Under § 115.7 of the CBP regulations (19 CFR 115.7), the Commissioner may designate additional Certifying Authorities.

On May 8, 2002, Lloyd's Register North America, Inc. (''Lloyd's'') filed a request with CBP for status as a Certifying Authority for containers and container-design types pursuant to 19 CFR part 115. This request was granted by the Commissioner by letter dated April 10, 2003. Lloyd's status as a Certifying Authority does not extend to certification for individual road vehicles or road vehicle design types covered in 19 CFR part 115, subparts E and F. This document amends § 115.6 to add Lloyd's to the list of designated Certifying Authorities only for containers and container-design types.

This document further amends § 115.6 to update the addresses of the previously-designated three Certifying Authorities, and also to clarify that they are approved entities for certifying both containers and road vehicles. Finally, this document revises § 115.6 to distinguish between the two types of Certifying Authorities designated by the Commissioner.

Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being issued in accordance with section 0.2(a) of the CBP regulations (19 CFR 0.2(a)).

Inapplicability of Notice and Delayed Effective Date Requirements

Because this amendment merely updates the list of Certifying Authorities designated by the Commissioner and their addresses, and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12866 and Regulatory Flexibility Act

This final rule document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. In addition, because no notice of proposed rulemaking is required for the reasons stated above, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*), this final rule document contains no new information collection and recordkeeping requirements that require Office of Management and Budget approval.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule would not result in such an expenditure.

Executive Order 13132

In accordance with the principles and criteria contained in Executive Order 13132 (Federalism), this final rule will have no substantial effect on the States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials.

List of Subjects in 19 CFR Part 115

Containers, Customs duties and inspection, Freight, International conventions.

Amendments to the CBP Regulations

■ For the reasons set forth above, part 115, CBP regulations (19 CFR part 115), is amended as set forth below:

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

■ 1. The authority citation for part 115, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

■ 2. Section 115.6 is revised to read as follows:

§ 115.6 Designated Certifying Authorities.

(a) *Certifying Authorities for containers and road vehicles.* The Commissioner has designated the following Certifying Authorities for containers and road vehicles as defined in this part:

(1) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, Texas 77060–6008;

(2) International Cargo Gear Bureau, Inc., 321 West 44th Street, New York, New York 10036;

(3) The National Cargo Bureau, Inc., 17 Battery Place, Suite 1232, New York, New York 10004–1110.

(b) *Certifying Authority for containers.* The Commissioner has designated Lloyd's Register North America, Inc., 1401 Enclave Parkway, Suite 200, Houston, Texas 77077, as a Certifying Authority only for containers as defined in this part.

Dated: July 22, 2009.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E9–17876 Filed 7–24–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571, 573

RIN 3141–0001

Amendments to Various National Indian Gaming Commission Regulations

AGENCY: National Indian Gaming Commission.

ACTION: Final Rule.

SUMMARY: The final rule modifies various Commission regulations to reduce by half the fee reporting burdens on tribes, remove obsolete provisions, clarify existing appellate procedures, update and clarify management contract procedures and costs for background investigations, clarify various definitions and licensing notices, update audit requirements to allow for simplified and consolidated reporting in certain circumstances, and add gaming on ineligible lands to the class of substantial violations warranting immediate closure.

DATES: *Effective Date:* This rule is effective on August 26, 2009.

Compliance Date: Submitting fee statements and payments twice per year under sections 514.1(c)(2) and 514.1(d) is not required until January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Rebecca Chapman, Staff Attorney, Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA or Act), 25 U.S.C. 2701–21, creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands. 25 U.S.C. 2702. IGRA granted the NIGC, among other things, regulatory oversight and enforcement authority over tribal gaming. This authority

includes the authority to monitor tribal compliance with IGRA, NIGC regulations, and tribal gaming ordinances.

In 1992, the Commission adopted its initial regulations, and it has worked under IGRA for almost 20 years. 25 U.S.C. 2706(b)(10). The Commission undertakes this collection of regulation changes to better carry out its statutory duties. The final rule modifies various Commission regulations to (1) reduce by half the fee reporting burdens on tribes, (2) remove obsolete provisions, (3) clarify existing appellate procedures, (4) update and clarify management contract procedures and costs for background investigations, (5) clarify various definitions and licensing notices, (6) update audit requirements to allow for simplified and consolidated reporting in certain circumstances, and (7) add gaming on ineligible lands to the class of substantial violations warranting immediate closure.

Development of the Proposed Rules Through Tribal Consultation

The Commission identified a need for minor changes to various parts of its regulations, and in accordance with its government-to-government consultation policy (69 FR 16973 (Mar. 31, 2004)), requested input from Indian tribes. On March 26, 2007, the Commission prepared amendments to the regulations and sent a copy to the leaders of all gaming tribes for comment. Fifty-seven tribes provided written comments. The NIGC carefully reviewed all comments and often incorporated suggested changes that corrected grammar, clarified meaning, and better expressed or implemented the Commission's regulatory intent.

In addition, the NIGC consulted with tribes and their gaming commissions at regional gaming meetings around the country and at the Washington, DC, headquarters. Since March 26, 2007, the NIGC held consultations at 15 regional gaming conferences and consulted with more than 110 tribes with the proposed rule as a possible topic for discussion. Other than the previous 57 submissions, tribes gave no further suggestions for improvement on the proposed rule.

The Commission published the regulations—updated and improved by incorporation of tribal comments—as a proposed rule in the **Federal Register** on December 22, 2008, 73 FR 78242, Dec. 22, 2008. The Commission set a 45-day comment period, which would close on February 5, 2009. Nineteen tribal leaders requested more time to review the proposed rule, and the Commission extended the comment period to March 9, 2009. *See* 74 FR 4363, Jan. 26, 2009.

