United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

Honorable Gregory Pyle
Chief of the Choctaw Nation
P.O. Box 1210
Durant, Oklahoma 74702-1210

Dear Chief Pyle:

On August 7, 2000, we received the Modification Compact between the Choctaw Nation (Tribe) and the State of Oklahoma (State) Off-Track Wagering Compact of April 15, 1997, dated July 27, 2000. We have completed our review of this Compact and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to delegated authority and Section 11 of IGRA, we approve the Compact. The Compact shall take effect when the notice of our approval, pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER.

We want to remind you that your Minimum Internal Control Standards must be in accordance with the National Indian Gaming Commission's (NIGC) regulations, set forth in 25 CFR Part 542.

Notwithstanding our approval of the Compact, Section 11(d)(1) of IGRA, 25 U.S.C. § 2710(d)(1), requires that tribal gaming ordinances be approved by the Chairman of the NIGC. Regulations governing approval of Class II and Class III gaming ordinances are found in 25 CFR §§ 501.1-577.15 (1999). Pursuant to IGRA and the regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman. The Tribe may want to contact the NIGC at (202) 632-7003 for further information to determine when and how to submit the ordinance for approval by the NIGC.

In addition, if the Tribe enters into a management contract for the operation and management of the Tribe's gaming facility, the contract must likewise be submitted to, and approved by the Chairman of the NIGC pursuant to Section 11(d)(9) of the IGRA, 25 U.S.C. § 2710(d)(9) and the NIGC's regulations

governing management contracts. The Tribe may want to contact the NIGC for information on submitting the ordinance and the management contract for approval by the NIGC.

We wish the Tribe and the State success in their economic venture.

Sincerely,

Assistant Secretary - Indian Affairs

Enclosure

Identical Letter Sent to: Honorable Frank Keating
Governor of Oklahoma
State Capitol Building
Oklahoma City, Oklahoma 73105

cc: Eastern Oklahoma Regional Director w/copy of approved Compact
Supt., Talihina Agency w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Oklahoma United States Attorney w/copy of approved Compact

FILED
JUL 27 2000
OKLAHOMA SECRETARY
OF STATE

MODIFICATION COMPACT FOR

CHOCTAW NATION/OKLAHOMA

OFF-TRACK WAGERING COMPACT

OF APRIL 15, 1997

MODIFICATION COMPACT FOR
CHOCTAW NATION/OKLAHOMA
OFF-TRACK WAGERING COMPACT
OF APRIL 15, 1997

This Compact Modification Agreement made and entered into by and between the Choctaw Nation of Oklahoma (Tribe) and the State of Oklahoma (State) pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq.,

RECITALS

Whereas, these parties have heretofore entered into a Tribal-State Compact governing the licensing, regulation and operation of Class II gaming in the form off-track wagering on simulcast horse races which became effective on April 15, 1997; and,

Whereas, on the 5th day of April, 2000, the parties made an Amended Compact extending the term of the original Compact until July 31, 2000; and,

Whereas, all references to "the Compact" in this Modification Compact shall mean the aforementioned Compact which became effective April 15, 1997, as modified by this Modification Compact.

Wherefore, it is agreed that the original Compact shall be considered automatically renewed pursuant to Section 19(b) on the same terms and conditions as contained therein effective April 15, 2000, subject to the following modification or amendments:

(1) Section 2 of the Compact is modified to add subparagraph (g) as follows:

(g) The Tribe and the State acknowledge that there has been an on-going good faith disagreement as to whether the Tribal Gaming Agency is the "Off-Track Betting Commission" for the purposes of the Interstate Horseracing Act under the Compact. In this connection, the State agrees that continued recognition by the Tribe of the Tribal Gaming Agency and not a state agency as the "Off-track Betting Commission" shall not be considered a breach of this Compact, unless there is a final, unappealable judgment

by a court of competent jurisdiction in an action not arising out of or related to this Compact in which the Choctaw Nation is a party adjudicating that the Choctaw Gaming Commission is not the off-track betting Commission under this Compact.

(2) Section 3(F) of the Compact shall be amended to provide as follows:

"All Class III gaming authorized by this Compact shall be conducted only at gaming facilities located on Choctaw Tribal Indian Country lands at locations described in Appendix "C" attached hereto.

(3) There is added Sub-section 4(t) to the Compact which provides:

(t) "OSF" means the Office of the State Finance for the State of Oklahoma which shall assist the OSBI in monitoring the compliance with the Compact and any modifications thereto. Copies of all reports or other communications that are required to be sent to the OSBI under the Compact shall, likewise, be forwarded to the OSF. Should the Governor deem it appropriate after consultation with the Tribe, to designate an agency of the State other than the OSF to assist the OSBI in its duties, notice shall be given as required by Section 18 of the Compact. Thereafter, responsibilities delegated to the OSF shall be deemed transferred to the newly designated agency.

