



BILLING CODE: 7565-01

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

Fees

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is amending its fee regulations. The rule amends the regulations that describe when the Commission adopts annual fee rates, defines the fiscal year of the gaming operation that will be used for calculating the fee payments, and includes additional revisions clarifying the fee calculation and submission process for gaming operations.

DATES: *Effective Date:* [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Austin Badger, National Indian Gaming Commission; 1849 C Street NW, MS 1621, Washington, DC 20240. Telephone: 202-632-7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian

Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. The IGRA established an agency funding framework whereby gaming operations licensed by tribes pay a fee to the Commission for each gaming operation that conducts Class II or Class III gaming activity that is regulated pursuant to IGRA. 25 U.S.C. 2717(a)(1). These fees are used to fund the Commission in carrying out its regulatory authority. Fees are based on the gaming operation's gross gaming revenues. The rates of fees are established annually by the Commission and payable on a quarterly basis. 25 U.S.C. 2717(a)(3). IGRA limits the total amount of fees imposed during any fiscal year to 0.08 percent of the gross gaming revenues of all gaming operations subject to regulation under IGRA. Failure of a gaming operation to pay the fees imposed by the Commission's fee schedule can be grounds for a civil enforcement action. 25 U.S.C. 2713(a)(1).

The purpose of part 514 is to establish how the NIGC sets and collects those fees, to establish a basic formula for tribes to utilize in calculating the amount of fees to pay, and to advise of the consequences for failure to pay the fees. Part 514 further establishes how the NIGC determines and assesses fingerprint processing fees.

II. Development of the Rule

The development of the rule formally began with the Commission's notice to tribal leaders by letter dated November 22, 2016, of the topic's inclusion in the Commission's 2017 tribal consultation series. On March 24, 2017, in Tulsa, OK, April 5, 2017, in Scottsdale, AZ, April 13, 2017, in San Diego, CA, April 20, 2017, in Billings, MT, May 4, 2017, in Biloxi, MS, and on May 25, 2017, in Portland, OR, the NIGC consulted with tribes on proposed changes to the fee regulations. In addition, the Commission issued a discussion draft on January 30, 2017,

and solicited written comments through July 1, 2017. Comments received were generally supportive of the proposed changes to the fee regulations.

The Commission subsequently published a proposed rule in the **Federal Register** on November 13, 2017. 82 FR 52253. The proposed rule included amendments to the discussion draft prompted by internal review and the Commission's careful consideration of the substantive comments received through consultation and written submissions. The proposed rule included discussion of the Commission's amendments to the discussion draft and the Commission's responses to comments received. The proposed rule invited interested parties to continue to participate in the rulemaking process by submitting comments to the proposed rule to the Commission. While the Commission did not receive any substantive comments in response to the proposed rule, the comments received through consultation have proven invaluable to the Commission in developing this rule amending the fee regulations.

The rule is intended to improve the Commission's analysis and budgeting process and simplify the fee calculation and payment process for gaming operations, thereby reducing the frequency of error in fee calculation. Under the current fee regulations, the Commission adopts a preliminary fee rate by March 1 and a final fee rate by June 1 of every year. In addition, the NIGC annually reviews the costs involved in processing fingerprint cards and adopts a preliminary rate by March 1 and a final rate by June 1. The rule simplifies this process by amending the fee regulations to provide that the Commission will adopt a final fee rate and fingerprint processing fee no later than November 1 of each year. The rule also defines the fiscal year used in calculating the required annual fee so that the fee rate is applied consistently to a gaming operation's gross revenues for one fiscal year. Finally, among other clarifying revisions

to the fee regulations, the rule describes the fees and statements required of gaming operations that cease operations.

III. Review of Public Comments

The Commission did not receive any substantive comments in response to the proposed rule.

Regulatory Matters

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC’s consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian Tribe’s formal relationship with the Commission; or the consideration of the Commission’s trust responsibilities to Indian tribes. As discussed above, the NIGC engaged in extensive consultation on this topic and received and considered comments in developing this rule.

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141– 0007. The OMB control number expires on November 30, 2018.

List of Subjects in 25 CFR Part 514

Gambling, Indian--lands, Indian--tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, the National Indian Gaming Commission revises 25 CFR part 514 to read as follows:

PART 514–FEES

Sec.

514.1 What is the purpose of this part?

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- 514.8 Where should fees, quarterly statements, and other communications about fees be sent?
- 514.9 What happens if a gaming operation submits its fee payment or quarterly statement late?
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- 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?
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- 514.14 What happens if the fees imposed exceed the statutory maximum or if the Commission does not expend the full amount of fees collected in a fiscal year?
- 514.15 May tribes submit fingerprint cards to the Commission for processing?
- 514.16 How does the Commission adopt the fingerprint processing fee?
- 514.17 How are fingerprint processing fees collected by the Commission?

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

§ 514.1 What is the purpose of this part?

Each gaming operation under the jurisdiction of the Commission, including a gaming operation operated by 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 of fees be published?

