



BULLETIN

No. 2013 - 2

February, 2013

Subject: Annual Fees Payable by Indian Gaming Operations; New Rules

On February 2, 2012, the Commission published changes to the annual fees rule (25 C.F.R. Part 514) in the Federal Register (77 FR 5178). The new regulations became effective on October 1, 2012. Submitting fee payments and worksheets on a quarterly basis under §§ 514.5 and 514.6 is required as of January 1, 2013. A copy of the final rule amending the fee regulations is attached.

The purpose of Part 514 is to establish how the NIGC sets and collects fees, to establish a basic formula for tribes to utilize in calculating the amount of fees to pay, and to advise of the potential consequences for failure to pay the fees. This bulletin highlights the changes to the fee regulations and gives guidance on how to comply with the amended requirements for submitting fee worksheets and payments. These regulations are applicable to all gaming operations under the jurisdiction of the Commission.

Under the revised 25 C.F.R. Part 514, fees are calculated based on the gaming operation's fiscal year rather than its calendar year. It is the Commission's belief that this change will result in a less complex fee calculation and consequently, fewer errors. Part 514 now also requires the submission of fee worksheets and payments on a quarterly basis rather than twice a year. The payments and fee worksheets must be submitted to the Commission within three (3) months, six (6) months, nine (9) months, and twelve (12) months of the end of the gaming operation's fiscal year. Tribes that wish to continue to pay their full year's fees at the beginning of the year may do so. Please refer to the attached schedule for additional information regarding fiscal year revenues and the submission dates.

Please note that new gaming operations still must submit worksheets by the specified due dates, even if no gaming revenues were generated in the previous year and no fees are owed. Additionally, existing gaming operations that owe no fees on a given due date must still submit worksheets. For example, if a gaming operation pays its fees for an entire year on its first quarterly due date, that operation still must submit a worksheet by the second, third, and fourth due dates for the current year.

The revised regulation also changes the date on which the Commission adopts and publishes the preliminary fee rate to no later than March 1st of each year. If necessary, the Commission will modify the rate no later than June 1st of each year. Once adopted, a fee rate will remain in effect until a new fee rate is adopted. Once a fee rate is adopted, it is used to calculate fee payments due on or after the date it is effective. Fee rates are published in an NIGC bulletin and in the Federal Register, and are

available on the NIGC website.

To be clear, fee payments are calculated using the fee rate in effect at the time the payment is due. In other words, each quarterly fee payment “stands on its own” and is not recalculated based on a change in the fee rate. The only circumstances under which a recalculation of a fee payment would be appropriate would be if a payment was calculated using unaudited financial numbers that affected the amount of the payment or in the case of an error. In the event a gaming operation believes it is necessary to recalculate a previous fee payment, a detailed explanation should be submitted with the fee worksheet.

For example, because the Commission has not yet adopted and published a preliminary fee rate in 2013, a fee payment submitted on February 20, 2013, should be calculated using the final fee rate that was adopted and published on July 12, 2012. Once the Commission adopts a preliminary fee rate on or before March 1, 2013, a fee payment should be calculated using that rate as long as it remains in effect (i.e. until the Commission adopts the final fee rate for the year). After the Commission adopts and publishes the final fee rate for 2013, that fee rate should be used to calculate all payments. Care should be taken to use the correct fee rate.

Finally, the revised fee regulation implements a “ticketing” system for failure to submit a fee payment or quarterly fee worksheet in a timely manner. NIGC uses the date of mailing, not the date of receipt (mailbox rule), to determine if a submission is timely. If a tribe uses a private delivery service such as FEDEX or UPS, the shipping receipt should be dated on or before the due date.

Should you have any questions or need additional information, please contact Yvonne Lee, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC, 20005; telephone (202) 632-7003; fax (202) 632-7066 (these are not toll-free numbers).

PART 514 ANNUAL FEES

§ 514.1 What is the purpose of this part?

Each gaming operation under the jurisdiction of the Commission, including a tribe with a certificate of self-regulation, shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

§ 514.2 When will the annual rates be published?

(a) The Commission shall adopt preliminary rates for each calendar year no later than March 1st of each year, and, if considered necessary, shall modify those rates no later than June 1st of that year.