(4) Section 5(a)(2) of the Compact is modified to provide:

"Any additional regulations to govern the operation and management of the Class III gaming conducted under the Compact shall be standards set forth by the Tribal Gaming Agency and approved by the OSF. The OSF shall not unreasonably withhold approval of said additional regulations. Failure of the OSF to object to any additional or modified

regulations within thirty (30) days after submission shall be deemed as approval thereof. The parties are mindful that this may be the statutory duty of the OSBI and upon proper notice by the OSBI of its intent to exercise said statutory duties in this regard, the submission shall be transferred thereto on the same terms and conditions that would otherwise apply to the OSF.

(5) The Office of State Finance (OSF) shall be added to all references in the Compact to the Oklahoma Bureau of Investigation or OSBI for the purpose of OSF assistance to the OSBI in monitoring compliance with the Compact.

(6) Section 11 of the Compact is modified to provide as follows:

"11(a) Regulatory Fees. The Tribe realizes that the State will incur expenses related to the Obligations undertaken under this Agreement. Accordingly, the parties agree as follows:

11(b) The State shall bill the Tribe the reasonable necessary costs related to the regulatory obligations undertaken under this Agreement and incurred after it becomes effective. The costs for such services shall be that established by the State either by agency rule or by statute or, where the cost of services (including more extensive background checks, other investigations, monitoring or similar matters) is not established by rule or by statute, the costs shall include employees' time, reasonable out-of-pocket expenses, including benefits and travel expenses at the statutory rate. The State shall send invoices to the Tribe for these services. Payments for reimbursement to the State shall be made to the Office of

the State Treasurer. Reimbursement for services provided by the OFS and/or OSBI shall, pursuant to 74 O.S. Section 150.19a, be transmitted to the OFS and/or OSBI to defray the cost of regulatory services as required under this Agreement.

11(c) Disputes arising with respect to the amount and fairness of regulatory costs billed to the Tribe shall be resolved pursuant to the dispute resolution provisions in Section 15.

(7) Section 15(C) of the Compact is modified to substitute "United States District Court for the Eastern District of Oklahoma" for "United States District Court for the Western District of Oklahoma.

(8) Section 18 of the Compact concerning notices shall be modified to add the "Director of the Office of State Finance, State Capital, Oklahoma City, OK, 73105."

(9) Section 19(b) and (c) of the Compact shall be modified to provide:

(b) Term. This Compact shall have a three (3) year term commencing on July 31, 2000. At the end of the term, the Compact shall automatically renew on the same terms and conditions as set forth in the Compact. Either party may give notice of its intention to terminate the Compact at the end of its term except during the final ninety (90) days preceding the end of the term. Provided, the State may not terminate the Compact except for reasons set forth in Section 19(c)(2),(3),(4) and (5) or paragraphs 13 and 14 of the Modification Compact.

(c) Duration. This Compact shall remain in full force and effect until one of the following shall occur:

(1) Expiration of the term, provided notice to terminate has been given as set forth in Section 19(b); or

(2) This Compact is terminated by mutual consent of the parties; or

(3) The Tribe duly adopts an ordinance or resolution revoking Tribal authority to conduct Class III gaming in Indian country as provided for under §2710(d)(2)(D) of the Act; or

(4) Pursuant to a final, non-appealable judgment by a court of competent jurisdiction determines that:

(a) This Compact is invalid, or

(b) A party has committed a material breach of this Compact and the other party is entitled to terminate it.

(5) The State abolishes pari-mutuel wagering.

(10) Section 22 of the Compact is modified to add the following language: "This Compact shall be controlling. In the event of any ambiguity, this Compact shall be deemed drafted by both parties and shall not be construed against or in favor of any party by virtue of such draftsmanship, or as a matter of law"

(11) Section 24 of the Compact is modified to provide as follows: "(a) While neither party waives its sovereign immunity from suit to an extent in excess of that set forth in this Compact, the parties recognize that under the Indian

Gaming Regulatory Act, either party to a Compact may commence an action in Federal District Court for breach of a Compact. Nothing in this Compact shall be construed to be a relinquishment of either party's right to seek federal court enforcement of this Compact. If the parties voluntarily enter into binding arbitration in order to settle a dispute arising under this Compact, either party's failure to comply with the arbitration decision shall be deemed a material breach of this Compact."

(b) As between the parties to this Compact and no others, either party may bring an action against the other in a court of competent jurisdiction for a breach of this Compact and each of the parties hereto waives immunity and consents to suit therein for such limited purposes. Either party may claim in such action that the repeated violations of this Compact by such party constitutes a prospective intent not to abide by its terms and that therefore the pattern of repeated violations constitutes a material breach of this Compact. Either party may seek termination of this Compact as a remedy for the other party's material breach hereof. Nothing herein shall be construed to authorize a money judgment other than for damages for failure to indemnify and hold the State harmless as required by Section 3(e) of this Compact or for unpaid monitoring costs. This limited waiver of immunity by the parties is done to the extent permitted by law.

(12) Notwithstanding any notice of intent not to renew heretofore sent to the Tribe by the State, the original Compact that became effective April 15, 1997 shall be deemed renewed prior to April 15, 2000, and herewith modified on the effective date of this Modification Compact.

