



NORTH FORK RANCHERIA
OF MONO INDIANS OF CALIFORNIA

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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

Part 573 – Enforcement

§ 573.1 What is the purpose of this ~~Part~~part?

§ 573.2 When may a letter of concern and/or non-compliance notice be issued?

§ 573.3 When may the Chair issue a notice of violation?

§ 573.4 When may the Chair issue an order of temporary closure?

§ 573.5 When does a notice of violation become final agency action?

§ 573.1 What is the purpose of this ~~Part~~part?

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chair under part 522 of this chapter. Civil fines in connection with a notice of violation issued under this part are addressed in part 575 of this chapter. Voluntary compliance is the goal of the Commission. This part sets forth efforts for achieving voluntary compliance; and, when voluntary compliance is not forthcoming, enforcement.

§ 573.2 When may a letter of concern and/or non-compliance notice be issued?

(a) Prior to the Chair issuing a notice of violation to a respondent, the Chair may provide a letter of concern and/or non-compliance notice ~~may be provided~~ to the respondent, detailing concerns regarding the respondent's compliance with the Act, this chapter, or any tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(b) Action under this section does not constitute final agency action, and may be taken by the Chair issuing the respondent:

(1) A "letter of concern" which recites available facts and information about the incident or condition and indicates that it may be a violation; or

(2) A "non-compliance notice" which confirms an assessment of the matter and states the necessary corrective action the respondent needs to take, agrees to take, or has taken.

(c) Either action under sub-section (b) may provide a time period for the respondent to come into voluntary compliance. ~~And, if~~ If corrective action is not fully completed, legal enforcement action may be taken.

(d) The Chair's discretion to issue a notice of violation is not limited or constrained in any way by this section.

§ 573.3 When may the Chair issue a notice of violation?

(a) The Chair may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(b) A notice of violation shall contain:

(1) A citation to the federal or tribal requirement that ~~has~~ the Chair determines have been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

§ 573.4 When may the Chair issue an order of temporary closure?

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under §573.3 of this part, the Chair may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

(1) The respondent fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after ~~a tribe~~ the Chair provides notice of a violation.

(2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal [gaming](#) ordinance or resolution that the Chair has approved under part 522 of this chapter.

(4) A gaming operation operates for business without a [facility](#) license from a tribe, in violation of part 522 or part 559 of this chapter.

(5) A gaming operation operates for business without either background investigations having been completed for, or tribal [gaming](#) licenses granted to, all key employees and primary management officials, as provided in ~~§558.3(b)~~[558.2](#) of this chapter.

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe or a customer.

(7) A ~~management~~ contractor ~~operates for business~~[manages all or part of a gaming operation](#) without a [management](#) contract that the Chair has approved under part 533 of this chapter.

[Commentary: The defined term “management contract” is a contract that “provides for the management of all or part of a gaming operation.”](#)

(8) ~~Any person~~[A tribe or a gaming operation](#) knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.

[Commentary: Consideration should be given as to whether the submission of false or misleading information by a person or entity other than the tribe or the gaming operation should or could result in the consequence to the tribe of temporary closure of the tribe’s gaming operation..](#)

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of §571.5 or §571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(10) A tribe fails to suspend ~~or revoke a gaming~~ license [issued to a primary management official or key employee](#) upon notification by the Commission that a primary management official or key employee does not meet the standards for ~~employment~~[eligibility for a gaming license](#) contained in ~~§558.2 of this chapter, in violation of §558.5556 and §558~~ of this chapter.

[Commentary: The standards are for eligibility for a gaming license, as distinguished from eligibility for employment. §558.3\(c\) provides that, even if the Commission objects to the tribe issuing a gaming license to an applicant, the tribe shall make the final decision as to whether or not to issue the gaming license to such applicant.](#)

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal [gaming ordinance](#) or resolution approved by the Chair under part 522 of this chapter.

(13) A gaming facility operates on Indian lands not eligible for gaming under the Indian Gaming Regulatory Act.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chair.

(1) The Chair shall complete the expedited review provided for by this paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chair shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chair serves an order of temporary closure, the respondent may appeal the order to the Commission under [part 577 subchapter H](#) of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chair for good cause. [If the order of temporary closure is not appealed pursuant to subchapter H of this chapter, the Commission shall decide within 60 days after the date of the order of temporary closure whether to issue an order of permanent closure of the gaming operation. An order of permanent closure shall become final agency action and a final order of the Commission as of the date of the order of permanent closure.](#)

§ 573.5 When does a notice of violation become final agency action?

If the respondent fails to appeal the notice of violation as provided for in [part 577 subchapter H](#) of this chapter or the notice of violation is not withdrawn by the Chair, the notice of violation shall become final agency action and a final order of the Commission [as of the date the respondent's right to appeal the notice of violation expires pursuant to subchapter H of this chapter.](#)

[\[Commentary: Cross-references in Section 575 to provisions of this revised Section 573 need to be reviewed and conformed.\]](#)