The Commission received a total of 54 written comments on the proposed rule. In addition, the Commission met with 56 tribes at six regional conferences around the country after the proposed rule's publication. The Commission invited all attending leaders to discuss the proposed rule, and two leaders provided additional comments. These comments were considered with the written comments received.

III. Purpose and Scope

The final rule modifies various Commission regulations to (1) reduce by half the fee reporting burdens on tribes, (2) remove obsolete provisions, (3) clarify existing appellate procedures, (4) update and clarify management contract procedures and costs for background investigations, (5) clarify various definitions and licensing notices, (6) update audit requirements to allow for simplified and consolidated reporting in certain circumstances, and (7) add gaming on ineligible lands to the class of substantial violations warranting immediate closure. The final rule is discussed below.

A. Definitions

NIGC regulations define ''key employee'' at 25 CFR 502.14. Applicants for positions defined as key employees are, among other things, subject to a background investigation as a condition of licensure. Under present regulations, this list of key employees is limited. With the addition of ''any other person designated by the tribe as a key employee,'' this section will allow tribes to expand the list and access the criminal history records held by the federal government for the purpose of conducting background investigations on these additional key employees.

IGRA and NIGC regulations define ''net revenue'' as ''gross gaming revenues of an Indian gaming operation less amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.'' 25 U.S.C. 2703(9); 25 CFR 502.16. The final rule amends 25 CFR 502.16 to define net revenues as previously seen in the regulations but clarifying what constitutes operating expenses and what does not.

The final rule incorporates the industry understanding of what constitutes an operating expense in order to clarify what constitutes net revenues for a gaming operation.

The NIGC's regulations define a ''person having a direct or indirect financial interest in a management contract'' to include holders of at least 10% of the issued and outstanding stock alone. The final rule reduces the requisite financial interest to five percent for publicly traded companies so as to be consistent with the Securities and Exchange Commission's understanding of a ''significant shareholder.'' This change is also consistent with similar requirements in other gaming jurisdictions.

NIGC regulations define ''primary management official'' at 25 CFR 502.19. Applicants for positions defined as primary management officials are, among other things, subject to a background investigation as a condition of licensure. Under present regulations, this list of primary management officials is limited. With the addition of ''any other person designated by the tribe as a primary management official,'' this section will allow tribes to expand the list and access the criminal history records held by the federal government for the purpose of conducting background investigations on these additional primary management officials.

B. Annual Fees Required

IGRA requires the NIGC to set an annual funding rate. 25 U.S.C. 2717. NIGC implements this requirement under 25 CFR part 514, which requires tribal submissions of fees four times per year. The final rule reduces the number of fee submissions by half. That said, submitting fee statements and payments twice per year under sections 514.1(c)(2) and 514.1(d) is not required until January 1, 2010.

In addition, the final rule requires that fees be sent on or before their due dates. This is a change from the previous requirement that NIGC actually receive fees on or before their due dates. Fees and statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date.

C. Content of Management Contracts

IGRA and NIGC regulations require specific provisions in a management contract, and its accompanying submission package, before the Chairman can approve it. 25 U.S.C. 2711; 25 CFR 531.1, 533.3. The Chairman must also approve any amendment to a management contract. 25 CFR 535.1, 535.3. In applying for approval, all persons having a financial interest in, or management responsibility for, a management contract must be disclosed to the Commission and must undergo a background investigation. 25 CFR 537.1. Management contractors must pay for this investigation. 25 CFR 537.3. If the Chairman disapproves a management

contract or amendment, the tribe or contractor may appeal. 25 CFR 539.1, 539.2.

The final rule updates 25 CFR 531.1, 533.1, 533.3, and 533.7 by removing language regarding the Secretary of the Interior's approval of management contracts. Because the Secretary no longer fulfills that role, the NIGC is eliminating unnecessary references in sections 531.1, 533.1, 533.3, and 533.7 to the Secretary's former authority. Further, section 533.5 permits the Chairman to take action on noncompliant management contracts previously approved by the Secretary. Because no management contracts approved by the Secretary remain active, section 533.5 is obsolete, and the final rule removes it.

Additionally, the final rule updates section 533.3 to reflect the existing practice of providing a legal description for the land upon which the gaming facility operates or will operate. This allows the Commission to determine whether a management contract references a site that is ''Indian lands'' eligible for gaming as required under IGRA.

The final rule changes § 537.3 to increase the fee for background investigations. This updates the fee and more accurately reflects the Commission's actual costs.

Finally, the final rule replaces the words ''modification'' and ''modify'' with ''amendment'' and ''amend'' in §§ 535.1, 535.3, 539.1, and 539.2 for purposes of internal consistency.

D. Background and Licensing for Primary Management Officials and Key Employees

IGRA requires that tribes, through their gaming ordinances, maintain an adequate system of background investigations. 25 U.S.C. 2710(b)(2)(F). NIGC regulations, 25 CFR parts 556 and 558, implement this requirement. The final rule removes language in 25 CFR 556.2, 556.3 and 558.2 referring to the employment of individuals as key employees and primary management officials and replaces it with language referring to their licensure instead. The reason for this is that a decision to license an applicant and a decision about an applicant's suitability (or eligibility) for licensure is separate and distinct from a decision to hire the applicant. The Commission believes that these sections should be concerned with licensure and suitability determinations, not employment decisions.

The granting of a license is a privilege and the burden of proving suitability is on the applicant. In doing so, the applicant typically provides much more comprehensive personal information on a license application than is normally required on an employment application. Thus, these changes redraw the distinction between employment and licensure, making it clear when an applicant must provide more detailed information and when this Commission may share applicant information.

