



NORTH FORK RANCHERIA
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Via Electronic Mail: [reg-review @ NIGC.gov](mailto:reg-review@NIGC.gov)

Ms. Lael Echo-Hawk, Counselor to the Chair
National Indian Gaming Commission
1441 L. Street, N.W. Suite 9100
Washington, D.C. 20005

Re: Comments on NIGC's Preliminary Draft of Revised 25 C.F.R. Parts 556,
558, 571 and 573

Dear Commissioners:

The North Fork Rancheria of Mono Indians (Tribe) is pleased to submit the attached comments on the above-referenced revisions prepared by the National Indian Gaming Commission (NIGC). Our comments are in the form of a blacklined markup of the NIGC's Preliminary Draft revisions with accompanying commentary added where necessary to explain the intent or rationale of our proposed changes. These comments were prepared in conjunction with our developer, but ultimately reflect the comments of our Tribe.

We appreciate the opportunity to provide these comments and hope that they assist the NIGC in developing the best regulations possible.

Sincerely,

Maryann McGovran
Tribal Vice-Chair

Enclosures

Monitoring and Investigations

25 CFR Part 571

SECTIONS

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Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

Source: 58 FR 5842, Jan. 22, 1993; 58 FR 8449, Feb. 12, 1993; 58 FR 16494, Mar. 29, 1993; 74 FR 36939, July 27, 2009.

Subpart A - General

§571.1 Scope of this part

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations [necessary to carry out the duties of the Commission under the Act](#).

§571.2 Definitions.

As used in this subchapter, the following terms have the specified meanings:

General Commentary: Consideration should be given as to whether all of the terms defined in Section 571.2 are in fact used in Sections 571, 573 and 575 now that Section 577 has been moved to Subchapter H.

Act means the Indian Gaming Regulatory Act, as amended.

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~~Chair, 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 or other remedies under sections 2711 or section 2713 of the Act.

Commentary: Although the topic of the Chair's determination to modify or void an approved management contract is referenced in Section 2713(a)(3) of the Act, the Chair's authority to effectuate such remedy is arguably contained in Section 2711(f) of the Act. The addition of the reference to "other remedies under section 2711" in the defined term "respondent" is intended to include remedies sought under Section 2711(f) and to more clearly encompass temporary closures under 2713, in addition to civil fines under 2713.

Violation means a violation of ~~applicable federal or tribal statutes, regulations, ordinances, or resolutions~~ the Act, this chapter, or a tribal gaming ordinance or resolution approved under part 522 of this chapter.

Commentary: The Commission's authority to impose civil penalties under section 2713 of the Indian Gaming Regulatory Act is only with respect to violations of the Act, the NIGC regulations set forth in this chapter or tribal gaming ordinances or resolutions approved under part 522 of this chapter. The Commission does not have authority, and the regulations should be revised so that they do not imply that the Commission has authority, to impose civil penalties with respect to apparent or actual violations of any federal laws or regulations other than IGRA and the Commission's regulations or violations of any tribal statutes, regulations, ordinances, or resolutions other than approved gaming ordinances and resolutions.

§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 Privacy Act of 1974 (Pub. L. 98-579) 5 U.S.C. 522a et. seq.) or the exemptions of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (7 et. seq.)); except that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission ~~shall~~may 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 appellate proceedings under subchapter H are addressed in ~~§ 577.8~~subchapter H of this chapter.

Commentary: It is not clear why Section 571.3 does not reference the Privacy Act. Also, it is not clear why Section 571.3 references the exemptions from disclosure set forth in subsections (b)(4) and (b)(7) of the Freedom of Information Act without referencing the exemptions from disclosure set forth in the other provisions of subsection (b) of the Freedom of Information Act.

§ 571.4 Investigation closure letter.

In instances where ~~NIGC~~the Commission has concluded its investigation of a particular matter and the Chair has determined that ~~it~~he or she will not recommend the commencement of an enforcement proceeding against a person, or the modification or voiding of an approved gaming ordinance or resolution or management contract, the Commission's authorized representative, in his or her discretion, may and, upon request, shall advise the person by letter that the investigation has been terminated. Such notification is not a finding that no violation of IGRA, NIGC regulations, or a tribe's approved gaming ordinance or resolution occurred. Such notification does not preclude further action by NIGC based on the investigation.

Commentary: Rather than reference the vague term “enforcement proceeding,” consideration should be given to a more detailed list of the types of circumstances where the Chair would have authority to issue an investigation closure letter. The defined term “person” should be used rather than the defined term “party,” because the consideration of the notice of violation may occur prior to the commencement of an appellate “proceeding” or a person becoming a “party” to an appellate proceeding.

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 ~~or any other person~~ 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 ~~or other facility~~ for the ~~purpose~~purposes 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 Commission's authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters concerning a gaming operation for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records (including computer 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 ~~-~~ concerning class II gaming conducted on Indian lands or any other matters concerning a gaming operation for which the Commission requires such access to carry out its duties under the Act.

~~(d) If papers, books, and records (including computer records) are held or maintained by a person other than a gaming operation, the person shall make them available at a time and place convenient to the Commission's authorized representative.~~

Commentary: It is not clear that the Commission has authority to request papers, books and records from a person other than a gaming operation.

§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 gaming 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 gaming operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all gaming transactions and other gaming 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 gaming operation, noting the final disposition of each case.

Subpart C –Subpoenas and Dispositions

§571.8 Subpoena of witnesses.

By majority vote, the Commission may authorize the ~~Chairman~~Chair 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~~Chair to require by subpoena the

production of certain [books, papers and](#) 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~~[584](#) 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. [and the Privacy Act, 5 U.S.C. 522a.](#) 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) 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 [gaming operation and reviewed or audited 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) 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.

(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;

(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 [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 tribe chooses to consolidate the financial statements of the gaming operations;

- (2) The consolidated financial statements include consolidating schedules for each [gaming 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 place](#), facility or location;
- (4) Unless waived in writing by the Commission, the gaming operations' ¹ 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.

§571.13 Copies of audit reports.

- (a) Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and [audits certified public accountant reports](#) required by §571.12, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.
- (b) If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, [and certified public accountant reports](#), ~~and audits~~ required by §571.12, together with management letter(s), ~~setting forth the results~~ of 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 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new ~~business~~ [fiscal](#) year.
- (c) When [a gaming operation](#) ceases to operate and the tribal gaming regulatory authority has terminated the facility license required by §559.6, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, [and certified public accountant reports](#), ~~and audits~~ required by §571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be sent to the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

§571.14 Relationship of audited financial statements to fee assessment reports.

A tribe shall reconcile its Commission fee assessment reports, submitted under 25 CFR part 514, with its audited or reviewed financial statements for each [gaming place, facility or](#) location and make available such reconciliation upon request by the Commission's authorized representative.