



Picayune Rancheria  
of the  
**CHUKCHANSI INDIANS**  
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August 11, 2021

**Via Electronic Mail**

National Indian Gaming Commission  
1849 C Street NW  
Mail Stop #1621  
Washington, DC 20040  
Email: [NIGC.Outreach@nigc.gov](mailto:NIGC.Outreach@nigc.gov)

Dear Commissioners:

The Tribal Council of the Picayune Rancheria of the Chukchansi Indians ("PRCI") is submitting comments on behalf of PRCI's Tribal Gaming Commission ("TGC") in response to the National Indian Gaming Commission's ("NIGC") request for input on the NIGC's proposed changes to its regulations implementing the Indian Gaming Regulatory Act ("IGRA") (Pub. L. No. 100-497).

The TGC reviewed NIGC's areas of focus and participated in NIGC's virtual tribal consultation sessions. The TGC supports the NIGC's efforts to update and clarify its regulations. The TGC's comments speak directly to NIGC's request for input on its proposed changes to the definitions of key employee ("KE") and primary management official ("PMO") found at 25 C.F.R. §§ 502.14 and 501.19. The PRCI and TGC would also like to express their appreciation to NIGC for its consultation and outreach efforts as discussed in its June 9, 2021 Dear Tribal Leader letter and its July 12, 2021 Dear Tribal Leader Letter that identified NIGC's areas of focus and invited Tribal comments on those topics. To that end, the TGC would like to provide the comments specific to NIGC's proposed changes to the definitions of key employee and primary management official found at 25 C.F.R. §§ 502.14 and 501.19.

**DISCUSSION**

**A. 25 C.F.R. § 502.14(a)**

NIGC proposes to expand the definition of KE under subsection 502.14(a) to include persons who perform one or more of the functions listed under subsection 502.14(a) "irrespective of [their] employment status or compensation." It also proposes to expand the functions to which subsection 502.14(a) applies. In addition, NIGC proposes to amend the definition of KE to include a "[c]ustodian of gambling devices, gaming supplies, gaming systems, or cash" under subsection 502.14(a)(9) and to include custodians of licensing records and/or compliance

inspectors or monitors if designated as such in a gaming ordinance approved by the NIGC Chair under subsections 502.14(a)(11) and (12), respectively.

The PRCI and TGC support NIGC's proposed changes to subsection 502.14(a). We also respectfully request that NIGC consider further amending subsection 502.14(a) to include in the definition of KE any person who has direct supervision over any person who is responsible for overseeing the entirety of the following types of departments or functions: contracts and agreements for entertainment or for the lease of space on the premises of the licensed gaming establishment; entertainment operations; food and beverage; hotel operations; human resources; internal audit; internal information technology; marketing; and sales.

The TGC's suggested amendment aligns with the requirements for employee reports for qualified employees and other employees under the Nevada Gaming Commission regulations found at §§ 3.100 and 3.110, from which the NIGC regulations were at one point derived.

**B. 25 C.F.R. §§ 502.14(b)-(c)**

NIGC proposes to amend subsections 502.14(b)-(c) to raise the total cash compensation qualifier for key employees from \$50,000 to \$100,000. It also proposes to replace the provision under subsection 502.14(d) (discussed below) with language that includes in the definition of KE "the four most highly compensated persons in the gaming operation" if they are not otherwise included under section 502.14.

The TGC supports NIGC's proposal to increase the total cash compensation qualifier for key employees generally and to designate the four most highly compensated persons in the operation as KEs unless they are already covered under section 502.14. The TGC also respectfully requests NIGC consider further increasing its proposed amount to \$400,000 per annum (or \$200,000 for Indian gaming operations with gross gaming revenues that total less than \$2,000,000) or the five highest compensated persons, whichever method results in the greater number of persons.

The TGC's suggestion is based on the PRCI's and TGC's years of experience in licensing those employed by the PRCI's gaming facility. As our experience has shown, with the passage of time and increases in cost-of-living indices, the consumer price index, and inflation, such finite dollar limits can become unrealistic and unintentionally capture applicants who do not perform the key functions intended. Perhaps an even better standard would tie the limit to an appropriate sliding index. The TGC would also like to note that its recommendation aligns with NIGC's current auditing standards for gaming operations with gross revenues of less than \$2,000,000 under 25 C.F.R. § 571.12(c).

In addition, the TGC recommends the definition of KE include any person who has the authority to determine who is authorized to grant complimentary benefits, with "complimentary benefits" meaning those products, services, and entertainment normally provided in exchange for



consideration including, but not limited to, transportation, hotel room nights, and shows given without consideration to a casino customer except food and beverage given to a casino patron.

**C. 25 C.F.R. § 502.14(d)**

NIGC is proposing to delete "[a]ny other person designated by the tribe as a key employee" under subsection 502.14(d). NIGC's summary documents explain that the purpose of this change is to "[a]ddress the [Federal Bureau of Investigation's ("FBI")] concerns regarding who constitutes a *key employee* or *primary management official*." Summary of proposed changes to 25 C.F.R. Parts 502, 556, & 588 (emphasis in original).

The PRCI and TGC encourage NIGC to retain some level of tribal discretion in determining who constitutes a KE. To that end, NIGC may wish to add a new subsection (e) to 502.14 that includes in the definition of KE any executive, employee, or agent of a gaming operation not otherwise captured by this section that the tribe may determine to have the power to exercise a significant influence over decisions concerning any part of the operation of a gaming facility.

**CONCLUSION**

The PRCI and TGC support the NIGC's desire to amend IGRA's implementing regulations to conform to current practices in Indian gaming. Likewise, the PRCI and TGC appreciate the opportunity to provide comments. We encourage the NIGC to consider the TGC's recommendations and we stand ready to discuss our proposals further if the NIGC has questions or comments.

Sincerely,



Claudia Gonzales  
Chairwoman  
Picayune Rancheria of the Chukchansi Indians