(b) The Commission shall publish the rates of fees in a notice in the Federal Register.

§ 514.3 What is the maximum fee rate?

(a) The rates of fees imposed shall be—

(1) No more than 2.5% of the first \$1,500,000 (1st tier), and

(2) No more than 5% of amounts in excess of the first \$1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.

(b) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25% of assessable gross revenues from self-regulated class II gaming operations.

§ 514.4 What are “assessable gross revenues” and how does a tribe calculate the amount of the annual fee it owes?

(a) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, entry fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures as reflected in the gaming operation's audited financial statements.

(b) Each gaming operation subject to these regulations shall calculate the annual fee based on the gaming operation's fiscal year.

(c) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(d) The allowance for amortization of capital expenditures for structures shall be either:

(1) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% of the cost of structures in use during only a part of the year; or

(2) An amount not to exceed 10% of the total amount of depreciation expenses for the year.

(e) All class II and III revenues from gaming operations are to be included.

§ 514.5 When must a tribe pay its annual fees?

Each gaming operation shall calculate the amount of fees to be paid and remit them with the quarterly statement required in § 514.6. The fees payable shall be computed using:

- (a) The most recent rates of fees adopted by the Commission pursuant to § 514.2,
- (b) The assessable gross revenues for the previous fiscal year as calculated using § 514.4, and
- (c) The amounts paid and credits received during the fiscal year, if applicable.

§ 514.6 What are the quarterly statements that must be submitted with the fee payments?

- (a) Each gaming operation subject to the jurisdiction of the Commission shall file with the Commission quarterly statements showing its assessable gross revenues for the previous fiscal year.
- (b) These statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures.
- (c) The quarterly statements shall be sent to the Commission within three (3) months, six (6) months, nine (9) months, and twelve (12) months of the end of the gaming operation's fiscal year.
- (d) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.
- (e) Each quarterly statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:
 - (1) Multiply the 1st tier assessable gross revenues, as calculated using § 514.4, by the rate for those revenues adopted by the Commission.
 - (2) Multiply the 2nd tier assessable gross revenues, as calculated using § 514.4, by the rate for those revenues adopted by the Commission.
 - (3) Add (total) the results (products) obtained in paragraphs (e)(1) and (2) of this section.
 - (4) Multiply the total obtained in paragraph (e)(3) of this section by $\frac{1}{4}$.
 - (5) The amount computed in paragraph (e)(4) of this section is the amount to be remitted.
- (f) Examples of fee computations follow:
 - (1) Where a filing is made for the first quarter of the fiscal year, the previous year's assessable gross revenues as calculated using section 514.4 of this part are \$2,000,000, the fee rates adopted by the Commission are 0.0% on the first \$1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues—	$\$1,500,000 \times 0.0\% = 0$
2nd tier revenues—	$\$500,000 \times .08\% = \400
Annual fees	\$400
Multiply for fraction of year—1/4or	.25
Fees for first payment	\$100
Amount to be remitted	\$100

(2) [Reserved]

(g) As required by part 571 of this chapter, quarterly statements must be reconciled with a tribe's audited or reviewed financial statements for each gaming location. These reconciliations must be made available upon the request of any authorized representative of the NIGC.

NIGC Fee Payments Schedule

For Tribes/operations with a fiscal year ending March 31:

Payment Due Date	Basis for Assessable Gross Revenues	Fraction of year used for Worksheet
6/30/2012	CY 2011	0.5
12/31/2012	CY 2011	0.5
3/31/2013	FYE 3/31/2012	0.25
6/30/2013	FYE 3/31/2013	0.25
9/30/2013	FYE 3/31/2013	0.25
12/31/2013	FYE 3/31/2013	0.25
3/31/2014	FYE 3/31/2013	0.25
6/30/2014	FYE 3/31/2014	0.25
9/30/2014	FYE 3/31/2014	0.25
12/31/2014	FYE 3/31/2014	0.25

For Tribes/operations with a fiscal year ending June 30:

