

September 20, 2021
Summary of Proposed Changes to 25 C.F.R. Parts 502, 543, 556, 558, 559, 571
National Indian Gaming Commission

The National Indian Gaming Commission seeks tribal input, feedback, and suggestions concerning proposed amendments to 25 C.F.R. Part 571, specifically as this part applies small and charitable gaming operations.

Pursuant to the Indian Gaming Regulatory Act, all gaming operations, including small and charitable operations, must conduct annual outside audits of the gaming and must submit copies of the audit to the NIGC. NIGC regulations currently allow gaming operations grossing less than \$2 million in the previous fiscal year to submit reviewed financial statements instead of audited financials if the gaming operation has three years of financial submissions that comply with NIGC's audit submission requirements or the gaming operation has received a waiver from the Commission.

The NIGC recognizes that the requirement to submit audited financials and even reviewed financials can be burdensome for small and charitable gaming operations. During formal and informal consultations, tribal stakeholders have expressed the financial hurdles that small and charitable gaming operations face regarding the audit requirement.

Accordingly, the NIGC is considering the following revisions to 25 C.F.R. § 571.12:

- Eliminate the Commission waiver requirement for reviewed financial statements and allow all operations grossing less than \$2 million in the previous fiscal year to submit reviewed financial statements provided that the tribe or tribal gaming regulatory authority permits the gaming operation to submit reviewed financials, and the gaming operation has no instance of non-compliance with 25 C.F.R. §§ 571.12 and 571.13 for the three previous years; and
- *[Option 1]* [(2) Create a third tier of financial reporting for charitable gaming operations with annual gross revenues of \$50,000 or less where, if permitted by the tribe, a charitable gaming operation may submit financial information on a monthly basis to the tribe or the tribal gaming regulatory authority (TGRA) and in turn, the tribe or TGRA provides an annual certification to the NIGC regarding the charitable gaming operation's compliance with the financial reporting.]
- *[Option 2]* [(2) Create a third tier of financial reporting for charitable gaming operations with annual gross revenues of \$50,000 or less where, if permitted by the tribe, a charitable gaming operation may submit compiled financial statements provided the charitable gaming operation has no instance of non-compliance with 25 C.F.R. §§ 571.12 and 571.13 for the three previous years.]

§ 571.12 Audit Standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The independent certified public accountant must be licensed by a state board of accountancy. Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(c) If a gaming operation has gross gaming revenues of less than \$2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation; ~~and~~

~~(2) The gaming operation's financial statements for the three previous years were sent to the Commission in accordance with § 571.13. The tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit a review of the financial statements according to this paragraph and the tribe or TGRA informs the NIGC of such permission; and Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years were sent to the Commission in accordance with § 571.13.~~

(3) The gaming operation has otherwise complied with this section and with § 571.13 for the three previous years.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location;

September 20, 2021
Summary of Proposed Changes to 25 C.F.R. Parts 502, 543, 556, 558, 559, 571
National Indian Gaming Commission

(4) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with § 571.13; and

(5) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than \$2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location;

~~(4) The gaming operation's financial statements for the three previous years were sent to the Commission in accordance with § 571.13. The gaming operation has otherwise complied with this section and with § 571.13 for the three previous years. Unless waived in writing by the Commission, the gaming operations' financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with § 571.13; and~~

(5) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

OPTION 1 for Charitable Gaming Operations

(f) (1) If a charitable gaming operation has gross gaming revenues of less than \$50,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(i) The charitable gaming operation creates, prepares, and maintains records in accordance with Generally Accepted Accounting Principles;

(ii) At a minimum, the charitable gaming operation provides the tribe or tribal gaming regulatory authority (TGRA) with the following financial information on a monthly basis:

(A) Each occasion when gaming was offered in a month;

(B) Gross gaming revenue for each month;

(C) Amounts paid out as, or paid for, prizes for each month;

(D) Amounts paid as operating expenses, providing each recipient's name; the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the operating expense;

(E) All deposits of gaming revenue;

(F) All withdrawals of gaming revenue;

(G) All expenditures of net gaming revenues, including the recipient's name, the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the expenditure; and

(H) The names of each employee and volunteer, and the salary or other compensation paid to each person.

(iii) The tribe or TGRA permits the charitable gaming operation to be subject to this paragraph (f), and the tribe or TGRA informs the NIGC in writing of such permission;

(iv) The NIGC [or Chair of the NIGC] permits the charitable gaming operation to be subject to this paragraph (f) and the NIGC [or Chair of the NIGC] informs the tribe or TGRA in writing of such permission; and

(v) Within 120 days of the gaming operation's fiscal year end, the tribe or the TGRA provides a certification to the NIGC that the tribe or TGRA reviewed the charitable gaming operation's financial information, and after such review, the tribe or TGRA concludes that the charitable gaming operation conducted the gaming in a manner that protected the integrity of the games offered and safeguarded the assets used in connection with the gaming operation, and the charitable gaming operation expended net gaming revenues in a manner consistent with IGRA, NIGC regulations, the tribe's gaming ordinance or resolution, and the tribe's gaming regulations.

(2) If the tribe or TGRA does not or cannot provide the NIGC with the certification required by subparagraph (f)(1)(v) within 120 days of the gaming operation's fiscal year end, the charitable gaming operation must otherwise comply with the annual audit requirement of paragraph (b).

(3) The tribe or TGRA may impose additional financial reporting requirements on charitable gaming operations that otherwise qualify under this paragraph (f).

Formatted: List Paragraph, Numbered + Level: 1 +
Numbering Style: A, B, C, ... + Start at: 1 + Alignment:
Left + Aligned at: 1.25" + Indent at: 1.5"

(4) The Chair of the NIGC may, at his or her discretion, require any gaming operation subject to this paragraph (f) to comply with the annual audit requirement of paragraph (b).

(5) This paragraph (f) does not affect other requirements of IGRA and NIGC regulations, including, but not limited to, fees and quarterly fee statements (25 U.S.C. § 2717; 25 C.F.R. part 514); requirements for revenue allocation plans (25 U.S.C. § 2710(b)(3)); requirements for individually-owned gaming (25 U.S.C. § 2710(b)(4), (d); 25 C.F.R. § 522.10); minimum internal control standards for Class II gaming and agreed-upon procedures reports (25 C.F.R. part 543); background and licensing for primary management officials and key employees of a gaming operation (25 U.S.C. § 2710(b)(2)(F); 25 C.F.R. parts 556, 558); and facility licenses (25 C.F.R. part 559).

[Option 2 for Charitable Gaming Operations]

(f) If a charitable gaming operation has gross gaming revenues of less than \$50,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a compilation of the financial statements conforming to the statements on standards for accounting and compilation services of the gaming operation;

(2) The tribe or TGRA permits the charitable gaming operation to submit a review of the financial statements according to this paragraph and the tribe or TGRA informs the NIGC of such permission; and

(3) The gaming operation has otherwise complied with this section and with § 571.13 for the three previous years.