

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 to required submissions of the annual audit.

Pursuant to the Indian Gaming Regulatory Act, all gaming operations must conduct annual outside audits of the gaming and must submit copies of the audit to the NIGC. The suggested changes cover four subjects:

- Language clarifying acceptable audit opinions;
- Clarification to distinguish the audit process from the submission of audit reports and opinions;
- Correction and clarification of the prerequisites for the submission of consolidated audits, and;
- Language allowing the Commission to delegate its waiver granting authority.

I. Adverse and Disclaimed Opinions

25 C.F.R. §§ 571.12(b)(3), (d)(5), and (e)(5)

The current audit regulations do not directly address instances where an auditor finds that the financial statements may be incomplete or inaccurate. Regulators need complete and accurate information to identify and prevent theft and to make regulatory decisions.

Auditors form audit opinions by examining the types of risks an organization might face and the types of controls that exist to mitigate those risks. Once the risks and controls to mitigate those risks have been identified, the auditors examine the supporting evidence and determine if management is presenting the financial statements fairly in all material respects. There are four different types of audit opinions an auditor may express:

- **Unqualified Opinion.** An unqualified opinion states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles (GAAP). This is the opinion expressed in a standard report. Under certain circumstances explanatory language might be added to the auditor's standard report, while not affecting the auditor's unqualified opinion on the financial statements
- **Qualified Opinion.** A qualified opinion states that, except for the effects of the matter(s) to which the qualification relates, the financial statements present fairly in all material respects the financial position, results of operations, and cash flows in conformity with GAAP.
- **Adverse Opinion.** An adverse opinion states that the financial statements do not present fairly the financial position, results of operations, or cash flows of the entity in conformity with GAAP.

- **Disclaimer of Opinion.** A disclaimer of opinion states that the auditor does not express an opinion on the financial statements.

Because the intent of 25 C.F.R. § 571.12 is to provide third party verification of the submitted financial statements, the only types of opinions that provide the intended verification are Unqualified and Qualified Opinions. An adverse or disclaimed opinion essentially states that the financial statements cannot be relied upon. They also signal that something may be amiss in the operation.

An operation might receive an Adverse Opinion because the auditor's findings indicate that the operation's financial statements are materially inaccurate. Similarly, Disclaimed Opinions are issued when the operation has kept such poor records for all or a portion of its gaming operation that the auditor is unable to determine whether the financial statements, as a whole, are fairly presented. Both Adverse and Disclaimed Opinions indicate an operation ripe for theft. Because the current regulations do not explicitly prohibit the submission of disclaimed or adverse opinions, clarification is needed to achieve the intent of IGRA and the regulation. The ability to issue a Letter of Concern, or take other enforcement actions for a disclaimed or adverse opinion would provide a more robust means by which to address potential issues with financial statements.

Under the proposed changes, tribes that submit an Adverse or Disclaimed Opinion as part of their audit will therefore be subject to an action for failure to submit an audit. As always, the Chairman has discretionary enforcement authority.

II. Clarification that the audit report and opinion is the required submission 25 C.F.R. §§ 571.12(b) and 571.13(a-c)

The proposed changes distinguish between the audit process and the final product to be submitted. An audit is the process of testing, inspecting, and observing that a CPA firm undertakes to verify an operation's financial statements and controls. The audit report and opinion are the product of that process. The two are often interchangeable in parlance, but the regulation would benefit from more precise language clarifying that it is the product—the third-party verified information—that the agency requires for its regulatory decisions, not merely the knowledge that the gaming operation completed the process.

III. Prerequisites for consolidated audits 25 C.F.R. § 571.12(d) and (e)

These proposed changes to § 571.12(d)(1) and (e) make explicit the implicit auditing requirement that only operations with the same owner (i.e., the tribe) may be consolidated. Generally Accepted Accounting Principles prevent the consolidated audits of businesses with different owners. This is a largely understood requirement, but the need for clarification arose when a tribe proposed submitting a single consolidated audit for six operations owned and

operated by separate non-tribally owned gaming enterprises. Audits must be performed in accordance with GAAP (25 C.F.R. § 571.12(b)(2)), the suggested changes clarify the ambiguity.

The second suggested change in § 571.12(d) from “gaming operation” to “tribe” corrects an error and restores meaning to the regulation. The Audit Division takes the view that *operation* and *facility* are synonymous. Under that view, the current regulation is nonsensical: a gaming operation cannot have multiple facilities because a gaming operation *is* a facility.

IV. Delegation of waiver granting authority
25 C.F.R. § 571.12(d)(4) and (e)(3)

The proposed change streamlines the process for granting a waiver. It would allow the Commission to delegate its authority to grant waivers permitting tribes to submit financial reviews or consolidated audits.

Audits are a significant cost of regulation, and in 2009, the Commission amended its regulations to give a break to tribes with small or numerous operations. The 2009 changes allow operations earning under \$2 million to submit *reviewed*, rather than *audited* financial statements. They also allow tribes with multiple operations to submit consolidated statements. However, financial reviews and consolidated audits are riskier than full audits. To mitigate the risk, the Commission required tribes to be in strict compliance with the audit regulations for the past three years in order to qualify—or to receive a waiver from the Commission. The proposed change allows the Commission to delegate its authority to grant a waiver to other divisions, thereby allowing a faster response to the tribe.