(13) The parties acknowledge that they are in negotiations for a Tribal Amusement Games Agreement (TAGA) which would settle a dispute between the Tribe and the State regarding the Tribe's ability to conduct certain amusement games with prizes at the same facilities covered by this Compact, and that it may not be approved by the time this Modification Compact has been approved. It is agreed that if, on or before September 30, 2000, the TAGA is entered into and approved by the State's Joint Committee on State-Tribal Relations, the Tribe shall cease its simulcasting and acceptance of off-track wagers at the facility near Pocola, Oklahoma, on the effective date of the TAGA; provided, that the Tribe may thereafter simulcast and accept off-track wagers on horse races at the Pocola facility only if it has the consent of the operator of Blue Ribbon Downs at Sallisaw, Oklahoma ("BRD"); and, provided further, in such event, should the Tribe be unable to implement the TAGA or should it be terminated, the Tribe's off-track wagering activities shall resume being governed exclusively by the original Compact which became effective April 15, 1997, and this Modification Compact shall be void, except for the provisions of paragraph (2) hereof which shall remain in effect without the qualified conditions for operating the Pocola, Oklahoma site. If the TAGA has not been entered into and approved by the State's Joint Committee on State-Tribal Relations by September 30,

2000, either party may give notice, on or before October 31, 2000, of its desire to renegotiate this Compact. If such renegotiations are not satisfactorily concluded by December 31, 2000, either party may give notice, on or before February 28, 2001, of its intent to terminate this Compact, in which case this Compact shall so terminate, if the notice of intent to terminate has not been withdrawn, on April 15, 2001. As consideration of the agreement of the State in this paragraph 13, if on or before December 31, 2000, the TAGA becomes effective or, after a notice by one of the parties of a desire to renegotiate this Modification Compact, a new Compact or modification thereof is entered into and approved by the State's Joint Committee on State-Tribal Relations, the Tribe shall pay to BRD an amount equal to $35,000 for each month or part thereof from August 1, 2000 to such date, or December 31, 2000, whichever occurs first.

(14) In any event, once a TAGA, if made, becomes effective, it and this modification compact shall become dependent upon each other as follows: Should for any reason, the tribe be unable to implement the TAGA or should it be terminated, the tribe's off-track activities shall resume being governed exclusively by the original April 15, 1997 compact and this modification compact shall be void. However, the site specific provisions of paragraph 2 above shall remain in effect without the qualifying conditions regarding the Pocola, Oklahoma site set forth in Appendix "C". Should the Tribe breach this modification compact while it is in effect by resumption of off-track wagering activities at the Pocola site without the consent required in Appendix "C", the TAGA shall be terminated.

(15) Each of the undersigned represents that he or she is duly authorized and has the authority to execute this agreement on behalf of the party from whom he or she is signing.

STATE OF OKLAHOMA

GOVERNOR — DATE 7/26/00

ATTEST:

SECRETARY OF STATE Acting Assistant — DATE 7/27/00

CHOCTAW NATION OF OKLAHOMA

CHIEF OF THE CHOCTAW NATION — DATE 7/26/00

Approved by the Joint Committee on State-Tribal Relations.

CHAIRMAN — DATE 7-27-2000

Consistent with 25 U.S.C.A. §2710(d)(8), this Compact is approved on the 20th day of September, 2000, by the **Assistant Secretary - Indian Affairs, Department of the Interior.**

KEVIN GOVER
ASSISTANT SECRETARY - INDIAN AFFAIRS

APPENDIX C

The following are the locations at which the tribe may accept off-track wagers on simulcast horse races pursuant to the Compact as modified:

(1) Idabel, Oklahoma - Choctaw Bingo at Choctaw Shopping Center on Washington Street

(2) Grant, Oklahoma - Four miles south of Hugo on U.S. Highway 271 at the Choctaw Travel Plaza - Choctaw Downs

(3) Calera, Oklahoma - Four miles south of Durant, Oklahoma on U.S. Highway 69/75 at the Choctaw Nation Bingo Hall or such other facility on the grounds of the Bingo Hall.

(4) McAlester, Oklahoma - At Frink Road and U.S. Highway 69 South By-pass at Choctaw Nation Gaming Center

(5) Stringtown, Oklahoma - On U.S. Highway 69/75

(6) Pocola, Oklahoma - On I-40 Until the effective date of Tribal Amusement Game Agreement (TAGA). Thereafter, no off-track wagers shall be accepted at Pocola without the consent of Blue Ribbon Downs at Sallisaw, Oklahoma.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Modification Compact for Off-Track Wagering between the Choctaw Nation and the State of Oklahoma, which was executed on July 27, 2000.

DATES: This action is effective October 2, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 20, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–25125 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–02–P

OFFICE OF THE SECRETARY OF STATE

STATE OF OKLAHOMA

CERTIFICATE OF TRANSCRIPT

I, the undersigned Secretary of State of the State of Oklahoma, do hereby certify that the annexed transcript has been compared with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy of the:

MODIFICATION COMPACT FOR
CHOCTAW NATION/OKLHAOMA
OFF-TRACK WAGERING COMPACT
OF APRIL 15, 1997

Filed: July 27, 2000

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Oklahoma at the City of Oklahoma City this 31st *day of* July, *2000.*

Mike Hunter

Secretary of State

By: Kathy Jeff