

## § 513.37

(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

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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 (Eff. until 10-1-12)**

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

**National Indian Gaming Commission, Interior**

**§514.1**

EFFECTIVE DATE NOTE: At 77 FR 5181, Feb. 2, 2012, part 514 was revised, effective Oct. 1, 2012. For the convenience of the user, the revised text follows this part.

**§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 no later than February 1st of that year, and, if considered necessary, shall modify those rates no later than July 1st of that year.

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

(3) 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.

(4) 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.

(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 be either:

(i) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% (two and one-half percent) of the cost of structures in use during only a part of the year; or

(ii) An amount not to exceed 10% of the cost of the total amount of amortization/depreciation expenses for the year.

(3) Examples of computations follow:

(i) For paragraph (2)(i) of this section:

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	
Maximum allowance:		
\$750,000 × .05 = .....	37,500	
50,000 × .025 = .....	1,250	38,750
Assessable gross revenues .....	.....	456,250

(ii) For paragraph (2)(ii) of this section:

Gross gaming revenues:		
Money wagered .....	.....	\$1,000,000
Admission fees .....	5,000	1,005,000

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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 ex- penditures for structures:		
Total amount of amortization/depreciation per books	400,000	
Maximum allowance:		
\$400,000 × .10 = .....		40,000
Gross gaming revenues .....	455,000	
Assessable gross revenues .....	455,000	

(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 a statement showing its assessable gross revenues for the previous calendar year.

(1) These 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 statements shall be sent to the Commission on or before June 30th and December 31st of each calendar year.

(3) The 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) 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) 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 the year.

(5) Each 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 reve-

nues 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)(5)(i) and (ii) of this section.

(iv) Multiply the total obtained in paragraph (c)(5)(iii) of this section by 1/2.

(v) The amount computed in paragraph (c)(5)(iv) of this section is the amount to be remitted.

(6) Examples of fee computations follow:

(i) Where a filing is made for June 30th of the calendar year, the previous year's assessable gross revenues are \$2,000,000, the fee rates adopted by the Commission are 0.0% on the first \$1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues—\$1,500,000 ×	
0.0% =	
2nd tier revenues—500,000 ×	
.08% =	\$400
Annual fees .....	400
Multiply for fraction of year—1/2	
or .....	.50
Fees for first payment .....	200
Amount to be remitted ..	200

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

(8) The Commission may assess a penalty for failure to file timely a statement.

(9) 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.

(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 by June 30th and December 31st of each calendar year.

(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 to defray the costs of operations of the Commission.

[74 FR 36933, July 27, 2009; 75 FR 2795, Jan. 19, 2010]

EFFECTIVE DATE NOTE: At 77 FR 5181, Feb. 2, 2012, part 514 was revised, effective Oct. 1, 2012. For the convenience of the user, the revised text is set forth as follows:

#### **PART 514—FEES (Eff. 10-1-12)**

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

##### **§ 514.1 What is the purpose of this part?**

Each gaming operation under the jurisdiction of the Commission, including a tribe with a certificate of self-regulation, 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.

##### **§ 514.2 When will the annual rates be published?**

(a) The Commission shall adopt preliminary rates for each calendar year no later than March 1st of each year, and, if considered necessary, shall modify those rates no later than June 1st of that year.

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

##### **§ 514.3 What is the maximum fee rate?**

(a) The rates of fees imposed shall be—

(1) No more than 2.5% of the first \$1,500,000 (1st tier), and

(2) No more than 5% 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.

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

##### **§ 514.4 What are “assessable gross revenues” and how does a tribe calculate the amount of the annual fee it owes?**

(a) 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, entry 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 as reflected in the gaming operation's audited financial statements.

(b) Each gaming operation subject to these regulations shall calculate the annual fee based on the gaming operation's fiscal year.

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

(d) The allowance for amortization of capital expenditures for structures shall be either:

(1) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% of the cost of structures in use during only a part of the year; or

(2) An amount not to exceed 10% of the total amount of depreciation expenses for the year.

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

##### **§ 514.5 When must a tribe pay its annual fees?**

Each gaming operation shall calculate the amount of fees to be paid and remit them with the quarterly statement required in § 514.6. The fees payable shall be computed using:

(a) The most recent rates of fees adopted by the Commission pursuant to § 514.2,

(b) The assessable gross revenues for the previous fiscal year as calculated using § 514.4, and

(c) The amounts paid and credits received during the fiscal year, if applicable.

##### **§ 514.6 What are the quarterly statements that must be submitted with the fee payments?**

(a) Each gaming operation subject to the jurisdiction of the Commission shall file

with the Commission quarterly statements showing its assessable gross revenues for the previous fiscal year.

(b) These 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.

(c) The quarterly statements shall be sent to the Commission within three (3) months, six (6) months, nine (9) months, and twelve (12) months of the end of the gaming operation's fiscal year.

(d) 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.

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

(1) Multiply the 1st tier assessable gross revenues, as calculated using §514.4, by the rate for those revenues adopted by the Commission.

(2) Multiply the 2nd tier assessable gross revenues, as calculated using §514.4, by the rate for those revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in paragraphs (e)(1) and (2) of this section.

(4) Multiply the total obtained in paragraph (e)(3) of this section by ¼.

(5) The amount computed in paragraph (e)(4) of this section is the amount to be remitted.