Payment Due Date	Basis for Assessable Gross Revenues	Fraction of year used for Worksheet
6/30/2012	CY 2011	0.5
12/31/2012	CY 2011	0.5
3/31/2013	FYE 6/30/2012	0.25
6/30/2013	FYE 6/30/2012	0.25
9/30/2013	FYE 6/30/2013	0.25
12/31/2013	FYE 6/30/2013	0.25
3/31/2014	FYE 6/30/2013	0.25
6/30/2014	FYE 6/30/2013	0.25
9/30/2014	FYE 6/30/2014	0.25
12/31/2014	FYE 6/30/2014	0.25

For Tribes/operations with a fiscal year ending September 30:

Payment Due Date	Basis for Assessable Gross Revenues	Fraction of year used for Worksheet
6/30/2012	CY 2011	0.5
12/31/2012	CY 2011	0.5
3/31/2013	FYE 9/30/2012	0.25
6/30/2013	FYE 9/30/2012	0.25
9/30/2013	FYE 9/30/2012	0.25
12/31/2013	FYE 9/30/2013	0.25
3/31/2014	FYE 9/30/2013	0.25
6/30/2014	FYE 9/30/2013	0.25
9/30/2014	FYE 9/30/2013	0.25
12/31/2014	FYE 9/30/2014	0.25

NIGC Fee Payments Schedule

For Tribes/operations with a fiscal year ending December 31:

Payment Due Date	Basis for Assessable Gross Revenues	Fraction of year used for Worksheet
6/30/2012	CY 2011	0.5
12/31/2012	CY 2011	0.5
3/31/2013	FYE 12/31/2012	0.25
6/30/2013	FYE 12/31/2012	0.25
9/30/2013	FYE 12/31/2012	0.25
12/31/2013	FYE 12/31/2012	0.25
3/31/2014	FYE 12/31/2013	0.25
6/30/2014	FYE 12/31/2013	0.25
9/30/2014	FYE 12/31/2013	0.25
12/31/2014	FYE 12/31/2013	0.25

For Tribes/operations with a fiscal year ending April 30:

Payment Due Date	Basis for Assessable Gross Revenues	Fraction of year used for Worksheet
6/30/2012	CY 2011	0.5
12/31/2012	CY 2011	0.5
1/31/2013	FYE 4/30/2012	1/12 or .0833
4/30/2013	FYE 4/30/2012	0.25
7/31/2013	FYE 4/30/2013	0.25
10/31/2013	FYE 4/30/2013	0.25
1/31/2014	FYE 4/30/2013	0.25
4/30/2014	FYE 4/30/2013	0.25
7/31/2014	FYE 4/30/2014	0.25
10/31/2014	FYE 4/30/2014	0.25

For Tribes/operations with a fiscal year ending May 31:

Payment Due Date	Basis for Assessable Gross Revenues	Fraction of year used for Worksheet
6/30/2012	CY 2011	0.5
12/31/2012	CY 2011	0.5
2/28/2013	FYE 5/31/2012	1/6 or .1667
5/31/2013	FYE 5/31/2012	0.25
8/31/2013	FYE 5/31/2013	0.25
11/30/2013	FYE 5/31/2013	0.25
2/28/2014	FYE 5/31/2013	0.25
5/31/2014	FYE 5/31/2013	0.25
8/31/2014	FYE 5/31/2014	0.25
11/30/2014	FYE 5/31/2014	0.25

§ 514.7 What should a tribe do if it changes its fiscal year?

If a gaming operation changes its fiscal year, it shall notify the Commission of the change within thirty (30) days. The Commission may request that the tribe prepare and submit to the Commission the fees and statements required by this subsection for 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 ninety (90) days of its request.

§ 514.8 Where should fees, quarterly statements, and other communications about fees be sent?

The statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Comptroller, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

§ 514.9 What happens if a tribe submits its fee payment or quarterly statement late?

(a) In the event that a gaming operation fails to submit a fee payment or quarterly statement in a timely manner, the Chair of the Commission may issue a notice specifying:

- (1) The date the statement and/or payment was due;
- (2) The number of calendar days late the statement and/or payment was submitted;
- (3) A citation to the federal or tribal requirement that has been or is being violated;
- (4) The action being considered by the Chair; and
- (5) Notice of rights of appeal pursuant to part 577 of this chapter.