As stated in the notice required by the proposed 25 CFR 556.2, application information may be ''disclosed * * * in connection with the issuance, denial, or revocation of a gaming license. * * *'' As such, the information could not, without otherwise complying with the requirements of the Privacy Act, 5 U.S.C. 552a, be provided to support employment decisions by prospective or current employers of the license applicant. This is a change from prior practice. Under the NIGC's existing regulations, application information can be disclosed in connection with the hiring and firing of an employee.

Finally, the amendments to 25 CFR 556.2, 556.3 and 558.2 will have implications for tribal gaming ordinances, but not immediately. Upon the effective date, tribes do not have to immediately amend their gaming ordinances. However, following the effective date, whenever tribes amend their gaming ordinances, they must also make amendments conforming to the language in these sections.

E. Monitoring and Investigating

IGRA requires ordinances submitted for the Chairman's review to contain a provision requiring an annual audit. 25 U.S.C. 2710(b)(2). The NIGC's regulation, 25 CFR 571.12, creates standard procedures for the submission of the annual audit to the Commission, and § 571.13 deals with how and when a tribe submits an audit statement. The final rule still requires tribes to contract with independent certified public accountants that use Generally Accepted Accounting Principles and Generally Accepted Accounting Standards to complete their audits. However, the final rule allows tribes with multiple facilities to consolidate their audit statements into one. Further, the final rule allows operations earning less than $2 million in gross gaming revenue to file an abbreviated statement. The final rule also allows a tribe to submit an electronic version of an audit for so called ''stub periods'' of less than one year.

Finally, the final rule requires that audits and financial statements be sent on or before their due dates. This is a change from the previous requirement that NIGC actually receive the audits and statements on or before their due dates. Audits and statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date. The final rule reflects common sense practice and reduces tribal costs and burden hours.

NIGC regulation 25 CFR 573.6 discusses the Chairman's ability to close a gaming operation for any listed substantial IGRA violation. The final rule adds one substantial violation to the list. The Chairman may now issue a temporary closure order for a gaming operation that operates on Indian land not eligible for gaming under IGRA. Indian gaming under IGRA must occur on ''Indian lands,'' 25 U.S.C. 2710(a), (b) and (d), as IGRA defines that term. 25 U.S.C. 2703(4). If Indian land is trust land acquired after October 17, 1988 (''after-acquired land''), then the land is eligible for gaming only if it meets one of the exceptions provided in 25 U.S.C. 2719. A gaming operation that operates on after-acquired trust land that does not meet one of the exceptions in section 2719 is in violation of IGRA. Operating illegally in this way is a substantial violation of IGRA that warrants immediate closure.

Regulatory Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that an agency prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impact of the final rule, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Indian tribes and tribal casinos do not meet this definition. Tribes are excluded from the governmental jurisdictions listed under (2), and tribally owned casinos are not ordinary commercial activities but are tribal governmental operations.

As a practical matter here, the cost increases of the final rule take the form of increased fees for management contractors' background investigations. The economic impact of these is not significant as the fees, currently below industry norms, are raised to meet them, and the effect is limited to only management contracting entities. These are by no means substantial in number, and, generally, do not fall within the definition of ''small entity'' as defined by the Small Business Act. Accordingly, the Commission certifies that this action will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, local government agencies, or geographic regions. Nor will the final rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1). Regardless, the final rule does not impose an unfunded mandate on state, local, tribal governments, or on the private sector of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the final rule does not unduly burden the judicial system, and it meets the requirements of section 3(a) and 3(b)(2) of that order.

National Environmental Policy Act

The Commission has determined that the final rule does not constitute a major federal action significantly affecting the quality of the human environment and no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Paperwork Reduction Act

The final rule does not require any significant changes in information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collections in the affected regulations are included within OMB control numbers 3141–0001 for part 571; 3141–0003 for parts 556 and 558; 3141–0004 for parts 531, 533, 535, 537, 539; and 3141–0007 for part 514.

Review of Public Comments

A number of commenters made editorial suggestions that improved consistency within the final rule. These changes were accepted and did not change the substance of the final rule. Substantive changes and suggestions are addressed below.

General Comments

Comment: Eight commenters objected generally to any promulgation of regulations by the NIGC, stating that such action violated tribal sovereignty. Further, the commenters also stated that the NIGC had failed to consult tribes in crafting these changes. The commenters requested complete withdrawal of these regulations, including regulations passed in 1993 that the NIGC has not proposed to amend.

Response: The Commission does not agree that making these slight modifications to its existing regulations violates tribal sovereignty. Under IGRA, tribes and the NIGC share dual regulatory roles, and the NIGC is statutorily authorized to issue regulations. Thus, the Commission does not feel that it is appropriate to withdraw the final rule. Further, as to those regulations passed in 1993 that were not addressed in the proposed rule, they have served Indian gaming well for 16 years, and the Commission sees no reason to withdraw them now.

As to a failure of consultation, the Commission strongly disagrees. The NIGC has spent the last two years consulting with tribes on the updates. The Commission alerted tribes to the changes in March 2007, has asked them for review and comment, and has incorporated tribal suggestions into each successive draft. Further, the Commission has met with tribes all over the country to discuss the regulations, or anything else that tribal leaders desired to discuss. Comments from those discussions were incorporated into the final rule.

Comment: The NIGC has received comments that are generally supportive of these updated rules.

Response: The Commission appreciates the support and is grateful to everyone who commented, both on the proposed rule and in response to the earlier draft sent to tribal leaders.

Comment: Nine commenters cited to a White House memorandum signed by Chief of Staff Rahm Emanuel on January 20, 2009, stating that it advocated for the immediate withdrawal of all pending regulations. Thus, the commenters insisted that the proposed rule could not go forward.

