



**Little River Band of Ottawa Indians
Gaming Commission**

2840 Orchard Hwy, Suite "A"
Manistee, MI 49660

Tel: (231) 723-7755 • Fax: (231) 723-7788

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National Indian Gaming Commission

Sent via email at: information @nigc.gov

Re: Comments for Proposed Rule

Dear Chairman Simermeyer and Commissioners,

The Little River Band of Ottawa Indians (LRBOI) submits these comments related to the substantial amendments to 25 CFR Parts 502, 556, and 558. LRBOI Gaming Commission regulatory staff and legal counsel attended the July 27, 2021, consultation session and at that time sought clarification on some potential issues and/or concerns with proposed changes. On August 12, 2021, LRBOI submitted written comments related to the consultation. On August 10, 2022, the NIGC published its revised proposal which differs significantly from the language originally proposed in July 2021, thus creating confusion over what is expected of the tribal regulatory agencies and how they may achieve compliance with the new rules while increasing the negative impact on LRBOI. The effect of this confusion causes great concern to LRBOI on several levels. The LRBOI also finds no substantive justification for the proposed changes, including lack of clarity and added ambiguity. These comments seek to further clarify these issues and/or concerns and to articulate LRBOI's position on these proposed revisions.

Proposed Changes to 25 C.F.R. Parts 502, 556, & 558 (Key and PMO definitions)

LRBOI response: Prior to addressing specific changes to this section of the regulations, we would like to express that these potential changes remain a great concern to LRBOI. Accepting these changes with a conservative interpretation to assure compliance would affect no less than 52 positions at LRBOI's gaming operation, with no less than 36 changing from Key to PMO licensing. To be clear, that is number of positions, not employees, which is a larger number. Moreover, we are aware of instances where this shift could result in the elimination of a tribal member from our workforce due to the new licensing requirements. LRBOI has not found any substantive rationale (verbal or written) for a couple of the changes (summarized later in content of this communication). LRBOI requires non-gaming licensure for all positions at the gaming enterprise that are not otherwise licensed as a Primary Management Official or Key Employee. LRBOI completes background investigations on all employees for this practice, but these changes would have a significant negative impact. Our understanding is that these changes have been prompted by concerns not at all grounded in the protection of tribal gaming assets, but rather friction between the FBI

and NIGC's interpretation/implementation of licensing classifications and background requirements. In fact, there has been no suggestion that any of these changes present a benefit to the tribes because there is no guarantee that these changes would solve the issue the tribes had when the Commission required an update to the MOU and the shift of allowable submissions for fingerprints through the FBI. Many tribes, LRBOI included attended training sessions regarding that shift and implemented new policies to adjust compliance. While we can appreciate that NIGC is trying to adjust the regulations to minimize the impact of the changes the FBI is imposing, we cannot support this solution as presented. Please see direct suggestions below.

- *Address FBI's concerns regarding who constitutes a Key Employee or a Primary Management Official*

LRBOI response: We do not believe that this approach is in keeping with the spirit or intent of IGRA. The FBI's concerns about CHRI management are legitimate to some extent from their perspective, but those concerns have almost no connection to the intent of IGRA and should not be the basis for regulatory change. Our specific concerns with the changes in definition are addressed further below.

- *Provide for custodians of surveillance systems or surveillance system records to be licensed as a Key Employee or Primary Management Official (by proposed revision of definition) and any other employee of the gaming enterprise designated by the Tribe as a Key Employee or Primary Management Official (by proposed revision of definition) in its Gaming Ordinance*

LRBOI response: We do not support this approach, do not find any substantive justification for the change, and do not recall this change being discussed during the consultation sessions. Perhaps a more sound approach would be create a third optional classification for regulator licensing that would comply with the FBI's concerns but would not unnecessarily change the scope of Key or PMO licensing. Here at LRBOI the Surveillance Department is under the regulatory agency as the custodians of surveillance systems or surveillance system records and the IT Department is under the executive branch of the Tribal government – neither being employees of the gaming operation. Also, here at LRBOI, Gaming Commissioners nor staff are licensed but must meet the qualifications for licensure to be employed. This change would cause some Gaming Commission staff and at least one Commissioner to be licensed, but no allowance for the other Commissioners or staff to be licensed. We would suggest further investigation and consultation into this solution prior to expanding current definitions.

- *Include persons with unescorted access to restricted areas as Key Employees or Primary Management Official (by proposed revision of definition)*

LRBOI response: The term "restricted areas" requires clarification. Through participation in the calling session, we understand that this term is not meant to apply broadly to the back of the house but would appreciate some language to address more specifically what NIGC would deem a restricted area and would further like that limited to the gaming related operations. Furthermore, the revision provides the regulatory agency has the body to designate what are deemed restricted areas.

- *Key Employee definition*

LRBOI response: We do not support the change that removes the tribe's discretion to identify Key Employees (Part 502.14 (d)). Understanding the FBI's concern that this may be too vague, we would request NIGC to further consult with the FBI to determine if an allowance for tribes to identify specific Key Employee license designation in their Gaming Ordinance which may be broader than NIGC's designation.

- *Expand the Primary Management Official definition*

LRBOI response: We do not support the change to include one who supervises a Key Employee of the gaming operation (Part 502.19 (3)) – see concerns reference above. We do not support the change that removes the tribe’s discretion to identify Primary Management Officials (Part 502.19 (e)). Understanding the FBI’s concern that this may be too vague, we would request NIGC to further consult with the FBI to determine if an allowance for tribes to identify specific Primary Management Official license designation in their Gaming Ordinance which may be broader than NIGC’s designation. What purpose does this serve as both Key and PMO are fingerprinted as it stands.

- *Notification to NIGC of license decisions and retention obligations*

LRBOI response: We do not support this change and do not recall this being a part of the consultation (Part 558.3 (e) (2)). What is the purpose of the requirement of the Tribes to forward copies of the summary of evidence it relied upon to the Commission for inclusion in the Indian Gaming Individuals Record System? Will the Commission share this information with all tribal regulatory agencies? If so, how are the tribes protected under their confidentiality agreements with licensees?

- *Notice of information impacting eligibility and licensee’s right to a hearing*

LRBOI response: We would like further clarification on this proposed revision 558.4 (a). As written, it appears this applies after the Notice of Results and Eligibility Determination has been submitted to the Commission. Does the Commission provide the tribe’s regulatory agency all evidence (reliable information as written) relied upon to make their determination as the proposed rule states, “shall notify the issuing Tribe of the information”. Does any part of this new requirement subject to inclusion in the Indian Gaming Individuals Record System? Will the Commission share this information with all tribal regulatory agencies? If so, how are the Tribe’s protected under the confidentiality agreements with licensees.

In closing, the LRBOI Gaming Commission urges the NIGC to postpone (at a minimum) adopting the proposed changes as final and to extend their consultation period with the Tribes on these significant changes prior to proceeding forward as the changes will have a significant negative impact on us.

Respectfully,



William Willis, Gaming Commission Chairperson