(b) Within fifteen (15) days of service of the notice, a respondent may submit written information about the notice to the Chair. The Chair shall consider any information submitted by the respondent as well as the respondent's history of untimely submissions or failure to file statements and/or fee payments over the preceding five (5) years in determining the amount of the late fee, if any.

(c) When practicable, within thirty (30) days of issuing the notice described in paragraph (a) of this section to a respondent, the Chair of the Commission may assess a proposed late fee against a respondent for each failure to file a timely quarterly statement and/or fee payment:

- (1) For statements and/or fee payments one (1) to thirty (30) calendar days late, the Chair may propose a late fee of up to, but not more than 10% of the fee amount for that quarter, as calculated in § 514.6(e);
- (2) For statements and/or fee payments thirty-one (31) to sixty (60) calendar days late, the Chair may propose a late fee of up to, but not more than 15% of the fee amount for that quarter, as calculated in § 514.6(e);
- (3) For statements and/or fee payments sixty-one (61) to ninety (90) calendar days late, the Chair may propose a late fee of up to, but not more than 20% of the fee amount for that quarter, as calculated in § 514.6(e).

§ 514.10 When does a late payment or quarterly statement submission become a failure to pay?

(a) Statements and/or fee payments over ninety (90) calendar days late constitute a failure to pay the annual fee, as set forth in IGRA, [25 U.S.C. 2717\(a\)\(3\)](#), and NIGC regulations, [25 CFR 573.6\(a\)\(2\)](#). In accordance with [25 U.S.C. 2717\(a\)\(3\)](#), failure to pay fees shall be grounds for revocation of the approval of the Chair of any license, ordinance or resolution required under IGRA for the operation of gaming.

(b) In accordance with § 573.6(a)(2) of this chapter, if a tribe, management contractor, or individually owned gaming operation fails to pay the annual fee, the Chair may issue a notice of violation and, simultaneously with or subsequently to the notice of violation, a temporary closure order.

§ 514.11 Can a tribe or gaming operation appeal a proposed late fee?

(a) Proposed late fees assessed by the Chair may be appealed under part 577 of this chapter.

(b) At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chair and the respondent may agree to settle the notice of late submission, including the amount of the proposed late fee. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chair and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the notice or late fee in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the proposed late fee before the Commission in accordance with part 577 of this chapter.

§ 514.12 When does a notice of late submission and/or a proposed late fee become a final order of the Commission and final agency action?

If the respondent fails to appeal under part 577 of this chapter, the notice and the proposed late fee shall become a final order of the Commission and final agency action.

§ 514.13 How are late submission fees paid, and can interest be assessed?

(a) Late fees assessed under this part shall be paid by the person or entity assessed and shall not be treated as an operating expense of the operation.

(b) The Commission shall transfer the late fee paid under this subchapter to the U.S. Treasury.

(c) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date.

§ 514.14 What happens if a tribe overpays its fees or if the Commission does not expend the full amount of fees collected in a fiscal year?

(a) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due according to § 514.4.

(b) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended to defray the costs of operations of the Commission.

§ 514.15 May tribes submit fingerprint cards to the NIGC for processing?

Tribes may submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI) and the Commission may charge a fee to process fingerprint cards on behalf of the tribes.

§ 514.16 How does the Commission adopt the fingerprint processing fee?

(a) The Commission shall review annually the costs involved in processing fingerprint cards and, by a vote of not less than two of its members, shall adopt preliminary rates for each calendar year no later than March 1st of that year, and, if considered necessary, shall modify those rates no later than June 1st of that year.

(b) The fingerprint fee charge shall be based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe.

§ 514.17 How are fingerprint processing fees collected by the Commission?

(a) Fees for processing fingerprint cards will be billed monthly to each Tribe for cards processed during the prior month. Tribes shall pay the amount billed within forty-five (45) days of the date of the bill.

(b) The Chair may suspend fingerprint card processing for a tribe that has a bill remaining unpaid for more than forty-five (45) days.

(c) Fingerprint fees shall be sent to the following address: Comptroller, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).