Response: The Commission disagrees. The commenters incorrectly refer to this memorandum as an executive order, which it is not. Further, the memorandum does not ask agencies to withdraw all pending regulations. Rather, it says something far narrower, asking for the withdrawal of proposed regulations that had not already been published in the **Federal Register** by January 20, 2009. This proposed rule was published in the **Federal Register** on December 22, 2008, almost one month prior to the memorandum.

Additionally, the memorandum asks agencies to extend the comment periods for any proposed rules pending. The Commission had done just that and extended the comment period for the proposed rule as published in the **Federal Register**. *See* 74 FR 4363 (January 26, 2009). Finally, the Commission continues to comply with the memorandum and keep the Administration informed as to the final rule.

Specific Comments

Comment: Some commenters requested that the definition for ''net revenues'' in 25 CFR 502.16 include the words ''gaming-related'' in order to make clear that the Commission's jurisdiction extends only to gaming revenues.

Response: The Commission agrees and incorporated this change into the final rule.

Comment: Ten commenters claimed that the NIGC has no authority to change the definition of ''net revenues'' in 25 CFR 502.16 because Congress has already defined the term.

Response: The Commission is not changing the definition of net revenue. It is, rather, preserving the original meaning of the term in IGRA in light of changes in professional accounting pronouncements that make the term ambiguous. What is more, that ambiguity has the potential to improperly increase management contract fees.

When IGRA was enacted, the definition of net revenue reflected the accounting profession's understanding of ''operating expenses'' as including all expenses incurred by a business.

Subsequently, however, the accounting profession changed its understanding of the term.

The American Institute of Certified Professional Accountants (AICPA) reasoned that not all expenses are alike. Some expenses are directly tied to increases and decreases in the economic activity of a business, and hence its ability to produce revenue. Examples of these include salaries, utilities, and advertising. Presumably, an increase in these expenses—say, in a period of expansion for the business—should ultimately result in the business producing more revenue. AICPA called these expenses ''operating expenses,'' and thus the term has come to refer to a smaller class of expenses than it did when IGRA was adopted.

Other expenses are not so closely tied to a business's economic activity and revenue production. For example, a business's interest obligation on a loan may increase with a change in the prime rate, and this does not represent an expansion of business activity at all. These latter expenses AICPA now calls ''non-operating expenses.''

Under IGRA, ''net revenue'' is calculated by deducting prizes and ''operating expenses'' from gross revenue. ''Operating expenses,'' however, has become ambiguous because of the change in AICPA's understanding of the term. Thus, the question arises whether to calculate net revenues by deducting ''operating expenses'' as the term was understood at the time IGRA was adopted or as the term is understood now.

If you apply the current understanding and remove interest and the like—the ''non-operating'' expenses—from the calculation of net revenue, the result is improperly high management contract fees. The expenses deducted from gross revenues become smaller, and net revenues, which form the basis for calculating management fees, are overstated.

This is the result the Commission intends to prevent. The amendment to 502.16 is intended to ensure that net revenues are calculated by using AICPA's original understanding and deducting as ''operating expenses'' all of the expenses incurred by a business—by deducting, in other words, what AICPA now calls ''operating expenses'' and ''non-operating expenses.''

Comment: Fifteen commenters objected to the definition of ''Person having a direct or indirect financial interest in a management contract,'' 25 CFR 502.17 as unduly burdensome to tribes. Tribal commenters argued that the definition could make it impossible for tribal entities to manage a gaming operation because the definition can be read to include all tribal members. Thus, they argue, when a tribal entity is the manager, all tribal members would be subject to background investigations and suitability determinations.

Response: The Commission does not agree. The language in 502.17(e) to which the commenters refer is the same language adopted in 1993. The Commission has not proposed any changes to it, and it sees no reason to change the language now. The Commission has never interpreted this section to include the entire membership of a tribe for purposes of determining who ''has an interest'' in a management contract and thus who needs to undergo a background investigation.

The Commission proposed only two changes here. One was to lower the threshold for corporate stockholders included in the definition of ''persons with a direct or indirect financial interest'' from persons owning 10% of stocks to 5% of stocks. The other was to add persons receiving gifts.

Comment: These same commenters objected to the change in section 502.17 that allows the agency to conduct background investigations on persons with 5% or more interest in the management contract, a change from the previous 10% interest. The commenters argued that this change appeared arbitrary and would increase the time needed to complete the approval process by increasing the number and costs of required background investigations.

Response: The Commission disagrees. It feels that the changes do not create significant cost increases for tribes because the management contractor pays for the background investigations conducted on their principals. While the change may require a greater number of background investigations, the increased workload falls on the Commission staff conducting the background investigations. The Commission feels that the increase in workload is offset by the benefit of protecting the integrity of Indian gaming. Finally, eight commenters expressly agreed with the changes presented in this section.

Comment: Nine commenters objected to the changes in filing fee statements under 25 CFR 514.1 and cited to *Colorado River Indian Tribe* v. *National Indian Gaming Commission (CRIT),* 383 F. Supp 2d 123 (D.D.C. 2005), aff'd 466 F. 3d 134 (D.C. Cir. 2006), for the proposition that the NIGC does not possess authority to apply these changes to Class III gaming operations.

Response: The Commission disagrees. The commenters incorrectly understand CRIT to hold that NIGC has no authority over Class III gaming. CRIT, however, only holds that NIGC lacks the authority to promulgate and enforce minimum internal control standards for most Class III gaming operations. 383 F. Supp 2d 123, 132 (D.D.C. 2005). CRIT did not strip the NIGC of the power to regulate Class III gaming generally. Rather, it stands for the proposition that NIGC, like every other administrative agency, has only those authorities Congress has granted to it. The NIGC has continued to regulate the industry consistent with IGRA's provisions, and IGRA specifically gives the Commission the authority to assess fees on Class III gaming. 25 U.S.C 2717(a)(1). Finally, six commenters agreed with the changes to 514.1.

