revisions are implemented.

§ 1200.20 How can a tribe withdraw additional funds?

(a) If a tribe has withdrawn funds under an approved tribal management plan and wishes to withdraw additional funds that will be managed under the same plan, it need not submit a complete new application. The tribe must:

(1) Notify us of the additional amount it intends to withdraw and whether the funds to be withdrawn are in kind or cash. (Written notification should be provided to our address in § 1200.13);

(2) Send us a tribal resolution approving the new withdrawal and certifying that the funds are being withdrawn subject to the same conditions and that they will be managed under the plan in the original approved application;

(3) Send us a copy of the most recent compliance audit or investment report.

(b) After we finish our review we will release the additional funds, unless the compliance audit or investment report indicates that the tribe is not complying with its management plan. In this case, we will not release the additional funds until the tribe demonstrates that it is complying with the management plan.

§ 1200.21 How may a tribe appeal denials under this part?

If we deny a request or do not approve an application within 90 days of a request, the tribe may address any problems that we identify and resubmit a revised request, seek technical assistance, or appeal the denial under 43 CFR part 4.

Subpart C—Returning Tribal Funds to Trust

§ 1200.30 How does a tribe notify the Department if it wishes to return withdrawn funds to Federal trust status?

If a tribe elects to return some or all of the funds it has withdrawn from Federal trust status pursuant to this Act, it must first notify us in writing at our address in § 1200.13. This notification must provide a proposed date for the return of the funds, as well as the amount of funds to be returned, or actual securities to be delivered to the appropriate custodian.

§ 1200.31 What part of withdrawn funds can be returned to trust?

A tribe may return all or a portion of the principal which was removed from trust under this Act along with earnings and profits. We will verify the amount declared for earnings before we accept a return. We will accept any amount less than the original principal amount as a principal amount.

§ 1200.32 How often can funds be returned?

Tribes may return all or part of withdrawn funds no more than twice a year, beginning no sooner than six months after date of withdrawal, except with approval of the Secretary.

§ 1200.33 How can funds be returned?

Funds may be returned either as cash or securities, which meet the requirements for investments in 25 U.S.C. 162a. Cash can be transferred to the US Treasury by Electronic Funds Transfers (EFT), or the Automated Clearing House (ACH) process. Tribes must coordinate the transfer of ownership in securities with us to ensure proper credit to the tribe. The securities must meet investment restrictions contained in 25 U.S.C. 162a.

§ 1200.34 Can a tribe withdraw redeposited funds?

Yes. If a tribe wishes to withdraw redeposited funds from Federal trust status, it must submit a written request to do so, accompanied by a new resolution and any revisions it wishes to make in its original management plan.

Subpart D—Technical Assistance

§ 1200.40 How will the Department provide technical assistance for tribes?

(a) We will provide direct or contract technical assistance, in accordance with appropriations availability to tribes for developing, implementing, and managing Indian trust fund investment plans. We will ensure that our legal, financial and other expertise is made fully available to advise tribes in developing, implementing, and managing investment plans.

(b) We may award grants to tribes for developing and implementing plans for investing Indian tribal trust funds.

(c) Tribes may also obtain technical assistance on their own.

§ 1200.41 What types of technical assistance are available?

The types of technical assistance include: investment planning; accounting; selection of investment managers; monitoring of investments; asset management; or other assistance appropriate to support funds withdrawal.

§ 1200.42 Who can provide technical assistance?

A sample of competent providers includes any of the following entities with the appropriate skills and capabilities: available DOI or OST staff; intertribal organizations; public agencies; and contracted private investment firms.

§ 1200.43 How can a tribe apply for technical assistance?

(a) Tribes wishing technical assistance may request it by sending us a letter along with a tribal resolution outlining the technical assistance required, tribal resources which may be applied to the need, and suggested provider, if known. The resolution must state clearly that the assistance is needed for developing, implementing, or managing an investment plan under the provisions of this authority.

(b) Tribes requesting funds for technical assistance must send a completed SF–424, APPLICATION FOR FEDERAL ASSISTANCE, and SF–424A, BUDGET INFORMATION, along with a tribal resolution, detailing the assistance specifically requested, and the suggested provider to our address in § 1200.13.

(c) We will make grants subject to funds availability. We will publish a notice in the FEDERAL REGISTER concerning the availability of funding, deadlines for grants, the application process, and approval criteria. If funding is limited, grants will be awarded based on criteria that we feel will best meet the intent of the Act. We will consult with tribes in determining annual criteria. Unsolicited grant requests will not be accepted.

§ 1200.44 What action will the Department take on requests for technical assistance?

We will respond in writing to all requests for technical assistance and grants, advising of decision, availability of appropriate expertise and funding, and anticipated delivery of the service.