(f) Examples of fee computations follow:

(1) Where a filing is made for the first quarter of the fiscal year, the previous year's assessable gross revenues as calculated using section 514.4 of this part are \$2,000,000, the fee rates adopted by the Commission are 0.0% on the first \$1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues—\$1,500,000 × 0.0% = ...	0
2nd tier revenues—\$500,000 × .08% = ....	\$400
Annual fees .....	\$400
Multiply for fraction of year—¼ or ....	.25
Fees for first payment .....	\$100
Amount to be remitted .....	\$100

(2) [Reserved]

(g) As required by part 571 of this chapter, quarterly statements must be reconciled with a tribe's audited or reviewed financial statements for each gaming location. These reconciliations must be made available upon the request of any authorized representative of the NIGC.

**§ 514.7 What should a tribe do if it changes its fiscal year?**

If a gaming operation changes its fiscal year, it shall notify the Commission of the change within thirty (30) days. The Commission may request that the tribe prepare and submit to the Commission the fees and statements required by this subsection for the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be sent to the Commission within ninety (90) days of its request.

**§ 514.8 Where should fees, quarterly statements, and other communications about fees be sent?**

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

**§ 514.9 What happens if a tribe submits its fee payment or quarterly statement late?**

(a) In the event that a gaming operation fails to submit a fee payment or quarterly statement in a timely manner, the Chair of the Commission may issue a notice specifying:

- (1) The date the statement and/or payment was due;
- (2) The number of calendar days late the statement and/or payment was submitted;
- (3) A citation to the federal or tribal requirement that has been or is being violated;
- (4) The action being considered by the Chair; and
- (5) Notice of rights of appeal pursuant to part 577 of this chapter.

(b) Within fifteen (15) days of service of the notice, a respondent may submit written information about the notice to the Chair. The Chair shall consider any information submitted by the respondent as well as the respondent's history of untimely submissions or failure to file statements and/or fee payments over the preceding five (5) years in determining the amount of the late fee, if any.

(c) When practicable, within thirty (30) days of issuing the notice described in paragraph (a) of this section to a respondent, the Chair of the Commission may assess a proposed late fee against a respondent for each failure to file a timely quarterly statement and/or fee payment:

- (1) For statements and/or fee payments one (1) to thirty (30) calendar days late, the Chair may propose a late fee of up to, but not more than 10% of the fee amount for that quarter, as calculated in §514.6(e);
- (2) For statements and/or fee payments thirty-one (31) to sixty (60) calendar days late, the Chair may propose a late fee of up

to, but not more than 15% of the fee amount for that quarter, as calculated in §514.6(e);

(3) For statements and/or fee payments sixty-one (61) to ninety (90) calendar days late, the Chair may propose a late fee of up to, but not more than 20% of the fee amount for that quarter, as calculated in §514.6(e).

**§ 514.10 When does a late payment or quarterly statement submission become a failure to pay?**

(a) Statements and/or fee payments over ninety (90) calendar days late constitute a failure to pay the annual fee, as set forth in IGRA, 25 U.S.C. 2717(a)(3), and NIGC regulations, 25 CFR 573.6(a)(2). In accordance with 25 U.S.C. 2717(a)(3), failure to pay fees shall be grounds for revocation of the approval of the Chair of any license, ordinance or resolution required under IGRA for the operation of gaming.

(b) In accordance with §573.6(a)(2) of this chapter, if a tribe, management contractor, or individually owned gaming operation fails to pay the annual fee, the Chair may issue a notice of violation and, simultaneously with or subsequently to the notice of violation, a temporary closure order.

**§ 514.11 Can a tribe or gaming operation appeal a proposed late fee?**

(a) Proposed late fees assessed by the Chair may be appealed under part 577 of this chapter.

(b) At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chair and the respondent may agree to settle the notice of late submission, including the amount of the proposed late fee. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chair and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the notice or late fee 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 proposed late fee before the Commission in accordance with part 577 of this chapter.

**§ 514.12 When does a notice of late submission and/or a proposed late fee become a final order of the Commission and final agency action?**

If the respondent fails to appeal under part 577 of this chapter, the notice and the proposed late fee shall become a final order of the Commission and final agency action.

**§ 514.13 How are late submission fees paid, and can interest be assessed?**

(a) Late fees assessed under this part shall be paid by the person or entity assessed and shall not be treated as an operating expense of the operation.

(b) The Commission shall transfer the late fee paid under this subchapter to the U.S. Treasury.

(c) 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.

**§ 514.14 What happens if a tribe overpays its fees or if the Commission does not expend the full amount of fees collected in a fiscal year?**

(a) 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 according to §514.4.

(b) 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 to defray the costs of operations of the Commission.

**§ 514.15 May tribes submit fingerprint cards to the NIGC for processing?**

Tribes may submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI) and the Commission may charge a fee to process fingerprint cards on behalf of the tribes.

**§ 514.16 How does the Commission adopt the fingerprint processing fee?**

(a) The Commission shall review annually the costs involved in processing fingerprint cards and, by a vote of not less than two of its members, shall adopt preliminary rates for each calendar year no later than March 1st of that year, and, if considered necessary, shall modify those rates no later than June 1st of that year.

(b) The fingerprint fee charge shall be based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe.

**§ 514.17 How are fingerprint processing fees collected by the Commission?**

(a) Fees for processing fingerprint cards will be billed monthly to each Tribe for cards processed during the prior month. Tribes shall pay the amount billed within forty-five (45) days of the date of the bill.

(b) The Chair may suspend fingerprint card processing for a tribe that has a bill remaining unpaid for more than forty-five (45) days.

(c) Fingerprint fees shall be sent to the following address: Comptroller, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Checks

should be made payable to the National Indian Gaming Commission (do not remit cash).

## PART 515—PRIVACY ACT PROCEDURES

Sec.

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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,