Comment: Nine commenters objected to the requirement in 25 CFR 514.1 that fees and fee statements actually be received by NIGC on or before the due dates, preferring instead to apply the mailbox rule. This would mean that fee payments and statements are timely so long as they are mailed by their due dates, no matter how long those documents take to arrive.

Response: The Commission agrees. The final rule now requires that fees and fee statements be sent on or before their due dates. Fees and fee statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date.

Comment: Six commenters objected to the requirements that management contracts set operating days and hours as well as the advertising and placing budgets under 25 CFR 531.1(b)(3) and (10). Specifically, commenters asserted that these requirements were indicative of NIGC overreaching its authority and asked too much of tribes and potential contractors.

Response: The Commission disagrees. None of the language in 531.1(b) was changed from the original language adopted in 1993. The requirements that management contracts must contain provisions regarding days and hours of operation, as well as provisions on advertising and placing budgets, has always existed in the Commission's regulations. The Commission sees no reason to change that language now. Finally, two commenters specifically agreed with the changes presented in 531.1.

Comment: Five commenters noted that 25 CFR 533.2 gave tribes only 30 days to submit contracts for

management approval and felt that the timeline was too stringent.

Response: The Commission understands that the parties to a management contract may desire more time and thinks that it is fair to allow a longer time for submission. Thus, the Commission has changed this section to allow for the submission of management contracts within 60 days of their execution.

Comment: Twelve commenters objected to the requirement in 25 CFR 533.3(h) that the parties to a management contract submit a legal description of the land on which the gaming is to take place. The requirement, they felt, was burdensome and unnecessary. Commenters instead preferred the idea of having the Chairman approve management contracts without a legal description in case the parties chose a different site for construction or needed more time to finalize the land-into-trust process.

Response: The Commission disagrees. The NIGC routinely requests land descriptions for all management contracts. Since all management contracts are site-specific, the Chairman needs to have this legal description to determine whether the gaming operation will reside on Indian lands as IGRA requires. The Chairman does not normally approve management contracts prior to land being taken into trust. Consequently, this change simply clarifies agency practice.

Comment: Seven commenters objected to the 90-day extension permitted to the Chairman for his decision on a management contract under 25 CFR 533.4 because it allows the Chairman too much time. The commenters insisted that the standard 180 days for approval was long enough.

Response: The Commission disagrees. The 90-day extension that the commenters object to is the original language of the regulations adopted in 1993. The changes to this section do not involve this timeline, and the Commission feels no need to revisit the question now.

Comment: One commenter objected to 25 CFR 535.3 and 537.1 on grounds that they violated tribal sovereignty and were too burdensome.

Response: The Commission disagrees. The commenter failed to explain what changes were problematic or why these changes violate sovereignty or burden the tribes. Further, the changes made to these two sections do not impede tribal sovereignty. The changes to section 535.3 indicate that the Chairman can void management contract amendments as well as approve them, a power given to him by IGRA. 25 U.S.C. 2711. Thus, this change merely clarifies the Chairman's existing authority.

Furthermore, the changes to section 537.1 merely require a management contractor to disclose its ten largest stock holders, their relations, and managers, regardless of corporate form. This is a clarification of an existing obligation. In fact, much of the text of these two sections remains unchanged from the original language adopted in 1993. Finally, two commenters agreed with the changes.

Comment: Six commenters objected to the language in 25 CFR 535.1 that states: ''If the Chairman does not approve or disapprove an amendment within the timelines of paragraph (d)(1) or (d)(2) of this section, the amendment shall be deemed disapproved.'' The commenters asserted that the Chairman's failure to act on these contracts should make them ''deemed approved'' by operation of law instead of ''deemed disapproved.'' They requested that the NIGC make this change to this section.

Response: The Commission disagrees. This language has not changed from the language adopted in 1993 and has always read that the Chairman can ''approve or disapprove'' the amendment at issue and that the amendment will be ''deemed disapproved'' if he fails to act. The Commission sees no reason to change this now.

Comment: Twelve commenters objected to the increase in fees for background investigations from $10,000 to $25,000 under 25 CFR 537.3. The commenters suggested that the fee was too high and caused too great a burden on tribes. They advised that the fee should remain the same.

Response: The Commission disagrees. The change represents the amount of the deposit made for the background investigations rather than an increase in fees. Furthermore, typically, contractors pay for their background investigations, and not the tribes. Furthermore, even if a tribe chooses to reimburse a contractor for the costs, the deposit presented in the final rule has been changed to reflect the actual costs of performing this service.

Comment: One commenter objected to the ability of a party to appeal the Chairman's approval of a management contract or amendment under 25 CFR 539.2. Originally, this section only permitted appeals for disapprovals of management contracts and amendments. The commenter requested that this language be removed for fear that state and local governments might be considered a party for purposes of appealing under this section and challenging an approved management contract or amendment.

Response: The Commission disagrees. While the Commission anticipates that this addition will be used infrequently, the amendment was made to acknowledge the possibility that parties may question the propriety of a contract approval. This section does not give standing to an entity that was not a party to the management contract or amendment. The amended section merely recognizes a practical necessity and reflects existing practices.

Comment: Two commenters stated that 25 CFR 558.2 needed clarification because the language appeared to indicate that someone other than a gaming commission could license gaming employees.

Response: The Commission agrees and has altered the language in the final rule accordingly.

Comment: Twenty-three commenters objected to the changes presented in 25 CFR 556.2, 556.3, and 558.2. The commenters insisted that the NIGC lacks the authority to change these sections because the changes would require tribes to specifically amend their ordinances in contravention of their status as a sovereign.

The commenters also asserted that in replacing the word ''employment'' with the word ''licensing'' throughout these sections, the Commission was making a mistake. They argued that changing these words incorrectly indicated that the Privacy Act and False Statement Act now apply to tribes. Finally, the commenters argued that using these sections for employment purposes was convenient for their needs.