(a) The Commission shall adopt the rates of fees no later than November 1st of each 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 of the assessable gross revenues from each gaming operation; and

(2) No more than 5% of amounts in excess of the first \$1,500,000 of the assessable gross revenues from each gaming operation.

(b) If a tribe has a certificate of self-regulation, the rate of fees imposed on assessable gross revenues from the class II gaming activity shall be no more than 0.25%.

(c) The total amount of all fees imposed on assessable gross revenues during any fiscal year shall not exceed 0.08% of the assessable gross gaming revenues of all gaming operations.

§ 514.4 How does a gaming operation calculate the amount of the annual fee it owes?

(a) The amount of annual fees owed shall be computed using:

(1) The most recent rates of fees adopted by the Commission; and

(2) The assessable gross revenues for the gaming operation's assessed fiscal year.

(b) Assessed fiscal year means the gaming operation's fiscal year ending prior to January 1 of the year the Commission adopted fee rates.

(c) For purposes of computing fees, assessable gross revenues for each gaming operation are the total amount of money wagered on class II and III games, plus entry fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for capital expenditures for structures as reflected in the gaming operation's audited financial statements.

(d) Tier 1 assessable gross revenues are the first \$1,500,000 of the assessable gross revenues from each gaming operation. Tier 2 assessable gross revenues are the amounts in excess of the first \$1,500,000 of the assessable gross revenues from each gaming operation.

(e) The allowance for capital expenditures for structures shall be either:

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

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

(f) Unless otherwise provided by regulation, generally accepted accounting principles shall be used.

§ 514.5 When must a gaming operation pay its annual fees?

(a) Annual fees are payable to the Commission on a quarterly basis. The annual fee payable to the Commission optionally may be paid in full in the first quarterly payment.

(b) Each gaming operation shall calculate the amount of fees to be paid, if any, and remit them with the quarterly statement required in §514.6 within three (3) months, six (6) months, nine (9) months, and twelve (12) months of the end of the gaming operation's fiscal year.

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

(a) Each gaming operation shall file with the Commission quarterly statements showing its assessable gross revenues for the assessed 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 allowance for capital expenditures for structures.

(c) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. A telephone number and email address for each individual identified shall be included.

(d) 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 Tier 1 assessable gross revenues by the rate for those revenues adopted by the Commission.

(2) Multiply the Tier 2 assessable gross revenues by the rate for those revenues adopted by the Commission.

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

(4) Multiply the total obtained in paragraph (d)(3) of this section by $\frac{1}{4}$.

(5) Adjust for prior amounts paid and credits received, if applicable. The gaming operation shall provide a detailed justification for the adjustment.

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

(e) 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 Commission.

§ 514.7 What should a gaming operation do if it changes its fiscal year or ceases operations?

(a) 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 gaming operation prepare and submit to the Commission fees and statements for the 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.

(b) If a gaming operation ceases operations, it shall notify the Commission within (30) days. The Commission may request that the gaming operation, using the most recent rates of fees adopted by the Commission, prepare and submit to the Commission fees and statements for the period from the end of the most recent quarter for which fees have been paid to the date operations ceased. The submission must be sent to the Commission within (90) days of its request.

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

Remittances, quarterly statements, and other communications about fees shall be sent to the Commission by the methods provided for in the rates of fees notice published in the FEDERAL REGISTER.

§ 514.9 What happens if a gaming operation 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 subchapter H of this chapter.

(b) Within fifteen (15) days of service of the notice, the recipient may submit written information about the notice to the Chair. The Chair shall consider any information submitted by the recipient as well as the recipient'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 recipient, the Chair of the Commission may assess a proposed late fee against a recipient 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;

(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; and

(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.

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

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)(4), and Commission regulations, 25 CFR

573.4(a)(2). In accordance with 25 U.S.C. 2717(a)(4), 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. In accordance with §573.4(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 proposed late fee be appealed?

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

(b) At any time prior to the filing of a notice of appeal under subchapter H of this chapter, the Chair and the recipient 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 recipient. If a settlement agreement is executed, the recipient 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 (b), the recipient may contest the proposed late fee before the Commission in accordance with subchapter H 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 recipient fails to appeal under subchapter H 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 the fees imposed exceed the statutory maximum 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.

(b) To the extent that revenue derived from fees imposed under the rates of fees established under §514.2 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 Commission for processing?

Tribes may submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation 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 the fingerprint processing fee no later than November 1st of each year.

(b) The Commission shall publish the fingerprint processing fee in a notice in the FEDERAL REGISTER.

(c) The fingerprint processing fee 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) Remittances and other communications about fingerprint processing fees shall be sent to the Commission by the methods provided for in the rates of fees notice published in the FEDERAL REGISTER.

Dated: January 9, 2018.

Jonodev O. Chaudhuri,
Chairman.

Kathryn Isom-Clause,
Vice Chair.

E. Sequoyah Simermeyer,
Associate Commissioner.
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