Response: The Commission does not agree. The final rule is not retroactive and does not require any tribe to immediately amend its gaming ordinance. Rather, the amendments need only be made when a tribe otherwise chooses to amend its gaming ordinance. Thus, the final rule states that tribal gaming ordinances and ordinance amendments that have been approved by the Chairman * * * and that reference this rulemaking will not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

Furthermore, the Privacy Act notice and False Statement Act notice have been required as part of NIGC regulations since they were adopted in 1993. The Commission is only changing the word ''employment'' to ''licensing.'' None of the changes alter the application of these Acts. Because tribes access personally identifiable information through the NIGC, they

have agreed to the Privacy Act and False Statement Act restrictions.

Finally, the emphasis here is on licensing and not employment. A decision to license an applicant and a decision about an applicant's suitability (or eligibility) for licensure are separate and distinct from a decision to hire the applicant. We have concluded that these sections should be concerned with licensure and suitability determinations, not employment decisions.

Comment: Ten commenters objected to the changes for filing audits under 25 CFR 571.12 and cited the *Colorado River Indian Tribe* v. *National Indian Gaming Commission (CRIT),* 383 F. Supp 2d 123 (D.D.C. 2005), aff'd 466 F. 3d 134 (D.C. Cir 2006), for the proposition that the NIGC does not possess authority to apply these changes to Class III gaming operations.

Response: The Commission disagrees. The commenters incorrectly understand CRIT to hold that NIGC has no authority over Class III gaming. CRIT, however, only holds that NIGC lacks the authority to promulgate and enforce minimum internal control standards for Class III gaming operations. 383 F. Supp 2d 123, 132 (D.D.C. 2005). CRIT did not strip the NIGC of the power to regulate Class III gaming generally. Rather, it stands for the proposition that NIGC, like every other administrative agency, has only those authorities Congress has granted to it. The NIGC has continued to regulate the industry consistent with IGRA's provisions, and IGRA requires Class II and Class III operations to file annual audits. 25 U.S.C. 2710(b)(2)(C); 2710(d)(1)(A)(ii). Finally, five commenters agreed with the changes to 571.12.

Comment: Ten commenters objected to the requirement in 25 CFR 571.12 that audit statements actually be received by NIGC on or before the due dates, preferring instead to apply the mailbox rule. This would mean that audit statements are timely so long as they are mailed by the due dates, no matter how long those documents take to arrive.

Response: The Commission agrees. The final rule now requires that audits and financial statements be sent on or before their due dates. Audit statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date.

Comment: Three commenters objected to the new requirement for a written statement as requested under 25 CFR 571.12(c)(3), (d)(5), and (e)(5). They insisted that the requirement was unnecessary and that the requirement was vaguely worded. Without further explanation, the requirement could cause further non-compliance as tribes attempt to understand the scope of what is required in the statement.

Response: The Commission agrees. The Commission is convinced by the arguments presented and has altered the final rule to delete these section requirements.

Comment: One commenter noted that the word ''reports'' appeared in the 1993 version of this section but no longer appears in the proposed rule published in December 2008. The commenter suggested that 25 CFR 571.13 include the word ''reports'' again because it captures more broadly the documents compiled by the certified public accountant when conducting an audit.

Response: The Commission agrees. The Commission has altered the final rule to put the word ''reports'' back in the relevant section.

Comment: Ten commenters objected to the addition of gaming on ineligible lands as a substantial violation under 25 CFR 573.6. Commenters argued that the Commission could not claim that gaming on ineligible lands is a substantial IGRA violation when it routinely permits operations to continue running after it is discovered that they exist on ineligible lands. The commenters asserted that the regulation was also duplicative because gaming occurring on ineligible lands is an issue that could be handled by parties other than the NIGC. Further, they suggested that the additional enforcement power for the Chairman creates confusion as to authority between the NIGC and the Department of the Interior (DOI) on this issue. A split decision between the departments could cause problems for tribes.

Response: The Commission disagrees. First, the Chairman does not routinely permit the operation of gaming on ineligible lands under IGRA. Next, the addition is not duplicative, and there is no additional power given to the Chairman. The Chairman already has the authority to close an operation running on ineligible lands. Under existing regulations, closure is a two-step process. The Chairman first has to issue a notice of violation. He may subsequently order closure if the operation on ineligible lands continues. Under the change here, the Chairman may issue a notice of violation and closure order simultaneously. The change thus merely adds operating on ineligible lands to the list of serious violations that justify immediate closure. Finally, there is no confusion between DOI and NIGC. Regardless of which agency makes the decision as to whether lands qualify for gaming, only the NIGC has the authority to close a gaming operation.

List of Subjects in 25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571

Gambling, Indians—lands, Indians—tribal government, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Commission amends its regulations at 25 CFR Chapter III as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Add new paragraph (d) to § 502.14 to read as follows:

§ 502.14 Key employee.

* * * * *

(d) Any other person designated by the tribe as a key employee.

■ 3. Revise § 502.16 to read as follows:

§ 502.16 Net revenues.

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

■ 4. Revise § 502.17 to read as follows:

§ 502.17 Person having a direct or indirect financial interest in a management contract.

Person having a direct or indirect financial interest in a management contract means:

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10)

shareholders for a privately held corporation;

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract; or

(f) Any person or entity who will receive a portion of the direct or indirect interest of any person or entity listed above through attribution, grant, pledge, or gift.

■ 5. Add new paragraph (d) to § 502.19 to read as follows:

§ 502.19 Primary management official.

* * * * *

(d) Any other person designated by the tribe as a primary management official.

PART 514—FEES

■ 6. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

■ 7. Revise § 514.1 to read as follows:

§ 514.1 Annual fees.

(a) Each gaming operation under the jurisdiction of the Commission 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.

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

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

(3) The rates of fees imposed shall be—

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

(ii) No more than 5 percent 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.

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

(b) 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, admission 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.

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

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

(i) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% (two and one-half percent) of the cost of structures in use during only a part of the year; or

(ii) An amount not to exceed 10% of the cost of the total amount of amortization/depreciation expenses for the year.

(3) Examples of computations follow:

(i) For paragraph (2)(i) of this section:

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees	5,000	
		1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
Maximum allowance:		
$750,000 × .05 =	37,500	
50,000 × .025 =	1,250	38,750
Assessable gross revenues		456,250

(ii) For paragraph (2)(ii) of this section:

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees	5,000	1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Total amount of amortization/depreciation per books	400,000	
Maximum allowance:		
$400,000 × .10 =		40,000
Gross gaming revenues		455,000
Assessable gross revenues		455,000

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

(c) Each gaming operation subject to the jurisdiction of the Commission and not exempt from paying fees pursuant to the self-regulation provisions shall file with the Commission a statement

showing its assessable gross revenues for the previous calendar year.

(1) 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;

(2) These statements shall be sent to the Commission on or before March 1st and August 1st of each calendar year.

(3) The 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.

(4) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during the year.

(5) Each statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(5)(i) and (ii) of this section.

(iv) Multiply the total obtained in paragraph (c)(5)(iii) of this section by ½.

(v) The amount computed in paragraph (c)(5)(iv) of this section is the amount to be remitted.

(6) Examples of fee computations follow:

(i) Where a filing is made for March 1st of the calendar year, the previous year's assessable gross revenues 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 × 0.0% =	
2nd tier revenues—500,000 × .08% =	$400
Annual fees	400
Multiply for fraction of year—½ or	.50
Fees for first payment	200
Amount to be remitted	200

(7) The statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, 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).

(8) The Commission may assess a penalty for failure to file timely a statement.

(9) 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.

(d) 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 by March 1st and August 1st of each calendar year.

(e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(f) 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.

PART 531—CONTENT OF MANAGEMENT CONTRACTS

■ 8. The authority citation for part 531 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 9. Revise § 531.1 to read as follows:

§ 531.1 Required provisions.

Management contracts shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of any increased public safety services; and

(16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for amending or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

■ 10. The authority citation for part 533 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 11. In § 533.1, remove paragraph (c).

■ 12. Revise § 533.2 to read as follows:

§ 533.2 Time for submitting management contracts and amendments.

A tribe or a management contractor shall submit a management contract to the Chairman for review within sixty (60) days of execution by the parties. The Chairman shall notify the parties of their right to appeal the approval or disapproval of the management contract under part 539 of this chapter.

■ 13. Revise § 533.3 to read as follows:

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§ 537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts and § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e)(1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For new contracts for existing operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(h) A legal description for the site on which the gaming operation to be managed is, or will be, located.

■ 14. Revise § 533.4 to read as follows:

§ 533.4 Action by the Chairman.

(a) The Chairman shall approve or disapprove a management contract, applying the standards contained in § 533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not approved or disapproved the contract under this part.

§ 533.5 [Removed and Reserved]

■ 15. Remove and reserve § 533.5.

■ 16. Revise § 533.6 to read as follows:

§ 533.6 Approval and disapproval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and § 533.3 of this part. Failure to comply with the standards of part 531 of this chapter or § 533.3 may result in the Chairman's disapproval of the management contract.

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or

information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his or her responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

■ 17. Revise § 533.7 to read as follows:

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Chairman in accordance with the requirements of part 531 of this chapter and this part, are void.

PART 535—POST-APPROVAL PROCEDURES

■ 18. The authority citation for part 535 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 19. Revise § 535.1 to read as follows:

§ 535.1 Amendments.

(a) Subject to the Chairman's approval, a tribe may enter into an amendment of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit an amendment to the Chairman within thirty (30) days of its execution.

(c) A tribe shall include in any request for approval of an amendment under this part:

(1) An amendment containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the amendment;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) A list of all persons and entities identified in § 537.1(a) and § 537.1(c)(1) of this chapter:

(i) If the amendment involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(A) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts or § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(B) The dates on which the information was previously submitted;

(ii) [Reserved]

(5) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d)(1) The Chairman shall approve or disapprove an amendment within thirty (30) days from receipt of a complete submission if the amendment does not require a background investigation under part 537 of this chapter, unless the Chairman notifies the parties in writing of the need for an extension of up to thirty (30) days.

(2) The Chairman shall approve or disapprove an amendment as soon as practicable but no later than 180 days from receipt of a complete submission if the amendment requires a background investigation under part 537 of this chapter;

(3) A party may appeal the Chairman's approval or disapproval of an amendment under part 539 of this chapter. If the Chairman does not approve or disapprove an amendment within the timelines of paragraph (d)(1) or (d)(2) of this section, the amendment shall be deemed disapproved and a party shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e)(1) The Chairman may approve an amendment to a management contract if the amendment meets the submission requirements of paragraph (c) of this section. Failure to comply with the submission requirements of paragraph (c) of this section may result in the Chairman's disapproval of an amendment.

(2) The Chairman shall disapprove an amendment of a management contract for class II gaming if he or she determines that the conditions contained in § 533.6(b) of this chapter apply.

(3) The Chairman may disapprove an amendment of a management contract for class III gaming if he or she determines that the conditions contained in § 533.6(c) of this chapter apply.

(f) Amendments that have not been approved by the Chairman in accordance with the requirements of this part are void.

■ 20. Revise § 535.3 to read as follows:

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, or 537 of this chapter, the Chairman may require modifications of, or may void, a management contract or amendment approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification or void proceedings by serving the parties, specifying the grounds for the modification or void. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make a decision on the basis of the developed record and notify the parties of the decision and of their right to appeal.

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

■ 21. The authority citation to part 537 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 22. Revise § 537.1 to read as follows:

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;

(4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) *Responses to Questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

> Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.
>
> The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) Notice regarding false statements. Each person required to submit information under this section shall sign and submit the following statement:

> A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) List of individuals. (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership;

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; and

(iv) For any other type of entity, the ten (10) largest owners of that entity alone or in combination with any other owner who is a spouse, parent, child or sibling and any person with management responsibility for that entity.

(2) Required information. (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust

agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;

(x) Complete financial statements for the previous three (3) fiscal years; and

(xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) Responses to questions. Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Notice regarding false statements. Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

■ 23. Revise § 537.3 to read as follows:

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract)—$25,000

(2) Each individual and entity with a financial interest in the contract—$10,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

PART 539—APPEALS

■ 24. The authority citation for part 539 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 25. Revise § 539.1 to read as follows:

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract or amendment under this subchapter, except that appeals from the Chairman's decision to require modifications of or to void a management contract or amendment subsequent to his or her initial approval are addressed in § 535.3 and part 577 of this chapter.

■ 26. Revise § 539.2 to read as follows:

§ 539.2 Appeals.

A party may appeal the Chairman's approval or disapproval of a management contract or amendment under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. At the time of filing, an appeal under this section shall specify the reasons why the party believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute a final decision of the Commission.

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

■ 27. The authority citation for part 556 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 28. Revise § 556.2 to read as follows:

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq*. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary

management officials that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(c) All tribal gaming ordinances and ordinance amendments that have been approved by the Chairman prior to the effective date of this section and that reference this notice do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

(d) All license application forms used 180 days after the effective date of this section shall contain notices in compliance with this section.

■ 29. Revise § 556.3 to read as follows:

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

(c) All tribal gaming ordinances and ordinance amendments that have been approved by the Chairman prior to the effective date of this section and that reference this notice do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

(d) All license application forms used 180 days after the effective date of this section shall contain notices in compliance with this section.

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

■ 30. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 31. Revise § 558.2 to read as follows:

§ 558.2 Eligibility determination for granting a gaming license.

(a) An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for granting of a gaming license. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, an authorizing tribal official shall not license that person in a key employee or primary management official position.

(b) All tribal gaming ordinances and ordinance amendments that have been approved by the Chairman prior to the effective date of this section and that reference this section do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

PART 571—MONITORING AND INVESTIGATIONS

■ 32. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

■ 33. Revise § 571.12 to read as follows:

§ 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The independent certified public accountant must be licensed by a state board of accountancy. Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(c) If a gaming operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation; and

(2) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years were sent to the Commission in accordance with § 571.13.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location;

(4) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with § 571.13; and

(5) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location;

(4) Unless waived in writing by the Commission, the gaming operations' financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with § 571.13; and

(5) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

■ 34. Revise § 571.13 to read as follows:

§ 571.13 Copies of audit reports.

(a) Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.

(b) If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results of 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 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new business year.

(c) When gaming ceases to operate and the tribal gaming regulatory authority has terminated the facility license required by § 559.6, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be sent to the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

■ 35. Revise § 571.14 to read as follows:

§ 571.14 Relationship of financial statements to fee assessment reports.

A tribe shall reconcile its Commission fee assessment reports, submitted under 25 CFR part 514, with its audited or reviewed financial statements for each location and make available such reconciliation upon request by the Commission's authorized representative.

PART 573—ENFORCEMENT

■ 36. The authority citation for part 573 continues to read as follows:

Authority: 25 U.S.C. 2703 (4), 2705(a)(1), 2706, 2713, 2715, 2719.

■ 37. Add new paragraph (a)(13) to § 573.6 to read as follows:

§ 573.6 Order of temporary closure.

(a) * * *

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

* * * * *

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Vice Chairman.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–27 and CP2009–37; Order No. 231]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 11 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective July 27, 2009 and is applicable beginning July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 30179 (June 24, 2009).

I. Background
II. Comments
III. Commission Analysis
IV. Ordering Paragraphs

I. Background

The Postal Service seeks to add a new product identified as Priority Mail Contract 11 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On June 11, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, announcing that it has entered into an additional contract (Priority Mail Contract 11), which it attempts to classify within the previously proposed Priority Mail Contract Group product.[1] In support, the Postal Service filed the proposed contract and referenced Governors' Decision 09–6 filed in Docket No. MC2009–25. *Id.* at 1. The Notice has been assigned Docket No. CP2009–37.

In response to Order No. 222,[2] and in accordance with 39 U.S.C. 3642 and 39 CFR 3020 subpart B, the Postal Service filed a formal request to add Priority Mail Contract 11 to the Competitive Product List as a separate product.[3] The Postal Service asserts that the Priority Mail Contract 11 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–27.

In support of its Notice and Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;[4] (2) requested changes in the Mail Classification Schedule product list;[5] (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;[6] and (4) certification of compliance with 39 U.S.C. 3633(a).[7]

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment B, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Notice, Attachment B.

The Postal Service filed much of the supporting materials, including the unredacted contract, under seal. In its Notice, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. Notice at 2–3.

[1] Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 11), June 11, 2009 (Notice).

[2] PRC Order No. 222, Notice and Order Concerning Filing of Priority Mail Contract 11 Negotiated Service Agreement, June 17, 2009 (Order No. 222).

[3] Request of the United States Postal Service to Add Priority Mail Contract 11 to Competitive Product List, June 23, 2009 (Request).

[4] Attachment A to the Notice.

[5] Attachment A to the Request.

[6] Attachment B to the Request.

[7] Attachment B to the Notice.